New decision taken by the Supreme Court on the liability for damages on behalf of the managing directors

The Supreme Court ruled again in the subject of the liability for damages of the managing directors. Recently, the Supreme Court published a regulation in which they dealt with acts with regard to liability for damages of the executive employee, which is regulated in Act I of 2012, in the so-called new Labor Code.

The related factual ground: a managing director of an employer created a health insurance policy for the employee in the name of the company and the managing director transferred the yearly fee of the health insurance policy for the insurer in two installments. The situation became more complicated: the owner of the company made a founding resolution before the second transfer. According to the resolution, the managing director was going to be able to issue an invoice with the prior approval of the budgetary and financial office of the founder whether the economic event occurred before the founding resolution or it comes from the binding contract, which was binding after the founding resolutions.

Before the mentioned second transfer, the managing director did not ask for permission to accomplish it. He implemented the payment of the account individually as he did during the first transfer. The founder of the company did not know about the contraction neither the payment.

The position of the Administrative and Labor Court

The curiosity of the case is that the first instance of the Administrative and Labor Court and the second instance of Regional Court ruled and represented an opposite position. Both courts started at the Civil Code and on the basis of the old Labor Code. The decision of the Supreme Court established on the following principles:

First of all, the Supreme Court established that the shall employer shall apply the rules, which were in force at the time of the harmful conduct in connection with the liability for damages of an employee. If the time is not **ascertainable then it shall employ those rules what was in force when the damage occurred and these rules will govern the judgement of the case.**

The position of the Supreme Court: The authoritative rules are not the rules of the Civil Code for the liability of the managing director taking into consideration that the damage occurred in November 2012 after the founding resolution and by transferring the second installment.

In regard to the mentioned point the Supreme Court declares: The new Labor Code does not refer to the employment of the rules of the Civil Code in connection with the executive employees (only the rules of the compensation of the damage) therefor it shall employ Section 179 Paragraph (1) of the Labor Code in connection with the **adjudication of** the liability for damages of the managing director.

So, according to Section 179 Paragraph (1) of the Labor Code the employees shall be exempt from their failure to act as it might normally be expected in the given circumstances.

The decision of the Supreme Court established: The difference between the Civil Code and the Labor Code with regard to the liability provisions is that the employer holds the burden of proof according to the liability system of the new Labor Code, over by standing virtue of contract and damage-casual connection , that the employee did not act as it might normally be expected in the given circumstances, if the employer refers to the liability for damages of the employer.

The managing director was condemned by the Supreme Court because of his decision (against the Regional Court's reviewed judgement). According to the abovementioned facts, the Supreme Court established that the harmful behavior had been materialized by the transfer of the insurance.

According to the Supreme Court, the welfare service, which is provided by the insurance, is a damage caused, because the owner didn't dispose about the service, and the intention of the service was not proved, so the property of the company decreased by the payed amount which was contrary to the owner's intention.