*Bors, Szilvia*

# Legal scientific/historical improvement of constitutional principles in employers' liability for damages

Mutua defensio tutissima.[1]

## I. Introduction

In civil constitutions the protection of health and rights connected to social care are regulated differently by the rule of law. In some of them the protection of health is especially stated by the constitution among the right of citizens (such as the French, Italian and Hungarian constitution), in other states the constitution does not specifically state the right to health, it rather lists it among the state's social political directives, social tasks (such as the Mexican, Irish, Bolivian and Burmese constitution), moreover, it also happens that the state lists the right of law-making and execution in the area of health care in the scope of central authorities (such as the Austria). Some constitutions express the right to financial benefits, while others separate the right to the protection of health and financial benefits. Basic constitutional rights[2] emerging in Hungarian labour law are partly formed by the national constitutional development, as well as by principles of the European Union, and according to the economic, social expectations they provide narrower or wider, individual or collective protection, form the bases of detailed arrangements and affect the subjects being in the hierarchy of labour law and labour law like legal relations.

## II. Basic constitutional principles of labour law in Hungary

Among basic constitutional principles the ones that are connected to labour law can be practiced individually or collectively, can be justified and are legally enforceable 3. At the same time, basic rights - besides some exceptions such as right to life or right to human dignity - are not unlimited. Those can be limited proportionate to the objective pursued, with full respect for the essential content of such fundamental right, to the extent absolutely necessary. The reason of limiting a fundamental right can be the effective use of another fundamental right, or the protection of a constitutional value[4]. In labor law relations the lawmaker builds in

[1] Mutual protection is the safest

[2] We call those rights basic right or fundamental right which are stated by the constitution, guarantee the freedom of an individual, behove to everyone, which can be legally and directly executed that is, from which there is direct subject entitlement. Fundamental rights are such universal human basic rights which stand "above" legislations and which protect both employees and employers. However, fundamental rights not only protect individuals that is natural people, but also legal people - such as labour unions - so if a right adhering to them is violated, they can also validate their constitutional protection.

[3] Paragraph (2) of Article 1. of the Fundamental Law of Hungary

[4] Fundamental law test

mandatory norms that protect the more dependent party, having regards to that the party accepting the service (the employer) becomes in a dominant position during the legal relationship and the aim is to restore this unbalanced situation. Due to the obligation coming from social rights the legal state directly limits employers' rights which shall cause conflicts of fundamental rights. While in classic private law the state's lack of intervention, passivity prevails, in labour law state intervention and means of the exercise of public authority is necessary to achieve the above mentioned goal, that is, parties' contractual freedom is only partial, meaning that the certain limitation of employers' autonomy goes hand in hand with the emergence of extra rights on the side of employees. Besides legal principles, in the field of labour law specific fundamental rights that can be practiced individually as well are such guarantee rules which ensure the justification of basic rights, such as the right to freely choose one's work, occupation[5], right to occupational safety [6], right to rest[7], requirement of the prohibition of discrimination [8], right to equal payment based on equal work[9], right to promote equality of opportunity 10 and right to the protection of personal data[11]. In the field of labour law specific fundamental rights which can be practiced collectively are the right of association[12], trade union rights and the right to enter into collective agreements[13], as well as the right to strike[14].

## III. National development of the right to safe work environment

**1.** In Hungary it was the Generale Normation Sanitatis which first expressed it in 1770 that healthcare was a state duty. Act XIV. of 1876 on the Improvement of Public Health stated it as a basic principle that the management of public health is the duty of the state administration. Based on the first industrial code[15] the industrial authority was obliged to assess the state of factories from time to time, while the second industrial code[16] expressed that every factory owner had to establish and maintain rooms which serve the protection of the life and health of workers on their own cost. During the time of the Soviet Republic these initial steps were followed by the establishment of the brand new bases of health protection and social insurance on one part due to nationalisation, on the other part because of the widening of the ratione personae of accident insurance. During the Horthy Era these measures were

[5] Paragraph (1) of Article XII. of the Fundamental law
[6] Paragraph (3) of Article XVII. of the Fundamental law
[7] Paragraph (4) of Article XVII. of the Fundamental law
[8] Paragraph (2-3) of Article XV. of the Fundamental law
[9] Paragraph 70/B. § (2) of the Constitution, however, it is not declared by the Fundamental law
[10] Paragraph (4) of Article XV. of the Fundamental law
[11] Article II. of the Fundamental law
[12] Paragraph (2) of Article XVIII. of the Fundamental law
[13] Paragraph (1) of article XVII. of the Fundamental law
[14] Paragraph (2) of Article XVII. of the Fundamental law
[15] Act VIII. of 1872
[16] Act. XVII. of 1884

overruled, however, they increased state intervention in social and health care relations but the constitution of 1936 did not use the term of right to health yet.

**2.** Paragraph (1) of 47. § of Act XX of 1949 on the Constitution of the People's Republic of Hungary, announced on 20 August 1949, and being in effect from that date until 25 April 1972 (hereinafter: Constitution) expressed that the People's Republic of Hungary protects workers' health and assists them in the case of incapacity. Subsequently, paragraph (1) of 57. § stated that in the People's Republic of Hungary citizens had the right to the protection of life, physical integrity and health, furthermore, according to paragraph (2) this right was realized by the People's Republic of Hungary with the organization of occupational safety, health care institutions and medical care. From 23 October 1989 – with 34. §- of Act XXXI of 1989 – the above mentioned provision was modified – until the annulment of the Constitution (1 January 2012) – with that the Constitution's paragraph (1) of 70/D. § stated that citizens living in the territory of the Hungarian Republic have the right to the highest possible quality of physical and mental health, while according to paragraph (2) this right is realized by the Republic of Hungary with the organization of occupational safety, health care institutions and medical care, ensuring regular physical activity and the protection of built and natural environment.

The historical antecedents of the fundamental right of the highest level of physical and mental health (in other constitutions: health protection or health care) are in the state of enlightened absolutism, where, in order to prevent devastating epidemics, public health started to become a state task. In that feudal society the care for those in need partly became incumbent on the landlord, on the other hand, it became part of churches' charity activity. When the feudal society came to an end taking care of those in need came down as a task of the state. In the capitalizing society, while the state tasks of public health widened, rapidly organized insurance companies started to take care of an ever widening range of health care cover based on the contribution of concerned people (as well).

It can be seen that the protection of the fundamental right was lifted to the obligations of the state by the regulation above with that it fully became a state task, however, the financial cover of health care was split between the concerned employee and the state.[17]

Simultaneously, international documents also took the obligation of universal health care as a starting point[18] that is, everybody shall enjoy the highest possible level of physical and mental health[19].

Guaranteeing the highest possible level of physical and mental health confirmed in § 70/D of the constitution meant such a state task was realized through

[17] Garancsy, Mihályné-Lőrincz, Lajos-Trócsányi, László: az egészségvédelemhez és anyagi ellátáshoz való jog [right to the protection of health and financial care]. in: *az állampolgárok alapjogai és kötelességei [rights and obligation of citizens]*. budapest, 1965. p. 328.

[18] http://alkjog.elte.hu/wp-content/uploads/2016_tulajdonjog_masodik_harmadik_generacio.pdf (downloaded on 6 December 2018)

[19] Article 12 of International Covenant on Economic, Social and Cultural Rights

its central bodies and local self-governments[20]. In frames of this the state was obliged to operate health care institution networks and organize medical care.

However, right to health has a much wider meaning than health care. The previous one also contains right to healthy environment, healthy lifestyle and the state support of sports but still not covers the (occupational) protection of employees.

**3.** According to (3) of article XVII of Hungary's Fundamental Law which was announced on 25 April 2011 and entered into effect on 1 January 2012 (hereinafter: Fundamental Law) every employee has the right to working conditions which respect their health, safety and dignity. With this article the state recognized the obligation of ensuring occupational safety as a fundamental right. In its understanding the state widens the definition of employee to every worker, so the above regulation has to appear in all employment relationships, on the other hand, besides substantive legal regulations of the given legal relation employee's health and safety is separately guaranteed with the system of safety regulations and health care.

## IV. The modification of the right to occupational safety in substantive law

**1.** 81 § of Statutory Rule 7 of 1951 on the Labour Code being in effect from 1 February 1951 presents the undertaking according to which the Hungarian People's Republic protects employees' health and physical wellbeing with establishing safe work environment and permanent health care.

Based on 33. § of Act II of 1967 on the Labour Code, being in effect from 1 January 1968 companies are obliged to provide the conditions for healthy and safe work environment. 62. § of the act ruled on employers' (companies') objective obligation, however, only on the obligation of compensation for material damage.

(2) of 102. § of Act XXII of 1992 being in effect from 1 July 1992 ruled on the employers' obligation to guarantee the conditions for healthy and safe work environment. Chapter IX regulated the objective obligation of employees, in which the obligation of the compensation for non-material damage also emerged for the first time[21] with that when judging the level of responsibility and damage one also has to consider 354 § of Act IV of 1959 on the Civil Code – its modification from 1 July 1992 – regulating the compensation of injured party's non-material damage[22] with regards to 12/1991. (IV. 11.) decision of the Constitutional Court as well.

Paragraph (4) of 5.§ of Act I of 2012 on the Labour Code (hereinafter: Labour Code) being in effect from 1 July 2012 until present day obligates employers to guarantee the conditions for occupational safety and occupational health requirements, Chapter XIII rules on employers' liability for damages; there is only one exception from the system of compensation, the protection of personality rights, which can be found in paragraph (1) of 9. § of the Labour Code and rules on the application of Act V of 2013 on the Civil Code (hereinafter: Civil Code).

[20] 56/1995. (IX. 15.) Resolution of the Constitutional court
[21] Paragraph (2) of 177. §
[22] Curia EBH2002. 694.

**2.** Point a) 2:43. § of the Civil Code specifies the right to life, bodily integrity and health; if they are violated the employee can demand restitution according to 2:52.§ of the Civil Code for any non-material violation suffered, with that for the liability for damages one has to apply 166.§-178.§ of the Labour Code and for compensation for the damage 6:518-534. § of the Civil Code.

**3.** Based on paragraph (1) of 83 § of Act XXXIII of 1992 on the Legal Status of Public Servants it took over the regulation of the Labour Code, the application of the Civil Code according to (4) of 11 § of Act CXCIX of 2011 on the Public Service Officials, and according to 15/A § of Act CXXII of 2010 on the National Tax and Customs Administration except rules referring to liability, while Act CCV of 2012 on the status of the military personnel and Act XLII of 2015 on the Service Status of Professional Members of Law Enforcement Agencies determine their own rules.

It can be seen that the requirements of secure and healthy working practices that is, the fundamental right of occupational safety can be found in all employment relations with that substantial regulations, hence Act XCIII of 1993 on Occupational Safety and Health (hereinafter: OSH) has the task to form such work requirements which protect employees' life, physical integrity and health, and which protect them against threats and damages emerging in connection with work. Based on and in frames of the legal principle regulated on legal level several other lower ranked legislations regulate the further details.

## V. Right to occupational safety in the law of the European Union

Article 118 of the Treaty of Rome made the facilitation of direct cooperation among member states with regards to the regulation of occupational safety the task of the European Committee. In point b) of Article 7 of International Covenant on Economic, Social and Cultural Rights it recognized that everyone has the right to safe and healthy working conditions. Chapter IV[23] of the Charter of Fundamental Rights of the European Union (Under the title of „Solidarity") expressed that the right to fair work conditions has to be ensured for employees, while points a) and b) of paragraph (1) of Article 153[24] of Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2012/C 326/01) highlighted that the Union shall support and complement the activities of member states in the improvement of the working environment to protect workers' health and safety 25.

[23] Paragraph (1) of article 31 of the Charter of Fundamental Rights mentiones fair and rightful working conditions meaning that every emplyoee has the right to such working conditions which respect his or her health, safety and dignity

[24] ex Article 137 TEC

[25] The definition of working conditions has to be understood according to Article 156 of Treaty on the Functioning of the European Union

Besides what was worded in treaties mentioned above, the European Union also aims to strengthen the situation of employees being in a more vulnerable position in this area with other legal tools. Therefore, the Council of the European Union individually and together with the European Parliament accepted more directives in order to establish the occupational safety of employees, such as Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship, Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment, Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Directive 2009/104/EC of the European Parliament and of the Council concerning the minimum safety and health requirements for the use of work equipment by workers at work[26], Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services, Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System and finally, Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

The European Council announced its most significant measures connected to occupational safety and health protection in its announcement entitled *Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy*, which basis was the *Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation).*

Besides, based on Article 114 of the Treaty on Functioning of the European Union there are some directives of the EU which deal with „protective and health care" aspects. Based on the so called „new approach" several technical directives have been accepted, through which European standardisation organisations – European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC) and European Telecommunications Standards Institute (ETSI) – regularly determine and update the European standards.[27]

Against this background, nowadays we can observe the tendency that the fundamental right to occupational safety has become more and more international

[26] The provisions adopted pursuant to Article 137(2) of the Treaty do not preclude any Member State from maintaining or introducing more stringent measures for the protection of working conditions provided they are compatible with the Treaty, based on paragraph (6) compliance with the minimum requirements designed to guarantee a better standard of safety and health in the use of work equipment is essential in order to ensure the safety and health of workers, while paragraph (7) expresses that the improvement of occupational safety, hygiene and health is an objective which should not be subordinated to purely economic considerations.

[27] http://real.mtak.hu/25691/1/alapjogok_kollizioja_a_munkajogban.pdf (downloaded on 15 October 2018)

both regarding its regulation and enforceability. It means that if a state does not want to exclude itself from the international community, it cannot allow to free itself from all what is going on in connection with fundamental rights in the European Union's legal improvement. It is one of the most significant guarantees of the justification of rights. However, becoming international also means that fundamental rights lose their objective, nature law roots: the frames and content of rights become the subject of international agreements[28].

## VI. ILO

The International Labour Organization formed in 1919 is the specialized body of the UN (in 1946) which main aim is the protection of employees' fundamental labour and social rights. In its frames it forms international labour norms and strengthens regulation connected to labour health and safety. Hungary has been a member of the ILO since 1922.

The Statute and modifications of the International Labour Organization also contain that it expresses such principles in the field of work conditions where governments, employer and employee organizations and multinational companies justify the directives on a voluntary basis. In frames of it the organization forms agreements and recommendations which states can ratify or even quit. Since Hungary joined the ILO in 1922 it ratified altogether 70 agreements (and a minute) out of which currently 59 is still in effect.

## VII. Instructive case decisions

**1.** In the verdict of the Luxembourg court on 19 September 2018 in connection with paragraph (1) Article 19 of Directive 2006/54/EC it – more or less – expressed that risk assessment in labour law has to contain the special examination having regard to the individual situation[29].

According to the facts the plaintiff working in Spain gave birth to a baby boy on 8 November 2014. From March 2015 she worked as a security person in a shopping centre in an eight hour changing shift, generally together with another security person, however, in some cases alone in a way that she continued to breastfeed her child. The plaintiff initiated a proceeding as she wanted to get the benefits relating to risks prevailing during the period of breastfeeding. In order to achieve this, along with international regulations she requested it from the insurance company that it shall issue a medical document for her for the labour risks that prevail for the period of breastfeeding, as she can only fulfil her tasks in the possession of this

[28] Sári, János, Somody, Bernadette: Alapjogok [Fundamental rights]. Alkotmánytan [Constitutional law] II. Osiris kiadó 2008.
https://www.tankonyvtar.hu/hu/tartalom/tamop425/2011o001s20_alapjogok_alkotmanytan_ii/index.html (downloaded on 15 October 2018)

[29] Case no. C-41/17.

document. Her claim and request were both denied, so the high court acting based on her appeal presented a question in frames of an initial decision making process with regards to that the plaintiff's job description has a risk which may affect her safety and health with special regards to working in shifts and at night: sometimes the plaintiff has to walk in the building alone and has to react in case of an emergency (crimes, fire or any other sudden event). The Luxembourg court ruled that paragraph (1) of Article 19 of *Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation* shall be understood in a way that it shall be applied in this given case and it has to be examined whether the risk assessment contained a special investigation of the unique situation of the employee.

**2.1.** Theoretical labour resolution no. 1537/2006 the Curia of Hungary expressed that the exclusive harmful conduct of the employee cannot be determined if the employer missed its obligations connected to the required work organization and occupational safety.

Based on the facts the operation of the tinning machine in the electroplating factory was among the tasks of the employee, together with the removal of diodes sticking to sweeping brushes by hand. On the day of the accident the employee reached into the moving machine without stopping it, during which movement one of the components drew in his right hand upon which his III., IV., and V. fingers were damaged on the right hand. In the investigation process carried out it was determined that the employer only aimed at keeping occupational safety rules formally, it did not initiate any effective actions which could terminate the already existing bad practice (working without stopping the machine), the employer actually eliminated the protective equipment, and despite of the work instruction necessary for the operation of the machine – which prescribes the presence of at least two employees – the employer only operated it with the above mentioned employee. It was also established that the employee wrongfully contributed to the accident as well, as he should have realized that reaching into a moving machine would bring along such consequences, still, he failed to stop the machine. After having evaluated all circumstances the court reached the decision that the employee cannot be relieved of his liability, however, the wrongful act of the employer serves as the basis of the spread of damage, therefore, having regard to that the employer missed its obligation set in paragraph (2) of 102 §of the Labour Code, it cannot successfully refer to that the employee had to take care of occupational safety all by himself.[30].

**2.2** In its verdict the Curia also expressed that if the employer did not provide the necessary working conditions, the sole responsibility of the employee could not be determined. The factual situation shows that the employer did not provide the auxiliary heating of the truck so it violated its obligation of guaranteeing occupational safety and health requirements. This behaviour can be regarded as violation. The behaviour of the employee that he tried to provide the heating of the truck with a gas

[30] Curia Mfv.I.10.594/2005.

cooker in a closed place was also a violation, however, it had not happened if the auxiliary heating of truck would have been appropriate[31]. The decision also contained that providing work equipment in itself does not mean the adherence to the above mentioned constitutional principles as tools provided by the employer also have to be suitable to be able to properly carry out the work with them. Hence, if the employer does not provide the harmonization of managing, executing and controlling tasks, the presentation of professional and technological instructions and the employment of workers with adequate education, in case the exact instruction with regards to the given method of work is missed the employer has to count with that employees apply an incorrect procedure or dangerous tool in order to carry out the task.

Based on the above mentioned it can be determined that the obligation to work only applies on the side of the employee if working conditions are legitimate, so the employee only has to execute the instructions in these cases[32].

## VIII. Safe working conditions

The aim of the fundamental right to safe working conditions means that employees can carry out their work in a healthy and safe work environment, in case of accident at work or occupational diseases they receive an adequate compensation and that such a social security system is formed which provides financial support in case of temporary or permanent decrease of incapacity or its total loss.[33] However, this obligation not only obliges the state but employers as well. The state regulates the procedural order with legal tools, determines substantive legislations, imposes legal consequences in case of failure and default/misconduct, and sets employers' obligation of risk assessment, education, control and sanction giving. The states imposes a general like – caring – obligation to all employers, upon which they are obliged to realize and further improve occupational safety in their own area.

The mutual characteristic of the legal rules of occupational safety (organization of occupational safety, control over its execution, legal consequences of their violation) is an essential content which means that regulations serving the protection of health and physical integrity exclude the validity of parties' opposite agreement, as well as the invalidity of abandonment of hence ensured rights and protection. The fulfilment of obligations coming from the regulations is inevitable, therefore, if one party does not fulfil its obligation and the other party does not justify its right, it does not mean that the other party abandoned its right. In such cases a permanent illegal state is formed due to which the request of the employee persists up until the employer does not terminate the illegal situation.

Therefore, we talk about a constitutional principle providing such fundamental right which expects a careful behaviour from the state, employers and even employees which shall promote the realization of occupational safety. The

[31] Curia Mfv.II.10.423/2010.

[32] EBH2007.1634

[33] Nigriny, Elemér: Felelősség a dolgozó egészségi károsodásáért [Liability for the health damage of employees]. Közgazdasági és Jogi Könyvkiadó, Budapest, 1983.

obligation to guarantee occupational safety is within the scope of the employer and covers the guarantee of the place of work, adequate work equipment and generally all those circumstances which are necessary for working properly, however, it also means the obligation of employees so that they can carefully adhere themselves to instruction referring to – among others – work ethic, use of equipment and participation in trainings, as well as keeping themselves to all information presented there.

## IX. Definitions

Interestingly, the substantive legal system of Hungary, so neither the Labour Code nor Act XCIII/1993 on Occupational Safety and Health does not define the definition of occupational safely. Act on Occupational Safety and Health fixes the source of hazard: all factors appearing in the course of or in connection with the performance of work, which may have hazardous or harmful effects on the workers or other personnel in the area of the performance of work. *Government decree 273/2011 (20 December) on the rates of occupational health and safety fines and procedures for imposing fines* defines the definition of endangering in that it is the lack of protection with regards to work equipment, material, mixture, work process, organization of work, application of technology – including activities coming with the exposition of physical, biological or chemical factors.

Based on the above mentioned conditions we can come to the conclusion that the safe qualification of a given working condition always has to be done with carefully examining all circumstances and taking the given workflow and the area's special characteristics into account, also covering all personal conditions related to the employment (education of employees, medical examination, protection of their employment, examination of accidents) as well as the establishing of physical equipment (formation of workplace, installation of machines, equipment, protective equipment and providing changing rooms and hygienic premises).

Table 1 presents the rate of accidents at work[34]

| Year | Number of all accidents | Per 1.000 employees | Deadly accidents | Frequency indicator per 100.000 employees | Number of employees |
|---|---|---|---|---|---|
| 2013 | 17.222 | 4,4 | 75 | 1,9 | 3.938.400 |
| 2014 | 19.661 | 4,8 | 78 | 1,9 | 4.100.840 |
| 2015 | 21.088 | 5,0 | 84 | 2,0 | 4.210.500 |
| 2016 | 23.027 | 5,3 | 80 | 1,8 | 4.351.634 |
| 2017 | 23.387 | 5,3 | 79 | 1,8 | 4.421.382 |

[34] Jelentés a nemzetgazdaság 2017. évi munkavédelmi helyzetéről [Report on the situation of occuparional safety of the national economy]: http://www.ommf.gov.hu/index.html?akt_menu=555 (7 January 2019.)

The increase of the rate of accidents at work stopped in 2017, the rate of accidents at work ending with death started to decrease from 2015.

Table 2 presents the gender division of occupational diseases and increased exposure cases in 2017[35]

| 2017. | Occupational diseases | Increased exposure cases |
|---|---|---|
| Women | 54 % (124 people) | 7% (3 people) |
| Men | 46% (106 people) | 93% (40 people) |

## X. Summary

With the rapid improvement of natural sciences and technology carrying out work has become ever more complicated. The increased usage of machines and natural resources has made carrying out work more dangerous. During the time of capitalism the aim of employers (and the state as well) was to have as much gain as possible with as little effort as possible, however, those conditions were not established which could have provided the most essential requirements of occupational safety. During the time of socialism this situation changed, employers gradually started to have all those social and economic tools which could form the bases of healthy and safe work environment. Law has become the area that with establishing the necessary norms of occupational safety and applying the adequate sanctions contributed to form the bases of healthy and safe work environment.

Through the positive quality change regarding the value of employers and employees the fundamental right of occupational safety is not only part of the tasks of the state these days but it emerges in the private sphere as well, so, in the employment relation between the employer and the employee in a way that a need for an even more detailed, more exact regulation has been formed in substantive legislations in order to protect the life and physical integrity of employees.

Employees not only depend on employers economically but legally as well. This dependant relationship is mainly determined by the wide range of right of instruction of the employer. The employer is the one who is entitled to exactly determine the obligations, tasks and work environment of employees, however, the right of instruction is at the same time an obligation also emerging in the area of occupational safety[36], therefore, Act on OHS states it as a principle that the responsibility for the implementation of occupational safety and occupational health requirements lies with the employers and the employers not only entitled but are also obliged to determine the method of its realization – among the frames of legislation and other regulations[37].

The study also reflected on that social rights which emerged in order to protect the interest of the party being in a weaker position, such as the formation of

[35] Jelentés a nemzetgazdaság 2017. évi munkavédelmi helyzetéről [Report on the situation of occuparional safety of the national economy]: http://www.ommf.gov.hu/index.html?akt_menu=555 (7 January 2019.)

[36] Points a)-c) of paragrapgh (1) of 52 §, point a) of paragraph (2) of article 42 § of the Labour Code

[37] Paragraphs (2)-(3) of article 2 § of the Labour Code

safe work environment aim to establish a harmonized situation between parties providing and parties accepting services in the state and private sphere as well with such public law tools which limit the rights of one party (employer) in order that the other party's above mentioned fundamental rights (employee) can prevail. Our domestic law not only contains the protection of fundamental right on a normative level but it also aims for its execution in practice in a way that – among others – it has also become part of the burden of proof and the system of liability. Our regulations are in line with the expectations of the European Union, also, besides the obligations of employers' common sense, the element of reason and the responsible thinking from the side of employees is also expected.

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