

The Casual Connection as an Element of the Legal Liability

Abstract of Dissertation

The concept of the casual connection is not understood in a uniform manner, although it represents the principal legal institute that enables functioning of the law. However, the nature and purpose of the legal liability in the Czech jurisprudence remains the object of discussions, and this is supported by the fact that the positive legal regulation uses the concept of liability at random.

Within the vindicative concept of the legal liability as the secondary legal liability arising as the result of the violation of the primary legal liability, we can discern several basic elements. It is particularly the violation of the legal liability, the negative consequence consisting in the violation of or a threat to the legal values, as well as the casual connection between the wrongful act and the negative consequence.

The causal connection is the principal element of the legal liability which represents the objective element whereby a wrongful act may be attributed to a certain subject. Thus, the causal connection transmits the penal liability to the subject concerned. Mostly, it is not difficult to find the element of violation of the legal liability and the negative consequence. However, the situation is more complicated in the case of the casual connection.

In its first part, the dissertation explores the concept of the legal liability in the Czech and the Czechoslovak law and its definition. It summarizes the present overview and development of the opinions on the essence of the legal liability. The Czechoslovak jurisprudence began paying attention to the concept of the legal liability only after the Second World War, wherein two views clashed: whether the liability is the threat by sanction or the sanction itself. At present, the legal theory inclines to the sanction concept of the legal liability.

We pay attention also to the views of the German jurisprudence on the legal liability. As opposed to the Czech (or the Czechoslovak, respectively) jurisprudence, the concept of legal liability has not been discussed theoretically in Germany. The reason is mainly the terminological unity of the legal theory and the text of the German legal standards. The liability (Verantwortlichkeit) is identified with the concept of Verschuldensfähigkeit – that is with the

condition of the person of the malefactor, whether he is capable to bear consequences of his culpable behaviour. Even in the case of the secondary liability to perform (as the Czech jurisprudence sometimes views liability), the discrimination between “Schuld und Haftung“ is applied. Schuld (debt) is traditionally considered as the debtor’s obligation to provide performance, and Haftung (guarantee) as the institute of the right of distraintment; the person who is liable has to accept that the creditor may satisfy himself from his guaranteed property.

The subject of the second part of this work is to stress the importance of the causal connection in law, where the wrongful act and the negative consequence has to have the relation of cause and consequence. The work follows the development of viewing the casual connection both in philosophy and in the law. The conclusion is that the concept of the casual connection in law has special characteristics as against philosophy or natural sciences, and that the jurisprudence has created its own theory for detecting the casual connection based in the philosophy of David Hume and John Stuart Mill.

The concept of the casual connection in law is based on the understanding the cause as the condition necessary so that the negative consequence may happen (*conditio sine qua non*). But as this concept may lead to indefensible results, the continental law saw the formation of two theories that should correct these undesirable results: the theory of condition and the theory of adequate causal connection.

Taking into account the decisions of the courts in Germany and in the Czech Republic, the dissertation therefore focuses on possible difficulties while applying these theories. It concludes neither of these theories is perfect and may lead to unwanted effects. The common denominator of these difficulties is the requirement that the cause is *conditio sine qua non*. This may be sufficient in the cause of simple causal relationships, but not if there is a competition of events, each of which is may bring about the given result.

This work also evaluates the Czechoslovak and Czech decisions dealing with the causal connection, particularly in the private law. Having studied the most important decisions of the Supreme Court of the Czech Republic we may state that the decisions are not uniform, even in the principal question as whether

the theory of the condition or the adequate theory should be used. The most current decisions expressly refer to the adequate theory, but its conclusions indicate that it remains with the theory of condition. The Supreme Court deals in a most unconvincing way with the question of interruption of the causal connection and the influence of the intervention events.

Notwithstanding the opinion of the Constitutional Court, the Supreme Court continues to insist that the causal connection is a question of fact and the injured party has to prove it in the legal action. The Supreme Court thus omits the possibility that the consistent exercise of such requirement could in some cases lead to an unjust sentence of denying the damages.

Therefore, the next part of the work focuses on the specific position of the causal connection within evidence in the civil proceedings. This concerns mainly the cases where the injured party lacks the necessary professional knowledge (the medical law and the so-called loss of chance), or the cases where the evidence on the causal connection are held by the evil-doer who does not want to submit them in his own interest. The solution of such situation may be to use the presumptions of facts, the burden of substantiation, transfer of burden of proof or forgiving the requirement to the full proof of the causal connection.

The last part of the dissertation briefly deals with the question of the so-called loss of chance as the specific case of a competition of an event independent on the human will and as the unlawful conduct. This includes the events where the harmful consequence would occur in a certain percentage of cases even if the conduct was lawful. This question was solved first in the common law where these conclusions were assumed by the Constitutional Court of the Czech Republic. In this respect, the Constitutional Court stated that the positive law does not contain any legal definition of the causal connection and it is up to the courts and theory what content they give to this concept.

Last but not least, this dissertation deals with the position of the causal connection in the common law where the theory of condition or the adequate theory are not applied, but the concept of cause-in-fact and proxima cause as the elements of the torts. Still, the common law faces the same problems as

the continental law in detecting the causal connection. Therefore the theory in common law forms its own theoretical concepts of coping with these problems.