

# **Non-contractual liability of the EU**

## **Abstract**

The aim of this thesis is to systemize the history of EU non-contractual liability; to analyse in detail the current concept of non-contractual liability of the EU, including procedural and substantive law aspects; to present a brief comparative analysis of selected national legal systems and their role in the regarding the general principles common to the laws of the Member States (and vice versa to reflect on the influence of EU non-contractual liability and its' possible role in the europeanization of administrative law); to contextualise non-contractual liability of the EU (with regard to constitutional, international and national aspects) and to consider compensation for damages caused by the EU as a tool for (un)effective judicial protection of individuals. Research methods are content analysis and comparison.

This thesis is divided into seven chapters. The first chapter is introductory and defines the subject of research, the methods used and terminology. The second chapter deals with an analysis of the current state of professional debate on non-contractual liability of the EU. The main part of the thesis focuses on the identification of problems connected to non-contractual liability of the EU and contextualization of those problems. In that regard non-contractual liability is examined from historical point of view (chapter three), substantive law point of view (chapter four), procedural law point of view (chapter five) and comparative law point of view (chapter six). The conclusions are drawn in chapter seven which also proposes a solution to the identified problems.

The identified problems to which the thesis is devoted are the following. The ambiguity of the concept of non-contractual liability of the EU, which does not comply with the principle of legal certainty as one of the fundamental principles of the rule of law. Furthermore, the inability of this concept to fully implement the functions that legal theory confers on non-contractual liability (reparative, preventive, repressive), and the associated risk of inappropriate and unjustified severity towards individuals and their claims.

Finally, the above mentioned problems are evaluated on several levels - the legislative-technical, the theoretical, the practical and the comparative. The thesis states that from the point of view of legislative and technical implementation, no conclusions can be drawn except that the chosen concept will not stand (neither in terms of clarity, nor in terms of the guaranteed level of legal certainty). Furthermore on the theoretical level, a number of reservations can be made against the chosen concept of non-contractual liability. The primarily restrictive approach of the Court of Justice does not reflect the importance of the right to reparation as a fundamental right, and it can also be doubted whether the solution actually leads in practice to the full implementation of at least

the remedial function of non-contractual liability of the EU. In addition, a number of partial conclusions of the CJEU, such as the conclusions reached by the parties on the issue of the joint responsibility of the Member States and the EU (*Haegeman* case-law), the insufficiently elaborated argumentation and clarity of the conclusions with regard to the possible objective responsibility of the EU (*FIAMM* case-law), arguments ignoring the economic reality in case of causality breakdown (*Gascogne* case-law), etc. The concept of non-contractual liability of the EU cannot be considered effective even if taking into account the practical findings. There are only a few complaints each year (the average is 16 new complaints a year), with only less than a tenth being successful. Lastly, it is emphasized that there is no single model of non-contractual liability of public authority that would be applied across Member States. On the other hand, all the idea that in some special situations it is worthwhile to provide individuals with compensation for the damage even though they would not otherwise be entitled to such compensation under the rules of non-contractual liability of the public authorities (in the absence of unlawfulness) can be traced down in every national legal system. With regard to the implementation, despite the clear wording of Article 340 of the TFEU, which refers to common principles, it is clear that the concept of non-contractual liability - as it was created by CJEU - is unique.

The proposed solution to the identified problem is based on the idea that the CJEU case-law could be codified with minor alterations. In other words a provision should be created which would govern non-contractual liability in a different way to current wording of Article 340 of the TFEU. Such an article should strive to find a compromise between a formally technical approach and a leeway for law enforcement. Compensation for damage caused by the EU should therefore be linked to the occurrence of damage, the qualified unlawfulness attributable to the EU and the causal link between the damage caused and the imputable illegality. In particular, EU law should address the type of damage (property, non-property, loss of hope). In addition, areas where the EU's responsibility is not to be applied should be firmly stipulated. Particularly the possibility action for damages in areas of legislative activity of the EU should be inadmissible because political and legal responsibility shall not be confused. Last but not least, there should be a special scheme allowing individuals to be compensated even if the EU didn't conducted unlawfully.

**Klíčová slova:** non-contractual liability of the EU, damages, EU law