

Employers pay attention! New Curia decision on employers' control and compensation obligation

The recent ruling of the Court on a case-by-case incident is related to an accident at work has repeatedly analyzed **the concept of the control circle in relation to compensation and was affected by the obligation to compensate and the possible sharing of damages also the question of the correct interpretation of the relevant legislation.**

The factual ground that served as a basic of the Curia's decision can be summarized in a woodworking machine incident. A worker in charge of managing inventory steps out of his designated working area, deliberately, intentionally and unreasonably reached under the protective cover of an operating circular saw, resulting in the loss of three of their fingers. The accident was such a psychologically shock for the employee that it resulted in his/her resignation, though they were offered further employment in a different department. At the same time, the employee claims both financial compensation (lost wages and future monthly salary replacement) and non-pecuniary damage (in connection with permanent health loss).

While the courts of first and second instance were essentially the same in this case, only judgments of different amounts were made in relation to the given items; this is a guideline for the correct interpretation and investigation of the breach of the obligation to compensate.

The decision of the Curia states that subject to **the control circle, all objective facts, is to be understood by the employer and therefore in case of accidents not only the direct cause of the accident** – i.e. the employee in the case of a deliberate and **unreasonable** impact on the circular saw in operation - **is to be considered, but the whole process had to be examined, so that the work organization of the employer, work safety measures, etc. have complied with legal requirements.**

In respect of this issue, the Curia agreed with the judgment of the courts that the employer was not able to save himself from the damage, because the accident was caused by a circumstance used by a work machine, i.e. the employer, which is in any case within the control of the employer, irrespective of the fact that the employee was not assigned to this machine for work and regardless of the fact that otherwise the employer had to count on the accident or if it would have been expected that the employer would avoid or circumvent the damage.

In addition, the Curia - divided by the position of the previous courts in this respect - did not consider the rescue of the employer responsible for the unavoidable conduct of the injured party to be justified, because according to the expert opinion available in the case, the employer has failed in three direct circumstances:



- 1. did not provide the employee with the new machine in special education,**
- 2. did not properly verify that the employee complies with the instructions and**
- 3. the machine itself did not fully comply with the safety regulations.**

Accordingly, the Curia also ruled that the compensation of damages be shared (in proportion to the contribution of the employer and employee). It is important to emphasize that the Curia also stated that the reference by the employer that it was not the foreseeable damage caused by the accident was not justified as in this respect. The employer should not anticipate the exact extent of the damage, but the damage the magnitude and type of event that was predictable in a given case.

However, regarding the second question, the issue of compensation, the Curia disagreed with the procedure court decisions. The courts that had previously acted were considered to have arisen during the trial. Expert opinion confirmed that the employee's accident had a psychological effect on the basis of which he was not expected to maintain his employment with the employer or accept another job from the same employer, hence the employer is compensating a reference to the breach of an obligation by the employee as unfounded account. In respect of this issue, the Curia considered the first and second instances to be inadequate in its proceedings and instructed the court of first instance to proceed with further proceedings and evidence. Curia's decision, it would have been necessary to examine this issue in detail, including to the extent that the employee's experience of an accident is an obstacle to the employee to work for the employer or elsewhere and to what extent your employment has contributed by examining the employee's ability to work and the consequences of the failure to find a job.

The Curia's referenced decision once again points to a detailed, thoroughly planned and implemented work organization, the importance of safety and work safety. Occasionally, work organization and work safety regulations and processes are useful and desirable, review, objective risk assessment to both employees and employers and protect the unwanted material or non-material damage!