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**GUILT OF THE EMPLOYEE AND THE LIABILITY
FOR THE DAMAGE INFLICTED ON A THIRD PARTY
– SOME REMARKS WITH REGARD TO THE POLISH
LABOUR CODE REGULATIONS**

Inflicting damage by an employee on a third party in the course of his/her occupational duties triggers specific legal consequences in the area of responsibility for the damage pursuant to the labour law. Regulation adopted in art. 120 of the Act of 26 June 1974. Labour Code² attributes liability for such damages solely to the employer, at the same time granting him a right of recourse against an employee. It is widely accepted in the academia, however, that despite of the wording of the art. 120 of the LC which does not differentiate between intentional and unintentional acts and omissions of the

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² The consolidated text: Journal of Laws of 2016 r., item 1666 as amended, hereinafter referred to as "LC".

employees resulting in damage, the rule envisaged in this provision applies only to acts and omissions performed by the employee inadvertently, while in the case of intentional misdeeds employee is directly liable for damages. That issue is crucial not only from the perspective of employers, but also to third parties injured by a wrongful act or omission by the employee. The aim of this paper is to analyze the theoretical concept of guilt against aforesaid provision as well as to examine the correctness of assumptions that this provision is not applicable in case of a damage inflicted intentionally.

PRELIMINARY REMARKS

Prior to the examining the concept of guilt in labour law which constitutes the subject matter of this article, it seems necessary to present the basic issues concerning the regulation of art. 120 of the LC. This provision stipulates that in the event of causing by the employee in the performance of his/hers occupational duties damage to a third party, the obligation to compensate the damage lies solely on the employer. At the same time towards the employer, who repaired the damage caused to a third party, employee is responsible as stipulated in the provisions of Chapter I of section V LC (the employee liability for the damage caused to the employer) i.e. as if he/she caused damage directly to the employer.

Bearing liability for the actions of an employee by the employer depends on several factors. First of all, what seems obvious, the person for whom the employer bears the responsibility must be an employee within the meaning of art. 2 of the LC³. Consequently, pursuant to art. 120 of the LC the employer will not be liable for persons cooperating with him on the basis of the self-employment, related with him on civil relationships and other legal non-employment relationships⁴. Secondly damage must result from the performance of the employee's work duties. Therefore the employer will not be liable for the actions of an employee if the damage was inflicted only accidentally ("by chance"⁵) to the performance of his duties, or by taking advantage of the opportunity resulting from the employment⁶. Conversely, between the action of the employee causing the damage and the performance of the employee's duties there must be normative internal and organizational⁷ as well as functional relationship⁸. Finally, the term 'third parties' within the meaning of that provision, should include both persons from outside the given workplace and another employees of the employer in question⁹.

³ Pursuant to this article an employee shall be a person employed on the basis of a contract of employment, an appointment, an election, a nomination or a cooperative contract of employment.

⁴ W. Patulski, *Pracownicza odpowiedzialność odszkodowawcza. Komentarz*, Warszawa 2006, p. 52.

⁵ See decision of Supreme Court dated June 19, 1975, case no. VPRN 2/75, OSNC 1976/4/70, decision of Supreme Court dated November 29, 2013, case no. I CSK 87/13, LEX no. 1418874.

⁶ See decision of Supreme Court dated Mai 5, 1998, case no. I CKU110/97, LEX no. 34023.

⁷ W. Perdeus [in:] *Kodeks pracy. Komentarz*, ed. K.W. Baran, Warszawa 2016, p. 818.

⁸ K. Jaśkowski [in:] *Komentarz aktualizowany do ustawy z dnia 26 czerwca 1974 r. Kodeks pracy (Dz.U.98.21.94)*, K. Jaśkowski, E. Maniewska, Lex/el. 2016, comments on art. 120 of the LC.

⁹ See decision of Supreme Court dated February 25, 1975, case no. II PR 302/74, PiZS 1976/2/56, resolution of the Supreme Court dated Mai 13, 1975, case no. III PZP 5/75, OSP 1976/7-8/135.

In principal the consequence of aforementioned regulation of art. 120 of the LC is the exclusion of the direct responsibility of the employee and depriving him of the passive legitimacy (standing as the defendant) in the civil proceedings initiated by the injured party claiming the compensation. This regulation aims at the protection of the employee¹⁰. It is also related with bearing personal risk by the employer¹¹, which is one of the basic elements constituting the employment relationship. However, it should be noted that this regulation is not absolute¹², since the Supreme Court in justification of the resolution of 7 judges having the power of a legal principle¹³ pointed out that this regulation refers only to the typical circumstances, i.e. situations in which the employer is not only liable, but also capable of compensating the damage. As a result, the possibility of claiming compensation by a third party directly from the employee is not excluded in the event of insolvency of the employer¹⁴.

One should note that art. 120 of the LC is not a legal basis of liability of the employer to a third party injured by the employee. In this regard provisions of the Civil Code¹⁵ concerning torts¹⁶, i.e. art. 416, 417-421, 430 and 474 of the CC¹⁷ should be applicable.

GUILT OF AN EMPLOYEE

As indicated at the beginning of this paper, it is assumed in the academia¹⁸ and jurisprudence¹⁹, that pursuant to the art. 120 of the LC the employer is not liable for the damage caused by the employee's intentional action. This obviously does not mean exclusion of the employer's liability for the actions of a third party (employee) based on the Civil Code if the statutory requirements are fulfilled²⁰.

¹⁰ G. Wolak, *Odpowiedzialność pracownika za szkodę wyrządzoną osobie trzeciej przy wykonywaniu obowiązków pracowniczych*, PiZS 2015, No. 1, p. 28, decision of Supreme Court dated October 30, 1975, case no. II PR 82/75, LEX no. 14290.

¹¹ W. Patulski [w:] *Zarys systemu prawa pracy*, tom I: *Część ogólna prawa pracy*, ed. K.W. Baran, Warszawa 2010, p. 804.

¹² K. Jaśkowski, [in:] *Komentarz aktualizowany...*, comments on art. 120 of the LC.

¹³ Resolution of the Supreme Court dated June 7, 1975, case no. III CZP 19/75, OSNC 1976/2/20. However it should be stressed that there are no clear normative grounds for such an opinion.

¹⁴ See decision of Supreme Court dated April 11, 2008, case no. II CSK 618/07, OSNC-ZD 2009/2/41, in which Supreme Court stated that the injured party may raise its claim directly against the employee who caused him/her damage unintentionally due to tort committed in the performance of the employee duties, if the employer due to bankruptcy is not able to pay the compensation.

¹⁵ The Act of April 23, 1964, Civil Code (the consolidated text: the Journal of Laws of 2016. item 380, as amended), hereinafter referred to as „CC”.

¹⁶ Decision of Supreme Court dated March 25, 1987, case no. II CR 48/87, LEX no. 8817.

¹⁷ M. Gersdorf [in:] *Kodeks pracy. Komentarz*, M. Gersdorf, M. Raczkowski, K. Rączka, Warszawa 2014, Lex/el. comments on art. 120 of the LC, side no. 5; G. Bieniek, *Roszczenia regresowe zakładu pracy wobec pracownika*, Warszawa 1978, p. 78.

¹⁸ See *inter alia*: P. Korus [in:] *Kodeks pracy. Komentarz*, ed. A. Sobczyk, Warszawa 2014, p. 528, J. Iwulski [in:] *Kodeks pracy. Komentarz*, J. Iwulski, W. Sanetra, Warszawa 2011, p. 800, W. Perdeus, *Kodeks pracy...*, p. 817, M. Gersdorf, *Kodeks pracy...*, comments on art. 120 of the LC, side no. 3.

¹⁹ Resolution of the Supreme Court dated June 12, 1976, case no. III CZP 5/76, OSNC 1977/4/61, decision of Supreme Court dated February, 2011, case no. II PK 189/10, LEX no. 811844.

²⁰ W. Perdeus, *Kodeks pracy...*, p. 818.

The Labour Code neither defines the very concept of guilt nor its species in the form of intentional and unintentional guilt. However it uses these notions in the regulation of the liability of employees. In order to distinguish intentional and unintentional guilt the criteria adopted in the criminal law are applied²¹. The use of such understanding of the concept of guilt in labour law instead of civil concept can be deemed surprising, not only due to the historical (genetic) bonds of these branches of law (the labour law evolved from the civil law), but also through their close normative relationship²² resulting from art. 300 of the LC.²³ However the usual justification of such a construction stems from the fact that civil concept of guilt implies more objective measures of required care²⁴, while it is widely believed that the responsibility of the employee in the labour law should be subjective and related to the individual characteristics and specific circumstances of the acts and omission resulting in damage²⁵. The guilt in criminal law, being one of the conditions for criminal liability, makes assessment of the criminal act subjective²⁶. In addition, the use of this kind of understanding of guilt supports the fact that the responsibility in criminal and labour law fulfils similar preventive and educational function, as opposed to purely compensatory function of responsibility in the civil law²⁷.

NOTION OF GUILT IN CRIMINAL LAW

Criminal law distinguishes two main theories of guilt: psychological (historically older one) and normative. The first relates to the identification of the guilt with the mental attitude (*mens rea*) of perpetrator to committed act²⁸, even further his mental-relationship to act called psychic bond²⁹. Under this concept, there are two distinct trends: the theory

²¹ A. Kamińska-Pietnoczko [in:] *Kodeks pracy. Komentarz*, ed. K. Walczak, Warszawa 2016, Legalis comments on art. 114 of the LC side no. 11; W. Muszalski [in:] *Kodeks pracy. Komentarz*, ed. W. Muszalski, Warszawa 2015, Legalis comments on art. 114 of the LC side no. 1; W. Sanetra, *Wina w odpowiedzialności pracowniczej*, Warszawa – Wrocław 1975, p. 99; W. Perdeus, *Kodeks pracy...*, p. 806; T. Zieliński, *Prawo pracy. Zarys systemu. Część II. Prawo stosunku pracy*, Warszawa 1986, p. 327. L. Dzikiewicz points out however that the civil, criminal and labour law developed different ways of understanding the guilt. He notices common features of this concept in labour law and criminal law or civil law, but notes the independence of this concept in labour law (L. Dzikiewicz, *O pojęciu winy i jej trzech odmianach*, "Państwo i Prawo" 1977, No. 1, p. 87-98).

²² T. Wyka [in:] *Zarys systemu prawa pracy*, tom I: *Część ogólna prawa pracy*, ed. K.W. Baran, Warszawa 2010, p. 150 et seq., K.W. Baran [w:] *Kodeks pracy. Komentarz*, ed. K. W. Baran, Warszawa 2016, p. 1587.

²³ Pursuant to that provision in cases not regulated by the provisions of labour law, the provisions of the Civil Code shall apply to an employment relationship, respectively, unless they are contradictory to the principles of labour law. It should be emphasized that the reference applies only to the rules of the Civil Code (no to other regulations of civil law) and shall take place only if there is a legal loophole within the autonomous regulation of the employment relationship. Further precondition for application of the provisions of the Civil Code is their consistency with the principles of labour law. Thus, the Civil Code amounts only to a subsidiary source of labour law. See. K.W. Baran, [w:] *Kodeks pracy...*, p. 1587 et seq.

²⁴ W. Sanetra, *Wina w odpowiedzialności...*, p. 99.

²⁵ Ibidem, p. 108.

²⁶ W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna*, Kraków 2011, p. 314.

²⁷ W. Sanetra, *Wina w odpowiedzialności...*, p. 100 et seq., W. Perdeus, *Kodeks pracy...*, p. 806.

²⁸ W. Wróbel, A. Zoll, *Polskie prawo karne...*, p. 315.

²⁹ J. Giezek [in:] *Prawo karne materialne. Część ogólna i szczegółna*, ed. M. Bojarski, Warszawa 2015, p. 174.

of the will, where the guilt lies in the malice of the perpetrator (he wants to commit a criminal offense) and the theory of ideas, in which the guilt lies in the fact that the idea of the possibility of committing the offense does not stop the perpetrator from performing it³⁰. Abovementioned idea determines the formation of the will³¹. Due to the shortcomings of psychological theory of guilt³² contemporary doctrine has largely moved away from it towards the normative theory. The normative theory focuses on the issue of objectionability³³ of the perpetrators' mental attitude to his act³⁴. This concept is based on the premise that the guilt may be attributed to the perpetrator only if that perpetrator could have been required to act in conformity with a violated legal norm. Determination that the perpetrator's conduct is objectionable, i.e. he/she was able to comply with a norm infringed by him, allows for the a negative assessment of his/her behaviour consisting in charging him, that although he could have behaved in accordance with the law, he failed to do so³⁵. As pointed out by J. Goldschmidt guilt lies not in the fact that the perpetrator wanted what he should not want to, but that he should not want what he wanted³⁶. Guilt occurs when the mental attitude of the wrongdoer can be related to a given norm (violation of a duty to act or refrain from acting) on the condition that he/she had the possibility to behave in accordance with the aforesaid norm³⁷. Further evolution of this view led to the development, among others concepts, of the so-called comprehensive theory and the pure normative theory (the final theory) of guilt³⁸. The first one does not question the need to take into account the mental elements of the perpetrator attitude to his/her act anchored in the guilt. As a consequence the question of intent or the lack of intent concerns not only the subjective side of an offense but also the guilt³⁹. Guilt within the meaning of this theory shall be understood as the negatively assessed subjective attitude of a perpetrator to his own act which in a given circumstances he/she could and should have refrained from performing. Such negative assessment is justified by the wrong content of the parties will or a guilty way of adopting a decision of will⁴⁰. Therefore the whole concept of guilt is

³⁰ J. Lachowski, A. Marek, *Prawo karne. Zarys problematyki*, Warszawa 2016, p. 97.

³¹ J. Lachowski [in:] *System prawa karnego*, tom 3: *Nauka o przestępstwie. Zasady odpowiedzialności*, ed. R. Dębski, Warszawa 2013, p. 623.

³² These shortcomings concern, among other things problematic question of understanding guilt in case of negligence (also called unconscious lack of intent), so: J. Giezek, [in:] *Prawo karne materialne...*, p. 175, or in case of external restraints on free will to decide on the implementation of the envisaged act (e.g. mental coercion – vis compulsiva), W. Wróbel, A. Zoll, *Polskie prawo karne...*, p. 316. Similarly problematic in the above mentioned theory was the explanation of the acting of the offender in a state of necessity (J. Lachowski, [in:] *System prawa karnego...*, p. 629).

³³ In Polish language „zarzucalność”.

³⁴ K. Buchała, A. Zoll, *Polskie prawo karne*, Warszawa 1997, p. 233.

³⁵ J. Giezek, [in:] *Prawo karne materialne...*, p. 176.

³⁶ K. Buchała, A. Zoll, *Polskie prawo karne...*, p. 234.

³⁷ J. Lachowski, A. Marek, *Prawo karne...*, p. 98.

³⁸ Within the normative theory also other trends have developed involving, for example, the determination of guilt as a relationship or a functional concept of guilt.

³⁹ *Ibidem* p. 98.

⁴⁰ J. Lachowski, [in:] *System prawa karnego...*, p. 638 after: T. Kaczmarek, *Spory wokół pojęcia winy*, [in:] *W kręgu teorii i praktyki prawa karnego. Księga poświęcona pamięci prof. A. Wąska*, Lublin 2005, p. 184.

based on the objection addressed to the perpetrator because of his intentional or unintentional behaviour which he/she could and should have avoided⁴¹. Pure normative theory limits the concept of the guilt exclusively to the objectionability of the perpetrator's act⁴² and clearly separates the subjective side of an offence (intent, lack of intent) from guilt⁴³. Guilt consists in a pure charge that the action of the perpetrator was contrary to the law, when it could have been required from him to behave in accordance with the law⁴⁴.

After the recapitulation of theory of guilt in the criminal law it should be stated that the current norms of the Act of June 6, 1997 Penal Code⁴⁵ do not expressly favour any theory of guilt. However, due to the separation of guilt from the subjective side of an offence, it is clear that psychological theory of guilt is not applicable⁴⁶. Regardless of the unsolved disputes existing in the doctrine of the criminal law between the supporters of the competing variants of the normative theory of guilt⁴⁷, it is submitted that on the basis of labour law the comprehensive normative theory of guilt shall be applicable⁴⁸. This is due to the fact that LC uses the notion of intentional guilt and unintentional guilt, which does not fit in the concept of guilt in depiction of the final (pure normative) theory.

NOTION OF GUILT IN LABOUR LAW

The logical consequence of the assumptions about the use of the comprehensive theory of guilt in labour law on the one hand and the application of the final theory of guilt on the basis of current regulations of PC⁴⁹ on the other hand, must be the assertion of the impossibility of explaining the concept of intentional and unintentional guilt under the labour law by the regulations provided for in PC, in particular by the art. 9 of the PC⁵⁰. As a result, the explanation of these concepts must be based on the findings of the doctrine of criminal law developed on the basis of the former Penal Code⁵¹ and the scholarship of labour law.

⁴¹ Ibidem, p. 192.

⁴² J. Giezek, [in:] *Prawo karne materialne...*, p. 177.

⁴³ J. Lachowski, [in:] *System prawa karnego...*, p. 636.

⁴⁴ J. Lachowski, A. Marek, *Prawo karne...*, p. 99.

⁴⁵ The consolidated text: "Journal of Laws" of 2016, item 1137 as amended, hereinafter referred to as "PC".

⁴⁶ A. Grześkowiak [in:] *Kodeks karny. Komentarz*, ed. A. Grześkowiak, K. Wiak, Warszawa 2015, p. 39; as noted by A. Zoll considering intent and lack of intent as the elements characterizing the offense does not yet prejudice adherence of PC to the concept of the final theory (A. Zoll [in:] *Kodeks karny. Część ogólna*, tom I, ed. A. Zoll, Kraków 2004, p. 40).

⁴⁷ Without going into deeper analysis of the merits of these competing variants it should be noted at this point that the author of this paper adheres to the position of A. Zoll, who argues that under the existing PC the guilt is separable from the intent and lack of intent constituting distinct elements of the structure of crime (A. Zoll, [in:] *Kodeks karny...*, p. 40). Thus, on the basis of PC one should apply a pure normative theory of guilt.

⁴⁸ W. Sanetra, *Wina w odpowiedzialności...*, p. 114.

⁴⁹ See footnote no. 45.

⁵⁰ Conversely E. Staszewska, *Odpowiedzialność pracownicza*, ed. Z. Góral, Warszawa 2013, p. 36 et seq. However, as stressed by A. Grześkowiak intent and lack of intent is not the same as intentional and unintentional guilt (A. Grześkowiak, [in:] *Kodeks karny...*, p. 39).

⁵¹ The Act of April 19, 1969, Penal Code, "Journal of Laws" of 1969, no 13, item 94 as amended, here-

Intentional guilt occurs, therefore, when the perpetrator wants to inflict a damage, and deliberately heads for it (direct intent, *dolus directus*) or when being aware of the harmful effects of his actions and anticipating probability of their occurrence, accepts it, although not directly aiming at causing damage (recklessness, *dolus eventualis*)⁵². To assign the employee intentional guilt the consequences of his actions must be included in his direct intent or recklessness⁵³.

Unintentional guilt occurs when an employee is able to predict that his/her unlawful conduct would likely cause damage, but wrongly believes that it will not occur (carelessness, *luxuria*, also framed as the conscious guilt⁵⁴), or if the employee does not provide for the possibility of the occurrence of damage, though taking into account all relevant circumstances of the case he could and should have predicted its materialization (negligence⁵⁵, *negligentia*, otherwise called the unconscious guilt⁵⁶).

As noted by the Supreme Court in its decision dated December 28, 1973⁵⁷, between recklessness by intentional guilt (art. 7 par. 1, second sentence of the former PC), and the carelessness by the unintentional guilt (art. 7 par. 2, first sentence of the former PC) there is a similarity on consciousness. However, by the recklessness the perpetrator is aware of the possibility of committing criminal act and he agrees with it, and by the carelessness he groundlessly assumes that he will avoid committing it.

THE EXCLUSION OF THE LIABILITY OF THE EMPLOYER IN CASE OF INTENTIONAL GUILT OF THE EMPLOYEE

As mentioned at the beginning of this paper non-application of art. 120 of the LC in the case of intentional guilt is not justified in the light of the literal interpretation of that provision. The literal wording of this provision implies no such exclusion whatsoever.

However, it should be considered by analyzing conditions of this liability, if it is possible to cause damage to a third party intentionally while performing of employee's duties at all. If the employee act with an aim (with the direct intent) to cause damage to a third party, in my opinion it is not possible simultaneously to fulfil the obligations arising from the labour

inafter referred to as "former PC". Art. 6 of the former PC used the concept of intentional and unintentional guilt. Consequently, on the basis of this regulation pure normative theory of guilt is not applicable. The definition of the intentional and unintentional crime contained in art. 7 of the former PC may therefore be used to define these concepts on the basis of the labour law.

⁵² Decision of Supreme Court dated March 9, 2010, case no. I PK 195/09, OSNAPiUS 2011, No. 17-18, item. 227, p. 720.

⁵³ See resolution of the Supreme Court dated December 29, 1975, case no. V PZP 13/75, Guidelines of justice and judicial practice on the material liability of employees, OSNC 1976/2/19.

⁵⁴ W. Sanetra, *Wina w odpowiedzialności...*, p. 139.

⁵⁵ Decision of Supreme Court called in footnote 46, although it should be noted that in this decision of the Supreme Court carelessness is mistakenly named as negligence and negligence as carelessness.

⁵⁶ W. Sanetra, *Wina w odpowiedzialności...*, p. 139.

⁵⁷ III KR 323/73, Biul. SN 1974 no 3, item 56.

relationship, i.e. to act in the capacity of the employee⁵⁸. Thus, this action will always be deprived of that abovementioned functional connection with the duties of the employee⁵⁹. The employee, in such circumstances, is not working in order to fulfil his employment-related obligations and the tasks of the workplace⁶⁰, and consequently causing damage occurs only in connection with, but not as a part of the process of carrying out the work. Namely speaking the wrongful act inflicting damage to a third party is committed by taking advantage of the opportunity created in the workplace but does not constitute performance of the work in the employee's capacity vested on him/her by the employer. As a result, the employer will not be responsible for such action on the basis of art. 120 of the LC. The situation, however, is not so obvious in the case when the employee act also with intentional guilt but with recklessness. It is possible to imagine a situation where the employee being aware that his action can cause damage, in fulfilling his employee's duties accepts (or at least tolerates) the possibility of causing a damage (however he aims not directly to do it). In this respect it should be noted that there is no clear antinomy between such behaviour of the employee and the fulfilment of the employee's duties⁶¹. Consequently, the above arguments seem to be no longer sufficient. As a result the question arises whether the employee who pursuant to the art. 100 § 1 of the LC is obliged to perform his/her work conscientiously and carefully, following the instructions of superiors which relate to work if they are not contrary to law or the contract of employment, should be expected to refrain from actions which are likely to result in damage to third parties and whether his / her failure to do so (implying the employees acceptance of inflicting damage on third parties) justifies exempting the employer from the liability for remedying adverse consequences of such a decision.

According to some authors systematic method of interpretation favours excluding the application of art. 120 of the LC in the case of intentional guilt of the employee⁶². It is argued that since the provision governing the liability for damages of the employer is included after the articles on liability for damage caused with unintentional guilt but prior to the rules referring to damage caused with intentional guilt, this regulation does not apply to intentional actions of the employee.

⁵⁸ It should be assumed after W. Piotrowski, that the employment relationship, which would aim to cause damage to other people would be invalid (art. 58 § 1 of the CC). W Piotrowski, *Glosa do uchwały SN z dnia 8.10.1975 r. (IV PZP 8/75)*, „Nowe Prawo” 1977, No. 1, p.124.

⁵⁹ K. Jaśkowski raises “that employee causes harm “in the performance of employment duties” when there is a functional relationship between the conduct causing the damage and the employee's responsibilities incumbent on the employee. The employer shall not bear the sole responsibility for the damage caused, if the performance of the employee's duties was just a chance (opportunity) used by the employee to cause damage. This occurs particularly in the case of intentional guilt” (K. Jaśkowski, [in:] *Komentarz aktualizowany...*, J. Skoczyński, however, opposes a thesis that the intentional infliction of damage automatically determines that such wrongful act falls beyond the scope of the performance of labour duties thus excluding the employer's liability (J. Skoczyński, *Odpowiedzialność za szkodę wyrządzoną przez pracownika osobie trzeciej przy wykonywaniu obowiązków pracowniczych*, PiZS 1998, No. 11, p. 36).

⁶⁰ See decision of the Supreme Court dated February 19, 1976, case no. III PR 21/76, PiZS 1977/10/68.

⁶¹ See W. Piotrowski, *Glosa do uchwały SN...*, p. 124 et seq.

⁶² G. Bieniek, *Roszczenia regresowe...*, p. 76.

At the same time, it should be noted that the § 2 of the art. 120 of the LC indicates that the employee is liable to the employer, who compensated the damage, under the provisions of Chapter I, which in turns regulates both – the activity of the employees with intentional and unintentional guilt. In this respect, G. Bieniek contends that the art. 122 of the LC which concerns intentional guilt (and provides for the full responsibility of the employee towards the employer for damage caused to him/her), and is located at the end of this chapter, constitutes an exception to the rules regulated by this chapter and therefore the reference contained in art. 120 § 2 LC refers only to unintentional guilt⁶³. This kind of interpretation however seems to be too far-reaching, and the assumption that the broad reference in art. 120 of the LC to regulation of the whole chapter does not apply to the last provision may be even treated as contradictory to the unequivocal wording of the provision.

Secondly it is submitted⁶⁴ in the scholarship that it would not be logical in the case of intentional guilt, pursuant to art. 120 of the LC, if the employer would bear the primary responsibility for the damage and then only by way of recourse the employee, who would be also liable for a total loss. Nevertheless, it should be underlined that for a third party to demand compensation from the employer will usually indeed be much more favourable (e.g. due to solvency issues, often faster possibility of full recovery of damages), than to demand it from the employee.

Undoubtedly, however, a teleological interpretation speaks for the exclusion of art. 120 of the LC in the case of intentional guilt of the employee⁶⁵. Since the idea of this regulation is to protect the employee, there is no reasonable basis for its application in the case of intentional guilt. Such use of this standard could lead to a distortion of its purpose and meaning and thus result in unjustified privilege of employee who due to the nature of his/her guilt does not deserve such treatment⁶⁶.

Consequently, the dominant position of the scholarship with regard to exclusion of art. 120 of the LC in the case of intentional guilt of the employee deserves approval. One should however note that the growing uncertainty and discrepancies around these issues urgently call for the necessity to settle this issue in a clear, explicit and unequivocal manner in the Labour Code.

CONCLUSION

Discussed-above considerations provide the firm basis for formulating the following conclusions. Firstly, within the realm of labour law, it seems to be appropriate to

⁶³ Ibidem, p. 76.

⁶⁴ See: G. Bieniek, *Roszczenia regresowe...*, p. 75; J. Skoczyński, *Odpowiedzialność za szkodę...*, p. 36.

⁶⁵ G. Bieniek, *Roszczenia regresowe...*, p. 76, J. Pietrzykowski, *Glosa do wyroku SN z dnia 25.02.1975 r. (II PR 302/74)*, „Nowe Prawo” 1975, p. 1247.

⁶⁶ See the statement of reasons of the already mentioned resolution of the Supreme Court case no. SN III CZP 5/76.

apply the notion of guilt as developed in the contemporary doctrine and jurisprudence of the criminal law. Conversely, due to the nature and functions of the labour law as well as the specific relationship between the employee and the employer, it would be undesirable to follow the path of the civil law in terms of the objectification of the concept of guilt. Secondly, despite of the wording of art. 120 of the LC, exclusion of its application in the case of intentional guilt of the employee appears to be justified from the standpoint of teleological interpretation of the regulation. Although it is worth noting that the analysis of the conditions for liability of the employer expressed in art. 120 of the LC provide little (if any) support for the formulation of such a conclusion, the imperfection of this provision should not lead to unjustified, over-reaching protection of the employee at the cost of the employer. These discrepancies between the wording of the provision in question and its expected function and purpose require clarification by way of its amendment.

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Summary: In the case of causing by the employee in the performance of his labour duties damage to a third party solely responsible for its repair is the employer on the basis of art. 120 of the Act of June 26, 1974 Labour Code. This regulation does not expressly provide any exception. The scholarship generally accepts, however, that this regulation does not apply if the damage has been inflicted with intentional guilt. This article is an attempt to assess the correctness of such a standpoint, based on a thorough analysis of the concept of guilt in labour law.

Keywords: guilt, responsibility of an employee, damage caused to a third party

WINA PRACOWNIKA A SZKODA WYRZĄDZONA OSOBIE TRZECIEJ – KILKA UWAG ODNOŚNIE DO REGULACJI POLSKIEGO KODEKSU PRACY

Streszczenie: W przypadku wyrządzenia przez pracownika podczas wykonywania przez niego pracowniczych obowiązków szkody osobie trzeciej wyłącznie odpowiedzialnym za jej naprawienie jest pracodawca na podstawie art. 120 ustawy z dnia 26 czerwca 1974 r. Kodeks pracy. Regulacja ta nie przewiduje wprost żadnego wyjątku od odpowiedzialności pracodawcy powiązanej z wyłączeniem odpowiedzialności pracownika wobec osób trzecich. W doktrynie powszechnie jednak przyjmuje się, iż nie dotyczy to sytuacji wyrządzenia szkody z winy umyślnej. Niniejszy artykuł stanowi próbę oceny zasadności takiego stanowiska, z uwzględnieniem analizy pojęcia winy w prawie pracy.

Słowa kluczowe: wina, odpowiedzialność pracownika, szkoda wyrządzona osobie trzeciej