



The violation of the employee's personal right to life, physical integrity and health in the light of Hungarian labour law judicial practice with particular regard to the grievance award

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1. Introduction

The Act V of 2013 on the Civil Code (hereinafter: CC) introduced the grievance award as a new legal institution.¹ The legislator made the relationship between civil law and labour law even closer when it stated that even in the employment relationship the rules of the CC on personal rights shall be applied.² In the initial period after its introduction, the regulatory structure of the grievance award led legal practitioners to a dead end in many cases, and different positions emerged during the interpretation of several provisions. For example, whether the grievance award is automatically awarded after the establishment of a violation of personal rights, or what amount of damages can be established. After the initial interpretation difficulties – on the basis of consistent case law – it can now be clearly stated that illegality (violation of personal rights) does not in itself establish the right to grievance award. Despite this, there are still open questions that need to be answered because the editors of the CC and the legislator – especially in relation to the criteria governing the determination of the amount of grievance award – relied heavily on the law-developing work of the courts.

In view of all this, the aim of my study is to analyse the labour law judicial practice of the grievance award based on the past eight years. In the course of the research, when analysing the judicial practice of the protection of personality in labour law, among the other sanctions, I scrutinized only the grievance award. The decisions included in my investigation were primarily the decisions of the Curia of Hungary,

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¹ The CC calls the new legal institution „sérelemdíj”, which has no official English name. In this study, I use the „sérelemdíj” with the translation according to the National Legal Database, see: <https://njl.hu/jogszabaly/en/2013-5-00-00>

² The Act I of 2012 on the Labour Code (hereinafter: LC), sec. 9., para. 1.

as well as their “history” in connection with the given case, the first and second instance judgments. The Collection of Court Decisions (hereinafter: CCD),³ where courts must publish their substantive decisions, served as the database for my research.⁴ I selected the decisions on which the analysis is based from the CCD as follows: I entered the term “sérelemdíj” (grievance award) in the search engine and I set the following filters: court – “Kúria” (Curia of Hungary), years: 2014–2022. With these search parameters, 230 hits were received, from which I selected the cases in which the courts dealt with the claim based on grievance award, regardless of whether they were found to be well-founded or the claim was rejected. After reviewing the judgments found in the CCD, it was established that in practice the demands put forward by employers only rarely occur and the richest case law covers the violation of the right to life, physical integrity and health. Therefore, in this paper, I deal exclusively with those cases in which the employees filed a lawsuit due to the violation of this right.

In the first part of my paper, I describe some cases in which the court found the plaintiff’s claim well-founded, and important conclusions can be drawn from the conditions for admissibility of the grievance award or the aspects evaluated when determining the amount of the grievance award can provide lessons. In the second part of the study, I will cover the other cases that are the subject of the investigation only briefly, in summary, to the extent of the conditions for the admissibility and the criteria governing the determination of the amount of the grievance award.

2. Overview of the private law instruments for the protection of personal rights

The CC provides for personal rights and their protection without defining the concept of a person’s personality, in fact, it explicitly refrains from doing so.⁵ The editors of the CC did not consider the subject of protection to be important in the protection of personal rights, but rather the restorative and organizing nature of the regulation.⁶ The regulatory concept of the CC is to list by way of example the personal rights for which it intends to provide normative regulation.⁷ In the CC violation of personality rights means in particular *a)* harm to life, physical integrity and health; *b)* violation of personal liberty and privacy, and trespass; *c)* discrimination against a person; *d)* defamation or violation of good reputation; *e)* violation of the right to keep personal secrets and the right to the protection of personal data; *f)* violation of the right to a name; *g)* violation of the right to the protection of one’s image and recorded voice.⁸ The nature of the violation of personal rights depends on the type of civil law claim

³ CCD is available at the following link: <https://ekta.birosag.hu/anonimizalt-hatarozatok>

⁴ See: Act CLXI of 2011 on the organization and administration of the courts sec. 163–164.

⁵ Szerkesztőbizottsági javaslat az I. Könyv: A személyek III. Részéhez. *Polgári Jogi Kodifikáció*, 2005/3. 3.

⁶ Loc. cit.

⁷ VÉKÁS, Lajos: Bíráló és jobbitó észrevételek az új Ptk. Törvényjavaslatához (a zárószavazás előtt). *Magyar Jog*, 2013/1. 57.

⁸ CC sec. 2:43.

that can be asserted against the violator in the given case, and there is no obstacle to asserting multiple claims at the same time.⁹

The system of personal protection instruments shows an extremely mixed picture: it contains both objective and subjective legal consequences. The fundamental difference between the two is that, in the case of an objective sanction, the fact of the violation itself establishes the applicability of the sanction against the violator, so the violator's responsibility is indifferent, and he has no possibility of exculpation.¹⁰ The purpose of sanctions independent of responsibility¹¹ is to eliminate the unlawful situation and to provide moral support to the injured party.¹² On the other hand, the application of other sanctions (grievance award and compensation) depends on the responsibility of the person who violates the law, so he must be responsible for the personal violation based on some form of liability.¹³

The legislator introduced the grievance award as a new legal institution in the CC as part of the sanctions for personal injury. The CC provides for the legal basis of the grievance award,¹⁴ the conditions for adjudgability of the grievance award¹⁵, as well as the aspects to be evaluated when determining the amount of the grievance award.¹⁶ The function of the grievance award is twofold:¹⁷ the indirect compensation of the violation of personal rights through financial compensation and at the same time a penalty under private law, which provides more effective protection for the person whose personal rights have been violated, since in order to determine the grievance award, the court does not have to investigate the disadvantage that occurred on the part of the injured party, nor does the injured party have to prove it.

⁹ KECSKÉS László: *Polgári jog. A személyek joga*. Budapest–Pécs, Dialóg Campus, 2007. 448.

¹⁰ BÍRÓ, György (szerk.): *Új magyar polgári jog (I-VIII.) I. kötet. Általános tanok és személyek joga*. Miskolc, Novotni Alapítvány, 2013. 232.

¹¹ CC sec. 2:51.

¹² PETRIK, Ferenc: *A személyiség védelme. A sajtó-helyreigazítás*. Budapest, HVG-Orac, 2001. 68.

¹³ FUGLINSZKY, Ádám: *Kártérítési jog*. Budapest, HVG-ORAC, 2015. 830.

¹⁴ CC sec. 2:52. para. 1.: Any person whose personality rights have been violated may claim a grievance award for non-material harm done to him.

¹⁵ CC sec. 2:52. para. 2.: Conditions of the obligation to pay grievance award, and in particular the identification of the person who is under the obligation to pay and the ways of exculpating him, shall be governed by the rules on liability for damages, with proviso that, apart from the fact of the violation, there is no need to prove further loss.

¹⁶ CC sec. 2:52. para. 3.: The court shall determine the amount of the grievance award in one sum, taking into account the circumstances of the cases, in particular the gravity of the violation, whether it was committed on one or more occasions, the degree of fault, and the impact of the violation on the aggrieved party and his environment.

¹⁷ The dual function of the legal institution (Schmerzensgeld – pain award) was declared by the German Federal Supreme Court in 1955 [see: BGHZ 18, 149]. The decision in principle supplemented the compensation function (Ausgleichsfunktion) with the function of satisfaction (Genugtuungsfunktion), on the basis of which, in addition to adequate and fair reparation, equalization, and reparation of non-pecuniary disadvantages, the offender must reckon with the fact that he owes satisfaction to the victim, and the courts aspect is evaluated with equal weight. Based on German judicial practice, the satisfaction function comes to the fore especially when the victim is unable to absorb the compensatory effect – for example due to his comatose state – and also when the disadvantage itself is not that significant, but the sanctioning of the violation can best be achieved with a pain award. See also: LÁBADY, Tamás: A nem vagyoni kártérítés funkcióiról. *Biztosítási szemle*, 1991/11–12., 4–5.; VÉKÁS, Lajos: *Parerga. Sérelemdíj – fájdalomdíj. Gondolatok az új Ptk. reformjavaslatáról a német jog újabb fejleményei tükrében*. Budapest, HVG-ORAC, 2008. 145–155.; SZILÁGYI, Ferenc: A személyiség magánjogi védelmének dogmatikája a német jogban. *In Medias Res*, 2013/2.; GÖRÖG, Márta: A fájdalomdíj mértékét befolyásoló körülmények összehasonlító elemzése a német joggyakorlat előtérbe helyezésével. *Jogelméleti Szemle*, 2001/4.

3. Excerpts from labour law court practice related to violations to life, physical integrity and health

3.1. *An accident at the pasta factory*

The defendant employed the plaintiff as a trained pasta maker. The plaintiff suffered a work accident in 2016 while working, when one of the rotating mixing arms of the pasta machine caught the plaintiff's right hand. The plaintiff shouted for help to the helper assigned to him, but the helper was a student, he did not know how to stop the machine, so he ran for help, however, by the time he returned, the blade of the machine destroyed the plaintiff's lower arm and tore it off.

The plaintiff can only use his left upper limb, therefore, in the case of unilateral, heavy straining, years or decades later, a higher-than-average degenerative damage and deterioration of the left upper limb joints is not excluded. In connection with the accident, the plaintiff suffered 54% locomotor health damage and 20% psychological damage, the plaintiff's 63% total body health damage resulted in a 67% reduction in work capacity.

In the plaintiff's lawsuit, he requested that the defendant be ordered to pay 15,000,000 Hungarian Forint (hereinafter: HUF) grievance award due to his work accident.

The court of first instance ordered the defendant to pay 3,000,000 HUF grievance award. When determining the amount of the grievance award, consideration was given to the "socially recognized purpose" of the monetary penalty, the satisfaction of the disadvantage and harm caused, and the sanctioning of the violation. The court of first instance assessed that the plaintiff was born in 1989, lives in a cohabitation relationship, had twins in 2017, and has two adopted daughters.¹⁸

The appeal court partially changed the first-instance court's verdict and raised the penalty amount to be paid by the defendant to 10,000,000 HUF. In addition to the assessment criteria, the first-instance court took into account the fact that in connection with the accident, the plaintiff's right to life, physical integrity, and health were violated, he was undergoing hospital treatment, he had a recovery process of several weeks, and he suffered permanent disability. As a result of the accident, the once right-handed plaintiff cannot do manual work, he is permanently limited not only in his work, but also in his daily life, his condition is permanent, he lost his entire right forearm.¹⁹

The defendant filed a review request against the final judgment, however, the review request did not provide a way to establish a violation of the law, so the Curia of Hungary upheld the final judgment.²⁰

¹⁸ See judgement of the Miskolci Közigazgatási és Munkaügyi Bíróság No. 5.M.608/2017/27.

¹⁹ See judgement of the Miskolci Törvényszék No. 1.Mf.21.127/2018/5.

²⁰ See judgement of the Kúria No. Mfv.I.10.027/2019/9.

3.2. *Grievance award for a slap?*

The plaintiff, who was employed as an electrician (independent network installer), performed an accuracy test at a point of consumption with his colleague, during which he informed the customer that the measuring equipment was adequate and suitable for further measurement, after which the customer unexpectedly punched him on the left side of the face, at eye level. As a result of the slap, the plaintiff was diagnosed with a bruise around the left eye, consequent swelling, blood-stained skin, and bleeding under the left conjunctiva. The eyeball was not damaged, and the subconjunctival bleeding healed without complications. The actual healing time of the physical injury was within 8 days, permanent physical damage or disability could not be considered.

During the plaintiff's psychiatric examination, recurrent depression, a severe depressive episode and post-traumatic stress disorder were diagnosed, and he was treated several times in the active department of the psychiatric department. In addition to the psychological stress he experienced, his health damage caused by an accident and still existing is 40%, his work capacity due to an accident is 50%, and his natural diseases do not affect the plaintiff's recovery. Due to the abuse and its psychological consequences, the plaintiff became unfit to perform his job as an electrician, which can be considered a permanent condition.

In the plaintiff's action, he requested that the defendant be ordered to pay 6,000,000 HUF grievance award due to the damage to his health suffered as a result of the legal abuse.

The first-instance court sentenced the defendant in accordance with the plaintiff's claim. The court of first instance found that the damage suffered by the plaintiff was related to the employment relationship.²¹ According to the expert opinion, the plaintiff's reduced work capacity and health damage stem from the abuse committed against him during work and the defendant's subsequent behaviour. The amount of the grievance award was determined by taking into account the amount of compensation usually awarded by the courts in the event of a similar violation, during which it also evaluated the sanctioning and prevention function of the grievance award.²²

The court of appeal upheld the judgment of the first-instance court. The court emphasized that during the assessment of the claim for grievance award, it was not important that the causal process resulting in the plaintiff's health damage was not initiated by the defendant, but by the culpable behaviour of a third party, but rather that it occurred in a cause-and-effect relationship with the employment relationship and the defendant could not exempt itself from the responsibility. Therefore, the defendant is obliged to pay grievance award as compensation for the personal injury suffered by the plaintiff. In the case decisions referred to in the first-instance verdict, the extent of the health damage suffered is similar, the different facts contained in it, as well as the change in price and value

²¹ See LC sec. 166. para. 1., 2.

²² See judgement of the Debreceni Törvényszék No. 4.M.70.021/2020/11.

relationships that have occurred over time, were taken into account by the court when determining the amount of the grievance award.²³

In the review request submitted against the final judgment, the defendant complained, among other things, that neither the first nor the second instance court mentioned how a one-time violation by another person establishes a 6,000,000 HUF grievance award.

The Curia upheld the final judgment. In the justification of its judgment, it explained that the fact that the health violation had an effect on the plaintiff's entire life and led to the forced termination of his employment relationship, which had existed for several decades, was of utmost importance in the litigation case. In the future, the plaintiff will not be able to carry out the tasks performed previously, and according to the classification of the medical committee, his employment rehabilitation is not recommended. His existing symptoms adversely affect his daily life, his way of life and behaviour are determined by his developed mental illness, the causal process leading to which was initiated by the abuse he suffered in connection with his employment with the defendant. The courts therefore established the amount of the grievance award for the violation of personal rights without violating the law, and the Curia did not see a need to reconsider it.²⁴

3.3. A case of an interrupted military career

The plaintiff, a soldier in his mid-thirties, suffered an accident related to his duties. He fell on his left knee during a sports session, and on another occasion he stepped into a pit during a martial arts session and felt severe pain in his previously injured left knee. In connection with the accident at work, the plaintiff had herniation of the lumbar V disc with provable root symptoms, spinal wear degeneration, painful movement of the lumbar spine, condition after rupture of the anterior cruciate ligament, arthropathy of the left thigh and calf muscle, cartilage wear of the left knee joint, a high degree of restriction of movement of the knee joint, reduced load-bearing capacity, and existence of a depressive disorder can be verified.

Three years later, it was determined that the plaintiff was unfit for military service, his overall health impairment was 43%, of which his health impairment was caused by an accident was 18%. The authority established disability benefits for the plaintiff, recorded that his state of health is 57%, and his employment rehabilitation is not recommended.

In the plaintiff's action, he requested that the defendant be ordered to pay 10,000,000 HUF grievance award.

²³ See judgement of the Debreceni Ítéltábla No. Mf.I.50.032/2020/7.

²⁴ See judgement of the Kúria No. Mfv.X.10.038/2021/6.

The court of first instance ordered the defendant to pay 10,000,000 HUF grievance award. The court took into account the fact that the plaintiff suffered the accidents at work at the age of 36, when he was in excellent physical condition, in full strength, and living an active life, which situation ceased due to the accidents. The extent of the damage to the plaintiff's health, as well as years of rehabilitation and the plaintiff's realistic feeling that he had become vulnerable, verifiably caused him psychological changes. As a result of the accident, the plaintiff is taking a number of medicines and medicinal preparations that he did not have to use before, and his musculoskeletal pain needs constant relief, which, by definition, has made his life more difficult. The plaintiff's condition is not expected to improve, therefore the court did not find the claim for 10,000,000 HUF grievance award excessive, taking into account the changes in value that occurred in the meantime. The court ruled that it can be stated that, in the case of the plaintiff, the health damage suffered in connection with his service obligations broke his military career when he was in his mid-thirties. This violated his right to work.²⁵

The appeal court upheld the judgment of the first instance court. He explained that the plaintiff's personal right to physical integrity and health, as well as to employment and free choice of occupation, has been proven to be violated, as a result of which his way of life has become significantly limited, narrowed, and radically changed, which condition is permanent, there is no improvement in it, and possible deterioration is expected. Therefore, as a result of the correct substantive legal consideration, the first-instance court well established the amount of the grievance award.²⁶

In the review procedure initiated by the defendant, the Curia maintained the final judgment in force. The Curia emphasized that the courts, when determining the amount of grievance award, carefully evaluated the severity of the personal injury in the lawsuit, taking into account its primary compensatory function. The courts correctly weighed all the circumstances of the case and ordered the defendant to pay a grievance award amount commensurate with the severity of the privacy violation. Its amount serves to proportionately balance the plaintiff's undisputedly serious physical and mental disadvantages, it complies with the CC and the consistent judicial practice.²⁷

4. Conditions for admissibility of grievance award

In 20 of the 29 cases that form the basis of the study, the courts found the claim for grievance award to be well-founded. Below, I summarize the conditions and criteria based on which the courts established the entitlement to grievance award, and I also refer to the cases in which the employees' claim was found to be unfounded.

²⁵ See judgement of the Szegedi Közigazgatási és Munkaügyi Bíróság No. 8.M.303/2016/84.

²⁶ See judgement of the Szegedi Törvényszék No. 2.Mf.20.056/2020/4.

²⁷ See judgement of the Kúria No. Mfv.X.10.161/2020/8.

In one of the Curia decisions, the Curia stated that although the employer's responsibility for compensation is objective, the burden of proving that the damage to his health was caused by the employment relationship is on the employee.²⁸ Accordingly, in the majority of cases, the courts conducted an extensive evidentiary procedure in order to establish whether the employer's aggrieved conduct had resulted in a violation of personal rights, as well as whether the unlawful conduct arose in a causal relationship with the employment relationship. In cases related to violations of life, physical integrity and health, the courts relied heavily on the evidence produced by expert testimony. In the examined cases, the courts used mostly occupational safety²⁹ and medical experts³⁰ and in some cases they requested the opinions of dermatologists³¹ or psychiatrists³² to decide a special medical question.

In one case, the Curia overruled the final judgment, including the first-instance judgment, because the first-instance court violated the law by omitting the appointment of an expert. In this case, the plaintiff, who was employed as a teacher, claimed that his oral viral infection and mental illness were also related to his work. The first-instance court came to the conclusion that even if it were proven that the defendant had violated the plaintiff's personal right to health, it could not be established that the oral herpes or the anxiety and depression specifically occurred solely because of the defendant's behaviour referred to by the plaintiff, therefore he omitted the assignment of the expert.³³ On the other hand, the Curia pointed out: the verification of whether the diagnosis in the plaintiff's medical records, i.e. the existence of anxious depression, is causally related to the legal relationship with the defendant is a medical issue, the courts could not decide on this due to lack of expertise.³⁴

In the decision referred above, the Curia stated that it must be examined whether the disadvantage on which the plaintiff's claim for grievance award was based was causally related to the employment relationship.

Among the examined cases, the courts found in several cases that the disadvantage to the employee arose in connection with the employment relationship. In one case,³⁵ the worker employed in a packaging job tripped and fell during the night shift; in another case,³⁶ the employee was kicked by

²⁸ See judgement of the Kúria No. Mfv.X.10.025/2020/6.

²⁹ See e. g. judgement of the Győri Közigazgatási és Munkaügyi Bíróság No. 6.M.508/2017/57.; judgement of the Szolnoki Törvényszék No. 4.Mf.21.395/2017/5.

³⁰ See e. g. judgement of the Miskolci Közigazgatási és Munkaügyi Bíróság No. 7.M.80/2017/52.; judgement of the Székesfehérvári Közigazgatási és Munkaügyi Bíróság No. 1.M.95/2016/117.; judgement of the Fővárosi Közigazgatási és Munkaügyi Bíróság No. 64.M.2782/2017/70.; judgement of the Debreceni Törvényszék No. 4.M.70.021/2020/11.; judgement of the Kecskemét Közigazgatási és Munkaügyi Bíróság No. 3.M.382/2016/52.; judgement of the Debreceni Közigazgatási és Munkaügyi Bíróság No. 6.M.121/2018/57.; judgement of the Budapest Környéki Közigazgatási és Munkaügyi Bíróság No. 33.M.388/2017/89.

³¹ See judgement of the Debreceni Törvényszék No. 2.Mf.20.241/2019/16.

³² See judgement of the Székesfehérvári Közigazgatási és Munkaügyi Bíróság No. 1.M.95/2016/117.

³³ See judgement of the Miskolci Közigazgatási és Munkaügyi Bíróság No. 2.M.525/2017/27.

³⁴ See judgement of the Tatabányai Közigazgatási és Munkaügyi Bíróság No. 1.M.316/2017/79.; judgement of the Tatabányai Törvényszék No. 2.Mf.20.028/2019/5., judgement of the Kúria No. Mfv.X.10.101/2020/6.

³⁵ See judgement of the Salgótarjáni Közigazgatási és Munkaügyi Bíróság No. 4.M.190/2017/61.; judgement of the Balassagyarmati Törvényszék No. 15.Mf.20.201/2019/4., judgement of the Kúria No. Mfv.X.10.333/2019/4.

³⁶ See judgement of the Tatabányai Közigazgatási és Munkaügyi Bíróság No. 1.M.316/2017/79., judgement of the Tatabányai Törvényszék No. 2.Mf.20.028/2019/5., judgement of the Kúria No. Mfv.X.10.101/2020/6.

one of the heifers on his right hand while milking a cow, which cut and damaged the right side of the railing made of closed section. In the case described under point 3.2., the courts established the cause-and-effect relationship with the employment relationship, even though the causal process resulting in the employee's health damage was not initiated by the employer, but by the culpable behaviour of a third party.³⁷

However, the courts have rejected the employees' claims on several occasions due to the lack of connection between their health damage and the employment relationship. In one case,³⁸ the employee claimed that her skin disease was causally related to the harmful effects of chemicals used in the defendant's production. Based on the unanimous opinion of the experts, the courts came to the conclusion that the route of exposure claimed by the plaintiff, i. e. the chemical passing through the documents or the employees' clothing, or its inhalation, could not have caused the plaintiff's illness. In another case³⁹, the plaintiff, who was employed as a goods loader, was diagnosed with calcification of the vertebrae and cartilage wear in the knee joint, and later underwent several operations, with her uterus, right adrenal gland and spleen removed. The courts found that the plaintiff's locomotor diseases did not constitute permanent health impairment, and the health impairment existing in connection with the other surgeries was not causally related to the employment relationship. There has also been a case⁴⁰ in which the first-instance court specifically stated that not even a partial causal connection can be established between the locomotor-related health damage and the job of an employee who had to perform gardening work.

In several cases, the courts found a violation of the employee's personal right to physical integrity and health due to the fact that the employer did not adequately train him on the safe working conditions⁴¹ and did not provide these conditions.⁴² In one of the cases, the plaintiff, employed as an assistant worker, slipped on or next to the water-filled anti-skid barrier while working in rainy weather and fell on his back and right side. The first-instance court not only found that at the time and place of the accident the requirements of occupational health and safety were not ensured and that the employer did not ensure adequate working conditions (non-slip floor), but also that the phenomenon that caused the accident was known to the employer, yet it did not take adequate preventive measures.⁴³ In another case, the plaintiff working as a structural locksmith suffered a hand injury, after which he became

³⁷ See judgement of the Debreceni Törvényszék No. 4.M.70.021/2020/11., judgement of the Debreceni Ítéltábla No. Mf.I.50.032/2020/7., judgement of the No. Kúria Mfv.X.10.038/2021/6.

³⁸ See judgement of the Debreceni Közigazgatási és Munkaügyi Bíróság No. 6.M.537/2016/83., judgement of the Debreceni Törvényszék No. 2.Mf.20.241/2019/16., judgement of the Kúria No. Mfv.X.10.003/2020/4.

³⁹ See judgement of the Debreceni Közigazgatási és Munkaügyi Bíróság No. 6.M.121/2018/57., judgement of the Debreceni Törvényszék No. 2.Mf.20.905/2019/6., judgement of the Kúria No. Mfv.X.10.025/2020/6.

⁴⁰ See judgement of the Budapest Környéki Közigazgatási és Munkaügyi Bíróság No. 33.M.388/2017/89.

⁴¹ See judgement of the Miskolci Közigazgatási és Munkaügyi Bíróság No. 7.M.80/2017/52.

⁴² See judgement of the Miskolci Közigazgatási és Munkaügyi Bíróság No. 7.M.370/2017/27., judgement of the Miskolci Törvényszék No. 1.Mf.20.443/2019/4.

⁴³ See judgement of the Győri Közigazgatási és Munkaügyi Bíróság No. 6.M.508/2017/57.

unfit to perform the locksmith job.⁴⁴ With regard to the employer's requirement to ensure safe and non-hazardous work, the Curia explained that due to the plaintiff's illness, he could not be employed to perform work at risk of accidents and he could not have worked alone in an area where he was at risk of accidents. In addition to the fixing devices required for processing the workpiece, the employer also did not provide the appropriate number of personnel to perform the work.⁴⁵

There have also been cases⁴⁶ in which the employer was exempted from liability (on the basis of section 166 of LC). According to the facts of the case, the plaintiff left after work through the street door of the doctor's office, from which it was possible to reach the street level with three steps. The plaintiff was walking up the stairs holding on to the banister when, following a wrong step, his ankle turned under him. Based on the medical expert's opinion, the courts determined that the plaintiff's accident was indeed the result of a wrong move or step, which could not be avoided by the employer.⁴⁷

In one of the cases, the Curia found it necessary to state that the employer's conduct is not relevant for determining the grievance award. Based on section 2:52 of CC and section 166 of LC, the employer is objectively liable for the damage caused to the employee.⁴⁸ In another case the Curia highlighted that the gravity of the violation, whether it was committed on one or more occasions, the degree of fault and the impact of the violation on the aggrieved party and his environment can be evaluated not when determining the legal basis for liability, but when determining the amount of the grievance award.⁴⁹

5. Amount of the grievance award

Among the examined cases, the courts rejected the claimants' claims in 9 cases, so in 20 cases they found the claims for grievance award to be well-founded.

The amount of the grievance award is not only important from the point of view of mapping the criteria the courts examine, but to assess how the courts of appeals reacted to the amount established by the court of first instance. In the investigated cases, the appellate courts increased the amount in 8 cases, left it unchanged in 9 cases, and reduced it in 3 cases.

In the examined cases, the courts set the amount of the grievance award according to section 2:52 of CC. It was determined with regard to all the circumstances of the case – in particular, the gravity of

⁴⁴ See judgement of the Szolnoki Közigazgatási és Munkaügyi Bíróság No. 2.M.548/2016/46., judgement of the Szolnoki Törvényszék No. 4.Mf.20.014/2019/6.

⁴⁵ See judgement of the Kúria No. Mfv.X.10.028/2020/4.

⁴⁶ See judgement of the Kecskemét Közigazgatási és Munkaügyi Bíróság No. 3.M.382/2016/52.

⁴⁷ See judgement of the Kúria No. Mfv.I.10.220/2019/5.

⁴⁸ See judgement of the Kúria No. Mfv.X.10.130/2020/6.

⁴⁹ See judgement of the Kúria No. Mfv.II.10.169/2019/4.

the violation, whether it was committed on one or more occasions, the degree of fault, and the impact of the violation on the aggrieved party and his environment.

In the examined cases, the courts rarely referred to the repeated nature of the infringement when determining the amount of the grievance award, because due to the nature of the infringement, the suffered health damage is usually the result of either a one-time illegal conduct or a process lasting a shorter or longer period of time.

Most of the time, the courts examined the gravity of the violation and the impact of the violation on the aggrieved party and his environment.

As part of the gravity of the violation, the courts assessed the level and extent of the damage to health caused by the employer's unlawful behaviour, how much pain it caused, whether the employee's condition can be considered permanent, or whether there is a realistic chance of improvement or even full recovery, in this regard, significance attributed to the duration of hospital treatments and recovery at home.

When examining the impact of the violation on the aggrieved party and the environment, the courts primarily took into account the closest environment of the employee: they attributed decisive importance to the age at which the health injury affected the employee, whether he has a minor child entitled to care/maintenance; an adult relative in need of help or support; is he able to perform work corresponding to his previous position or occupation, or is he suitable for any other type of work; to what extent his living conditions changed, can he maintain his former friendships, can he pursue leisure/hobby activities, can he manage his daily activities on his own or does he need help.

In addition to the above, in some of the cases, the courts investigated the contribution of the victim to the accident,⁵⁰ as well as whether the victim fulfilled his obligation to mitigate the damage.⁵¹ A frequent basis of reference is the "dual" function of the grievance award,⁵² as the courts usually determine the amount suitable for compensation based on consideration. The courts also referred to the price and value conditions⁵³ at the time of the judgment in several cases.

In my opinion, from the point of view of the analysis, the specifically determined amounts do not have too much importance, as the courts always determine it with regard to the given case, taking into account all the specific circumstances of the case. Nevertheless, I would like to point out that 60,000 HUF was the smallest amount that one of the first-instance courts determined⁵⁴ and neither the second-instance court nor the Curia changed this amount.⁵⁵ The decision was justified by the fact

⁵⁰ See judgement of the Gyulai Közigazgatási és Munkaügyi Bíróság No. 3.M.99/2015/169.; judgement of the Nyíregyházi Közigazgatási és Munkaügyi Bíróság No. 6.M.28/2017/89.; judgement of the Székesfehérvári Törvényszék No. 2.Mf.20.007/2020/4.

⁵¹ See judgement of the Miskolci Közigazgatási és Munkaügyi Bíróság No. 7.M.370/2017/27., judgement of the Kúria No. Mfv.X.10.052/2021/5.

⁵² See judgement of the Szegedi Ítéltábla No. Mf.I.40.006/2020/7., judgement of the Szegedi Ítéltábla No. Mf.I.40.006/2020/7.

⁵³ See judgement of the Kúria No. Mfv.II.10.237/2019/4.; judgement of the Nyíregyházi Közigazgatási és Munkaügyi Bíróság No. 6.M.28/2017/89.

⁵⁴ See judgement of the Miskolci Közigazgatási és Munkaügyi Bíróság No. 7.M.370/2017/27.

⁵⁵ See judgement of the Miskolci Törvényszék No. 1.Mf.20.443/2019/4., judgement of the Kúria No. Mfv.I.10.291/2019/5.

that the damage to the plaintiff's health was very limited, the plaintiff did not undertake the necessary surgery, thereby failing to fulfil his obligation to mitigate damages.

In those cases in which the courts acting at the second instance increased the amount of the grievance award, their decision was usually justified by the fact that the courts of first instance did not take into account the impact of the infringement on the victim with sufficient weight. For example, they referred to the fact that the once right-handed plaintiff cannot do manual labour as a result of the accident, he is permanently limited not only in his work, but also in his daily life, his condition is permanent, he lost his entire right forearm;⁵⁶ the plaintiff primarily needs the help and care of his partner, other relatives and friends in terms of everyday tasks and taking care of himself;⁵⁷ the use of medical assistance has been verifiable for one year;⁵⁸ to a permanent decline in working capacity at a young age;⁵⁹ due to the injury to the left hand, the plaintiff has to live with almost constant pain, he has become limited in his daily activities that require the use of both hands, his condition is not expected to improve, only to worsen;⁶⁰ the plaintiff still needs continuous medical treatment, despite the fact that his mental state has not improved, and the treating doctor diagnosed his condition as worsening;⁶¹ the plaintiff underwent several surgeries, the recovery process was painful, he had to give up his previous active lifestyle, he is not even able to do light physical work, his condition is not expected to improve, only worsening.⁶²

There have also been cases where the courts acting at the second instance have reduced the amount of the grievance award. In these cases, they referred to the fact that the first-instance courts ignored the plaintiff's significant health damage and poor health condition that existed before the accident.⁶³

As a summary, the courts awarded an average amount between 1,000,000 HUF and 3,000,000 HUF for violations of life, physical integrity and health, but in the case of minor violations, less than 1,000,000 HUF was also found to be appropriate. The lowest compensation amount was 60,000, HUF, while the highest was 10,000,000 HUF.

⁵⁶ See judgement of the Miskolci Törvényszék No. 1.Mf.21.127/2018/5.

⁵⁷ See judgement of the Gyulai Törvényszék No. 9.Mf.25.448/2018/5.

⁵⁸ See judgement of the Kúria No. Mfv.II.10.237/2019/4.

⁵⁹ See judgement of the Kúria No. Mfv.I.10.290/2019/3.

⁶⁰ See judgement of the Pécsi Törvényszék No. 1.Mf.20.095/2019/4.

⁶¹ See judgement of the Fővárosi Törvényszék No. 5.Mf.680.296/2019/14.

⁶² See judgement of the Pécsi Törvényszék No. 1.Mf.20.285/2018/7.

⁶³ See judgement of the Szegedi Ítéltábla No. Mf.I.40.006/2020/7., judgement of the Györi Ítéltábla No. Mf.V.30.044/2020/7/I., judgement of the Kúria No. Mfv.X.10.052/2021/5.; judgement of the Pécsi Közigazgatási és Munkaügyi Bíróság No. 2.M.424/2015/37., judgement of the Pécsi Törvényszék No. 1.Mf.20.870/2017/5.; judgement of the Kúria No. Mfv.I.10.257/2018/8.

6. Conclusions

6.1. Conditions for admissibility of the grievance award

The condition for admissibility is that the infringer is responsible for the personal injury based on some form of liability. In labour law, the rules of employer's or employee's liability for damages must be applied, depending on who is responsible for the violation. In both forms, the following are the common elements:

- a) connection with the employment relationship;
- b) illegality;
- c) non-pecuniary damage;
- d) the causal connection between the illegal behaviour and the non-pecuniary damage, and – as a negative condition – that
- e) the offender cannot exempt himself from the responsibility.

An additional condition for admissibility of the grievance award may be responsibility, which only plays a role in the general structure of the employee's liability for damages.

After analysing the jurisprudence, it can be seen that in the majority of cases, in the justifications of the judgments, the courts do not list and explain in detail the individual conditions for the admissibility, they usually only highlight the few elements that were of particular importance when the decision was made. It can be stated overall that it is not clear from the reasoning of the courts' judgments that the set of the above conjunctive conditions defined by the legislation would be examined individually and not only as a whole. In my opinion, remedying this would not only make the work of law seekers and higher courts easier, but would also contribute to the development of judicial practice.

6.2. Aspects to be taken into account when determining the amount of the grievance award

Due to the diversity of personal rights and the unpredictability of the facts, we cannot set up a comprehensive system of criteria to be taken into account when determining the amount of the grievance award. The CC highlights some of the circumstances to be considered – such as the gravity of the violation, whether it was committed on one or more occasions, the degree of fault, and the impact of the violation on the aggrieved party and his environment; but the law leaves the development of further aspects to judicial practice.

The cases that were subject of my analysis can be divided into two groups based on the aspects taken into account when determining the level of the grievance award: there were judgments where

the courts repeated the rules found in the CC but did not fill it with content. In the other group of cases the courts carefully considered the aspects that can be taken into account based on all the circumstances of the case and explained in detail the basis on which the amount of the grievance award was determined.

In conclusion, labour law jurisprudence uses all four guiding aspects named in the CC when determining the amount of the grievance award, and they are interpreted broadly, taking into account all the circumstances of the case, which is of decisive importance from the aspect of the further development of judicial practice.