

Author: Magdalena Wilejczyk

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Abstract:

The article criticized the purely causal concept of contributory negligence that is dominant in the Polish doctrine. Studies have shown that the view of the redundancy of the victim's fault for stating his contributory negligence is in contradiction with the norms adopted in the legislation of other countries and the provisions contained in international projects (PETL, DCFR). The purely causal concept of contributory negligence is thus a deeply inaccurate view, and also too harsh and unjust for the victim. The article also contains a polemic with the practice commonly adopted in the Polish law, consisting of taking into account the contributory negligence of minors and reducing their compensation. This practice is unacceptable in the light of regulations discussed in the article that are in force in other countries, where the possession of the tortious capacity is a precondition necessary for stating the victim's contributory negligence. In addition, the article discusses contemporary trends, which are increasingly appearing in foreign legislation, and which involve weakening or even eliminating the defence of the victim's contributory negligence. It turns out that the premise of the victim's contributory negligence does not only have to involve fault, but also in many cases, for the reduction of compensation to really take place, it needs to be qualified (intentional, gross negligence). This is particularly justified when the tort liability is based on risk, the responsible person has civil liability insurance, and the victim has suffered serious personal injury.