

COLLISION LIABILITY FROM THE HUNGARIAN PERSPECTIVE

DR. ZSOLT KOVÁCS

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The incident – A collision

Vessel type	Self propelled barge	Cruise vessel
Owner	Dutch company	Swiss company
Technical details	Deadweight: 3015,212 tons Propulsion: 1214 kW Cargo: 2000t gasoil	Displacement: 9910 m3 Propulsion: 1000 kW Passengers: 190

The consequences

The barge sinks;

A gasoilspill;

A crew member of the barge dies;
another is seriously injured;

The bridge is seriously damaged:
interruption of railway services for more than 1 year;
repair costs > EUR 10 mio;

cruise vessel is damaged;
50 passengers suffer serious injuries

Place of the collision



Procedural basics

Which law?

Contractual obligations

Rome I EU Regulation

General rule

- Choice of law

Special rules

- Not leading to Hungarian law

Hungarian law is a theoretical option

Non-contractual obligations

Rome II EU Regulation

General rule

- The law of the country in which the damage occurs

Special rules

- Not applicable in our case

Choice of law

- Not agreed

Hungarian law is the main option

Administrative liability

Hungarian law is the only option

Which court?

Brussels 1a EU Regulation

General rule - Article 4

- Courts of the Member State where the defendant is domiciled.

Special rules - Article 7 (2)

- in matters relating to tort, delict or quasi-delict, in the courts
- for the place where the harmful event occurred or may occur;

Hungarian court is a possible option

Presumptions for further discussion

Hungarian law is applicable for tort liability –
place of collision Hungary, all damages occurred in Hungary

Hungarian law has been chosen in all contractual matters,
including employment contracts

Liability aspects

Cruise ship vs.	Injured passengers	Contractual liability
Water administration vs.	Cruise ship/barge	Administrative liability
Crew members of the barge vs.	barge operator	Employer's liability
Owner of the bridge vs.	Liable vessel	Tort liability
Railway company vs.	Liable vessel	Tort liability
Owner of the barge vs.	Operator of the cruise ship	Tort liability
Owner of the cruise ship vs.	Operator of the barge	Tort liability

National law (HU)

Contractual liability

Civil Code

- No special regulation for liability in inland navigation

Basis of liability

- Strict liability (i.e. not based on fault)
- Exemption is difficult
 - circumstance was outside of the party's control and
 - was not foreseeable at the time of concluding the contract, and
 - the party could not be expected to have avoided that circumstance

Extent of liability

- Full compensation – damage to subject of the service
 - wilful misconduct
- Limit of foreseeability for all other damages (including loss of profit)
- Contractual limitation is possible BUT **not** for breach of contract causing damage to human life, physical integrity or health

National law (HU)

Administrative law

Administrative laws and the Criminal Code

Fixing the consequences of the collision

- To be done by the operator of the involved vessel
- If not, the respective authority makes the necessary steps at the cost of the operator
- Liability for restoration and costs are unlimited
- PLUS fine

Environmental pollution

- Obligation to terminate/or reimbursement of costs if done by the authority
- Fine
- Criminal liability – already the endangerment may qualify as a crime

Special power for the authority

- Detainment of the vessel until the imposed fine is paid – any flag

Fine

- Max. 2500 EUR for private persons
- Max. 25 000 EUR for legal entities


National law (HU)

Tort law

Civil Code

No special regulation for liability in inland navigation

Basis of liability

- Causing damage shall **always** be unlawful (with a few exceptions), no need to prove the breach of any legal regulation
- River navigation is a hazardous activity  strict liability
- The **operator** of the hazardous activity **is liable** for the damages caused by that activity
- Exemption is possible **only** if the damage was caused by an unavoidable event outside the scope of the hazardous activity

BUT

- If hazardous operations cause damage to each other, the operators shall compensate for the damage caused to each other in proportion to their degree of fault.

Extent of liability

- Full compensation
- **BUT** Limit of foreseeability – No causal relationship for damages which the person causing it could not foresee and should not have foreseen.
- Contractual limitation is possible **BUT not** for intentionally causing damage, as well as for harming human life, physical integrity and health

National law (HU)

Vicarious liability

No independent liability of the captain or members of the crew

If working in an employment relationship

Their behaviour is attributed to the operator of the vessel

Except for crimes committed by the captain or the crew

Liability insurance

Obligatory for

- vessels registered under Hungarian flag
- vessels engaged in sea trade sailing under any flag above 300 tons

Must provide cover for those claims which fall under the limitation of the CLNI

Limit of the insurance must reach at least 10 % of the limits provided for by the CLNI

No direct claim against liability insurers

International regulations relevant for collision liability in inland navigation

- Athens Convention \emptyset ratified but not applicable to inland navigation
- EU regulations and directives related to carriage of passengers are basically not concerning liability in case of collision
- + Geneva Collision Convention 1960
- + CLNI

Geneva Convention related issues 1.

Fault based liability

Damage to things and persons on board the vessels =
Passengers of a cruise ship are also included

Damage to anything outside the vessel(s) is not covered
by the Convention!

The meeting of the Geneva Convention and Hungarian law
can lead to interesting consequences

Geneva Convention related issues 2.

Colliding vessels (i.e. their operators) against each other

No difference –
liability is
apportioned
according to fault

Passengers against the vessels

Against the other vessel
– tort law –
Geneva Convention –
fault based liability

Against their own vessel
– breach of contract –
strict liability

Relatives of deceased
passengers - tort law –
not falling under the
Geneva Convention –
strict liability

Third parties outside the vessel (e.g. port infrastructure)

Tort law –
strict liability

Joint liability

Inner relationship
between the
colliding vessels –
fault liability

CLNI related issues

Entry into force – July 2019

Does not cover the Hableány tragedy (May 2019)

No rules for setting up and operation of limitation funds

The operator intending to limit his liability according to CLNI under Hungarian law can invoke the limitation, but cannot set up a limitation fund

Potential solution → If there is another state whose courts also have jurisdiction and whose law contains the institution of limitation fund, then the limitation fund may be set up there

Maybe Holland?

Thank you for your attention!

Dr. Zsolt Kovács | kovacs.zsolt@gmtlegal.hu



GÁRDOS
MOSONYI
TOMORI
LAW OFFICE

H-1056 Budapest, Váci utca 81. | H-1461 Budapest, PO Box 377
+36 1 327 7560 | www.gmtlegal.hu