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Employer liability for employee-caused harm: A study of vicarious responsibility

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Abstract

The study aimed to determine the effectiveness of legal mechanisms governing the subsidiary liability of employers for damages caused by employees in the course of their employment duties. The paper examined the theoretical foundations of tort law, judicial practice, and comparative approaches across different legal systems. The methodological framework was based on a comprehensive approach that combined doctrinal analysis, a comparative examination of common law and European law provisions, and case law analysis, including a review of specific cases. This approach made it possible to identify the peculiarities of interpretation and application of the relevant norms in various jurisdictions. The findings of the research demonstrated that subsidiary liability continues to play a key role within the system of tort law, as it ensures effective compensation for victims even in cases where the

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employee lacks sufficient financial resources. At the same time, it was established that legal systems vary in their definition of the employer's scope of liability: while continental European jurisdictions tend to interpret it more broadly, common law countries are more inclined to apply restrictive criteria. The analysis of judicial practice revealed that courts increasingly favour the principles of fairness and proportionality, striving to protect victims while preventing excessive financial burdens on employers. The research also identified ambiguity in the qualification of employees' intentional torts, which necessitates clarification of statutory criteria regarding the boundaries of "the course of employment". The obtained results have practical implications: for legal practitioners, they assist in the proper legal qualification of duties and scope of liability, and for employers, they serve as guidance for implementing preventive strategies, including risk management, compliance programmes, and insurance mechanisms

Keywords: subsidiary liability; employer's liability; tort law; employee misconduct; comparative law; workplace harm

Introduction

Employers' liability for damage caused by employees represents one of the most contentious areas of civil and labour law. It directly influences the balance between the economic interests of entrepreneurs, the rights of employees, and the protection of third parties who may suffer harm as a result of an employee's actions. The central issue concerns the delineation of the scope of the employer's liability, including whether it should be confined to the direct consequences of an employee's actions or extended to cover indirect losses arising in connection with the performance of employment duties.

In the case of Albania, the complexity stems from the process of integrating the national legal tradition with European standards and international approaches. Although Article 618 of the Civil Code of the Republic of Albania (2001) formally enshrines the principle of vicarious liability, judicial practice Albanian court practice shows inconsistent interpretation of its scope, particularly regarding the required proof of an employment relationship and the degree of connection between the employee's conduct and their professional duties. This Code recognised that the employer's scope of liability should include indirect

consequences of employees' actions. This demonstrates that, despite the statutory recognition of indirect liability, the practical determination of its boundaries remains insufficiently specified, leading to divergent judicial interpretations and uncertainty in law enforcement.

The research employed an extensive range of literature encompassing both national and international sources, as well as theoretical and practical aspects of employers' liability for employees' actions. B.O. Adebayo (2021) offered a doctrinally grounded analysis of employers' vicarious liability, focusing on the legal meaning of acts committed "in the course of employment" and the extent to which such acts may be attributed to the employer. The author made the case for a restrictive approach and concluded that employers shouldn't be held vicariously accountable for the criminal activities of their workers unless there is clear evidence of a tight functional relationship between the crimes and employment duties or the acts were specifically authorised. The author helped to define the conceptual boundaries of vicarious liability in tort law by highlighting the degree of proximity between the wrongdoing and the employee's responsibilities.

I. Gredka-Ligarska (2025) examined how well the vicarious responsibility doctrine applied to modern employment situations that were influenced by technological advancements. According to the author, classic employer responsibility principles are still applicable in today's more complex workplaces, but they need to be conceptually rethought to handle indirect harm and organisational control. This study emphasised the growing conflict between new types of risk created in contemporary businesses and traditional doctrinal frameworks.

P. Giliker (2024) looked at recent court rulings in Australia and the UK, showing that judges are still working to clarify the parameters of vicarious liability. Employer liability's preventive and compensating goals are strengthened by the analysis, which revealed that courts are increasingly focussing on the relational and functional relationship between employment and wrongdoing rather than formal classifications. M. Campbell and B. Lindsay (2024) offered a doctrinal reassessment of vicarious liability, concentrating on the legal relationships that justify the attribution of responsibility to employers. The study underlined that the ability of the employer to plan, profit from, and regulate labour activities is the foundation for liability, which offers a theoretical foundation for expanding liability beyond strictly defined employment laws.

A more recent perspective on the subject was offered by L. Burnazi Mitllari (2023), who, in her presentation at an international conference, addressed corporate fraud and liability provisions in Albanian law. The author explained that vicarious and subsidiary liability serve as tools for enhancing organisational accountability, especially by associating criminal liability with the proof of corporate actors' intent, knowledge, and involvement and civil liability with compensation and financial balance restoration. Her findings emphasised that the key to preventing corporate fraud and guaranteeing the efficacy of the law is

the efficient application of European standards in corporate governance and the concerted enforcement by regulatory and law enforcement agencies. A comparative analysis of employer liability across several legal systems was provided by Y.M. Porytska (2023), who also noted general trends towards extending protection for harmed third parties. The study emphasised how inconsistently the definition of the scope of work is applied and how crucial contextual interpretation is in establishing whether or not an employee's actions can be ascribed to the employer.

Previous studies have outlined a range of relevant aspects but left certain gaps requiring further investigation. In particular, there is a lack of detailed analysis of Albanian judicial practice concerning employers' liability, insufficient attention to the economic implications for small and medium-sized enterprises, and an absence of exploration into the harmonisation of approaches in states with transitional legal systems. Moreover, there is no comprehensive assessment of practical mechanisms for implementing European standards into national legislation, making an in-depth study of these dimensions especially pertinent. This study aimed to conduct a comprehensive analysis of the institution of employers' liability for harm caused by employees, particularly through the prism of the vicarious liability principle. To achieve this aim, the research addressed the following objectives:

- to examine the provisions of the Civil Code of the Republic of Albania (2001) and other regulatory acts governing employers' liability for employees' actions;

- to analyse the practice of Albanian courts in cases involving harm caused by employees, to identify trends and challenges in the application of the law;

- to determine the limits and conditions under which an employer bears liability for employees' actions, as well as exceptions to this rule.

Materials and Methods

To achieve the aim of the study, a comprehensive approach was employed, combining an analysis of Albania's national legislation, international legal instruments, and a comparative legal analysis. The primary sources included: Albanian statutes and codes regulating tortious and labour liability; case law of the Supreme Court and courts of general jurisdiction; directives and regulations of the European Union; and doctrinal sources on tort law and vicarious liability.

This study applied a complex methodological framework integrating multiple scientific methods to ensure a thorough exploration of employer liability for employees' acts. The formal-legal method enabled the examination of legislative provisions and their interpretation, which is essential for determining the legal nature of employer liability. In particular, the research analysed Article 618 of the Civil Code of the Republic of Albania (2001) and the relevant provisions of the Labour Code of the Republic of Albania (1995). The comparative legal method was employed to juxtapose Albanian provisions with the practice and norms of other European jurisdictions, aiming to identify both common features and divergences in legal approaches. The analysis encompassed Article 1242 of the Civil Code of France (2023), Paragraph 831 of the Civil Code of the Federal Republic of Germany (2021), and Article 2049 of the Civil Code of Italy (2016).

The study reviewed and analysed a range of judicial sources from different legal systems in order to examine the application of the vicarious liability doctrine in comparative perspective. This included landmark decisions of the United Kingdom courts concerning the "close connection" test (Judgement of the United Kingdom House of Lords..., 2001; Judgement of the United Kingdom Supreme Court..., 2016), Judgment of the Supreme Court of Canada in Case "Bazley v. Curry" (1999) addressing preventive and risk-based approaches

to employer liability, and United States Supreme Court case law emphasising employers' institutional duties and compliance obligations (Judgement of the U.S. Supreme Court in Case "Faragher v. City of Boca Raton", 1998). In addition, decisions of the French Court of Cassation were examined to capture a more restrictive civil-law interpretation of employer liability limited to acts directly connected with the performance of employment duties (Court of Cassation of France, 2005). Recent rulings from the Albanian Constitutional Court, specifically Judgement No. 14 (2025) and No. 229 (2025), were also included in the analysis. These rulings emphasise the importance of evidentiary standards for establishing an employment relationship and reject the idea of automatic or solidary employer liability, thus clarifying the application of Article 618 of the Civil Code of the Republic of Albania (2001).

To identify contemporary trends within the EU, statistical data and analytical reports of the European Commission (2022; 2023) and conclusions of the European Committee of Social Rights (2022) were examined. The study also reviewed international recommendations, including the Guiding Principles on Business and Human Rights of the United Nations (2011) and materials from the Office of the United Nations High Commissioner for Human Rights (OHCHR) (2025), which reveal the human rights dimension of the vicarious liability doctrine.

A systemic analysis made it possible to trace interconnections between national and international legal norms, as well as to assess the extent to which Albanian legislation aligns with European standards and EU practice. This approach provided a basis for evaluating the degree of harmonisation of Albanian law with the European legal framework – an especially relevant aspect within the context of European integration. The historical-legal method was used to explore the evolution of the vicarious liability concept in the

European legal tradition and its reception by the Albanian legislator.

Results

The concept of vicarious liability occupies a significant position in international tort law doctrine, as it enables the effective allocation of risks between the employee who directly caused the harm and the employer who organises the work process and benefits from the employee's activity. It represents a specific form of indirect or secondary liability, whereby one person is held liable for the acts of another, irrespective of personal fault. This approach is grounded in the notion that the employer is better placed both to supervise the employee and to ensure compensation to victims through financial resources or insurance mechanisms.

Modern employment relations, shaped by digital platforms and remote work, pose new challenges to the application of vicarious liability. Under such conditions, the boundaries of employment duties become increasingly blurred, as employees may perform tasks outside traditional workplaces and at varying times, complicating the determination of when and under what circumstances an act falls within the course of employment (Porkodi *et al.*, 2022). This necessitates an adaptation of legal mechanisms, including a reassessment of the functional nexus between employees' conduct and employers' duties, and clarification of the employer's role in supervision and harm prevention in decentralised work environments.

An analysis of selected judicial decisions reveals the particularities of applying the vicarious liability doctrine across legal systems and illustrates how it evolves in response to socio-legal contexts. A comparative review of common law and civil law jurisprudence highlights substantial differences in delineating the scope of employment duties, the relationship between the employee's personal fault, and the employer's

obligation to compensate for harm. Case law across jurisdictions demonstrates varying interpretations of the limits of employer vicarious liability. In the United Kingdom, the landmark case "Lister v Hesley Hall Ltd" involved a boarding school employee who committed sexual abuse against pupils (Judgement of the United Kingdom House of Lords..., 2001). The court held the employer liable, reasoning that the acts were "closely connected" with the employee's professional functions. This case established the "close connection" test, which has since served as a reference point for analogous decisions. The doctrine's further development is traceable in "Mohamud v. WM Morrison Supermarkets Plc" (2016), where a store employee assaulted a customer during service. The Supreme Court again imposed liability on the employer, holding that the incident arose within the course of employment, thereby broadening the scope of occupational duties. In French jurisprudence, the approach remains narrower. In the case of the Court of Cassation of France No. 02-30.858 (2005), an employee caused a traffic accident after deviating from his route for personal reasons. The court refused to hold the employer liable, finding that the act did not occur within the scope of employment duties. This decision reflects a restrictive interpretation of the link between harm and occupational functions.

In the United States, the seminal case "Faragher v. City of Boca Raton" (1998) concerned sexual harassment by a supervisor. The Court found the city, acting as employer, liable for inadequate oversight. Crucially, the Court emphasised the employer's duty to adopt preventive policies and maintain effective supervision to avert misconduct. In Canada, "Bazley v. Curry" (1999) became a cornerstone in shaping the doctrine. An employee of a charitable organisation committed sexual abuse against children, and the court held the organisation liable, reasoning that its operations created a heightened risk to victims. Thus,

Canadian jurisprudence ascribes a preventive function to vicarious liability, aimed at deterring harm by holding employers accountable for risks inherent in their activities. Anglo-American legal systems increasingly embrace an expansive interpretation of employment duties, emphasising prevention and victim protection, whereas continental jurisdictions, notably France, maintain a more formalised and restrictive stance.

In Judgement of the Constitutional Court of Albania No. 14 (2025), examined the use of employer liability in a case where the plaintiff invoked general tort laws along with Article 618 of the Civil Code of the Republic of Albania (2001). The Court examined the different strategies used by the regular courts, pointing out that the High Court later overturned the appellate court's judgement to hold the employer liable for flaws in safety organisation and supervision. The rationale supports a cautious and methodical application of vicarious liability principles by highlighting the judiciary's emphasis on accurately determining whether the employee's actions were within the scope of their work duties and on correctly qualifying facts under the law.

Important clarification regarding the legal character of employer liability under Article 618 of the Civil Code of the Republic of Albania (2001) is provided by Judgement of the Constitutional Court of Albania No. 14 (2025). The Albanian Constitutional Court emphasised that Albanian law does not automatically establish solidarity in such instances, explicitly rejecting the interpretation that sees employer and employee as jointly culpable. In order to strengthen legal certainty and evidentiary standards in the application of vicarious liability, the Court further emphasised that the imposition of employer liability necessitates unambiguous proof of an employment relationship and a functional connection between the employee's conduct and their professional duties.

The interpretation of vicarious liability exhibits both similarities and differences when comparing current Albanian court practice with US and UK case law. As evidenced by the Constitutional Court's rulings, Albanian courts take a rather formal and stringent stance, rejecting automatic or solidary liability and emphasising the need to establish an employment relationship and a clear functional connection between an employee's actions and their responsibilities. The "close connection" test, on the other hand, has given UK courts a broader interpretation, permitting employer culpability even in cases where the wrongdoing deviates from regular responsibilities as long as there is a significant connection to the employer's employment. In turn, US jurisprudence emphasises the employer's institutional responsibilities, like oversight and compliance guidelines, which frames vicarious liability as a tool for risk management and organisational prevention as well as a matter of factual relationship.

The evolution of the vicarious liability concept within the European legal tradition is closely intertwined with socio-economic transformations and doctrinal developments. Initially, employer liability was limited and predicated on personal fault; over time, however, an objective approach emerged, grounded in the doctrine of risk allocation. As noted by scholars of German tort law (von Bar, 2009), the principal aim shifted from punishing the wrongdoer to equitably distributing the consequences of hazardous activities between those who organise and control them and those who may suffer harm. In the French tradition, beginning with interpretations of Article 1242 of the French Civil Code (2023), the Court of Cassation progressively moved from personal fault towards recognising an objective link between enterprise activity and resulting harm – reflecting the principles of prevention and effective victim protection (Terré *et al.*, 2019). In common law jurisdictions, particularly in British

jurisprudence, the close connection test articulated in Case “Lister v Hesley Hall Ltd” (2001) has played a pivotal role, enabling broader coverage of employees’ wrongful acts. Collectively, these approaches align with the concept of social justice, which seeks a fair balance between employers’ economic interests and victims’ rights. The extension of liability incentivises employers to implement preventive mechanisms (insurance, compliance programmes, internal controls) while ensuring effective compensation for victims. Consequently, the modern doctrine of vicarious liability embodies an integration of risk allocation and social justice, reflecting both doctrinal progress and societal demand for more robust legal protection mechanisms (Vazova *et al.*, 2025).

According to the data of the European Commission for the Efficiency of Justice (2022), in EU Member States, the number of civil cases related to employment relationships and compensation for damages increased by approximately 15-20% in 2019-2022. This indirectly indicates a growing number of instances in which the issue of employers’ liability for employees’ actions becomes a subject of judicial examination.

In the case-law of the European Court of Human Rights (ECHR), it has been repeatedly emphasised that employers have positive obligations to protect the rights of both employees and third parties. For instance, in “Öneryıldız v. Turkey”, the ECHR (2004) held that the State and, correspondingly, employers bear broader duties regarding the safety of life and health when their activities involve elevated risks. Although the case did not directly concern vicarious liability, its reasoning has been actively invoked by national courts as a basis for expanding the scope of employers’ duties.

The UN, in its Guiding Principles on Business and Human Rights (2011), clearly underscores the corporate duty to conduct due diligence regarding risks of human rights violations and to

implement remediation mechanisms for affected individuals. This strengthens arguments for imposing liability on organisations as entities capable of controlling and compensating for the consequences of their employees’ actions. A similar stance is advanced by the OHCHR (2025) in its regular reports on business and human rights, emphasising the obligation of companies not only to prevent violations but also to establish effective redress mechanisms.

The European dimension of this trend is reflected in the practice of the European Committee of Social Rights (2022), which, in its conclusions under the European Social Charter (1996), stresses the need for enhanced protection of vulnerable categories of workers and third parties, as well as the obligation of States to ensure proportionality and legal foreseeability in the field of labour relations. Similar benchmarks are contained in the Guidelines of the Council of Europe (2025), which underscore the necessity of preventing excessive risks for workers and developing mechanisms of collective responsibility.

Furthermore, the European Commission (2023) in its “Joint employment report” highlights the need to adapt legal mechanisms to new forms of employment, including remote work and the gig economy, as well as to strengthen guarantees for the protection of third parties against harm caused by employees in the course of their professional duties. This confirms a Europe-wide trend towards revisiting the traditional doctrine of vicarious liability in favour of expanding employers’ social responsibility.

The legal regulation of employers’ liability for harm caused by employees in Albania is multi-layered and based on the provisions of the Civil Code of the Republic of Albania (2001), the Labour Code of the Republic of Albania (1995), insurance legislation, and a number of special acts. The Civil Code of the Republic of Albania (2001) occupies a central position in this system, particularly

Article 618, which enshrines the general principle of vicarious liability. Pursuant to this provision, an employer is liable for damage caused by employees in the course of their employment duties, even if the employer personally committed no wrongful act. Significantly, the injured party is not required to prove the employer's fault; it suffices to establish that the harm was inflicted by the employee within the scope of their employment. At the same time, the law defines the limits of such liability. If the employee acted solely in their own interests, unrelated to professional duties, the employer's liability may be excluded (Article 618). In cases where the actions exceeded specific instructions but remained closely linked to employment functions, judicial practice allows for the imposition of liability on the employer (Article 608). The Code also grants the employer a right of recourse – after compensating the injured party, the employer may seek reimbursement from the employee if the latter acted intentionally or with gross negligence.

Building on these statutory provisions, Article 608 further shapes the judicial interpretation of employers' liability, serving as the principal reference point in case law. Courts consistently emphasise that liability under this Article is objective in nature and arises whenever a functional link exists between the employee's conduct and the performance of their professional duties. This broad judicial approach reinforces the primacy of victim protection and ensures that employers remain accountable for harm occurring within the general scope of employment, irrespective of the degree of fault or whether the harmful act was directly or indirectly connected to the employee's official responsibilities.

Complementing the provisions of the Civil Code (2001), the Labour Code of the Republic of Albania (1995) elaborates on employers' duties concerning work organisation and occupational safety. Article 105 of the Labour Code establishes

the general obligation of the employer to ensure safe working conditions and monitor their compliance, while Article 106 provides for liability for harm caused to employees or third parties as a result of inadequate supervision, improper allocation of functions, or breaches of safety standards. The injured party is entitled to bring claims directly against the employer, which significantly facilitates the protection of their rights. The Labour Code demonstrates a distinctly social character of regulation: the employee is not held liable beyond their personal fault, particularly where harm arises from deficiencies in the employer's organisational arrangements. These provisions reinforce vicarious liability as a mechanism for equitable risk distribution and ensure effective protection of victims.

Law of the Republic of Albania No. 32 "On Compulsory Insurance in the Transport Sector" (2021) establishes mandatory civil liability insurance for vehicle owners and other transport operators vis-à-vis third parties. This constitutes one of the clearest norms on compulsory insurance; however, it remains confined to the transport sector, thereby excluding other risk-prone areas where employer liability for employees' actions may arise (e.g., construction, healthcare, manufacturing, etc.). Law of the Republic of Albania No. 52 "On the Activity of Insurance and Reinsurance" (2014) sets out the general framework for insurance regulation in Albania. It defines requirements for insurers and brokers, licensing procedures, financial minima, and obligations regarding insurance products. Nevertheless, it does not contain a specific general provision mandating employer liability insurance for employees' actions across all high-risk sectors.

A distinct category consists of sector-specific statutes governing individual professional activities. For example, the Road Code of the Republic of Albania (2015) establishes heightened carrier liability for harm inflicted upon passengers or cargo

owners by drivers' actions. The law stipulates that a carrier is liable for any injury or material loss occurring during transportation, irrespective of the carrier's direct fault, thereby operationalising the principle of objective liability. The injured party may lodge claims directly against the carrier company, ensuring swift compensation, while the carrier may exercise a right of recourse against the driver if intent or gross negligence is proven. Such provisions produce a preventive effect: carriers are incentivised to strictly monitor drivers' qualifications and conduct, implement training, and comply with safety standards. This approach balances victim protection with the economic interests of transport companies, integrating vicarious liability principles into the national regulatory framework for road transport.

Judicial practice confirms that employers are liable for employees' acts performed in the course of employment, with courts assessing the nature of the work, the connection between the employee's conduct and assigned tasks, and the employer's compliance with supervisory standards. This comprehensive approach illustrates the interrelation between legislative provisions and the practical implementation of vicarious liability in the national context. Albanian courts consistently uphold the principle that the employer is liable for damage caused by an employee while performing professional duties. In doing so, courts examine not only the existence of an employment relationship but also the nature of the work performed, the nexus between the employee's actions and their assigned functions, and the employer's adherence to appropriate control standards. These rulings demonstrate a general trend within the Albanian judiciary towards prioritising the interests of victims and reinforcing the principle of employers' strict (objective) liability, consistent with prevailing international approaches in the field of vicarious liability. A comparative perspective across

jurisdictions facilitates a deeper understanding of the specific features of Albanian law concerning employer liability.

In France, employer liability is grounded in the principle of liability of the employer for the acts of subordinates (*responsabilité du commettant du fait de ses préposés*), which affords a broad scope of coverage, extending even to acts that exceed explicit instructions, provided such acts remain within the employee's professional functions. The case of the Court of Cassation (1988) confirmed that an employer bears liability for the actions of an employee even when those actions exceed given instructions, insofar as they remain within the framework of the employee's professional duties. This approach is oriented towards the maximum protection of victims and establishes a strong presumption of employer liability (Civil Code of France, 2023).

In Germany, employer liability is governed by Paragraph 831 of the Civil Code of the Federal Republic (2021) and is characterised by greater flexibility: an employer may be exempted from liability if it can demonstrate that it exercised due care in the selection, training, and supervision of the employee. The *Straßenbahn Case* (Decision of the Federal Court of Justice..., 1957) confirmed that an employer may be relieved of liability if it can prove that its employees acted properly and that all necessary preventive measures, such as appropriate recruitment, training, and supervision, were taken. This mechanism enables courts to take into account the employer's due diligence in preventing harm and affords a certain degree of protection. In Italy, Article 2049 of the Civil Code of Italy (2016) establishes strict liability of employers for the acts of their employees performed in the course of their duties, subject to limited exceptions where the harm is unrelated to employment. This model ensures robust protection of victims and a broad understanding of the functional nexus between the employee's conduct

and the employer (Perozzi *et al.*, 2024). Table 1 compares the principal approaches of these jurisdictions to employer liability for employees' acts,

highlighting the distinctive features of Albanian law and its similarities and divergences with other legal systems.

Table 1. Approaches to employer liability for employee actions:
A comparative jurisdictional analysis

Country	Core principle	Scope of employer liability	Exceptions	Specific features
Albania	The employer bears objective (strict) liability for damage caused by an employee within the scope of their employment duties	Liability applies if the damage was caused during and in connection with work	Exoneration is possible if it is proven that the employee's actions were entirely outside their duties (e.g., a private act) (Article 618)	Court practice firmly establishes the employer's duty to ensure supervision of employees
France	Principle of responsabilité du commettant du fait de ses préposés	The employer is liable for any actions of an employee, even if they exceed instructions, provided they are not entirely disconnected from work	Exception – when the employee acts "hors des fonctions" ("outside of functions"), without any relation to work (Article 1242)	A very broad scope of liability, enhancing victim protection
Germany	Paragraph 831 of the German Civil Code (Liability for vicarious agents)	Liability is based on a presumption of fault in the selection or supervision of the employee	The employer can be exonerated if they prove adequate control and selection of the employee	The system is more flexible than the Albanian or French systems, as it allows for the avoidance of liability with proper organisation
Italy	Article 2049 of the Italian Civil Code (Responsibilities of owners and clients)	Objective liability for actions of employees within the scope of their work	Very rare exceptions, mostly if a complete lack of connection to work is proven	Closely aligned with the French model – strong victim protection

Source: compiled by the authors based on Civil Code of the Republic of Albania (2001), Civil Code of Italy (2016), Civil Code of France (2023), Civil Code of Germany (2021)

The comparative analysis indicates that jurisdictions differ in the degree of strictness applied to employer liability, with some allowing defences based on due diligence and others imposing near-absolute liability. Albania thus exemplifies a system in which a balance between the interests of victims and employers is achieved through a clear delineation of the boundaries and conditions of liability.

The effectiveness of the legal mechanism governing employer liability for employees' acts in Albania and other countries largely depends on the precise definition of the scope and conditions of such liability, as well as the practical ability of victims to prove damage and establish a causal

nexus with the employee's conduct (Civil Code of the Republic of Albania, 2001).

Nevertheless, the practical application of this mechanism reveals certain challenges. First, establishing proof of harm and causation can be complex, particularly in cases involving indirect damage or when the employee's actions are not fully documented. The judiciary often requires a detailed factual analysis in each instance, which may complicate proceedings and extend the duration of litigation. Second, limitations arise concerning the scope of liability: the employer is liable only for acts performed within the execution of professional duties or functionally connected with employment. Acts wholly outside the scope

of employment or of a private nature (akt privat) do not give rise to employer liability. Furthermore, compared with other jurisdictions, such as Germany, the Albanian system is less flexible in permitting exemptions from liability, which may impose additional burdens on employers in the areas of insurance and workplace organisation.

Despite these difficulties, the effectiveness of the legal framework is determined by its capacity to safeguard victims and to prevent recurrences of harm through incentivising employers to adopt preventive measures. International comparative analysis demonstrates that the stringent nature of liability embedded in the Albanian system yields

more predictable outcomes for victims, though it necessitates further procedural reforms aimed at simplifying evidentiary requirements and enhancing the transparency of judicial decisions.

The application of the vicarious liability mechanism in Albania, notwithstanding its effectiveness in victim protection, is accompanied by several practical challenges. These pertain both to procedural aspects and to organisational characteristics of employers' operations. Table 2 systematises the key issues encountered in the implementation of employer liability for harm caused by employees and provides illustrative examples of each complexity.

Table 2. Principal challenges in applying vicarious liability in Albania

Challenge	Description	Examples
Proving damage	The necessity to prove actual material or non-material damage, including the causal link to the employee's actions	Difficulty in proving damage in cases of indirect impact or psychological trauma
Defining liability scope	The clear determination of whether the employee's actions were within the scope of their employment duties	Actions entirely outside the scope of work do not incur employer liability
Limited evidence base	Insufficient documentation of internal processes, lack of supervision or records	The employee acted without written instructions or supervision
Duration of legal proceedings	The complexity and protracted nature of court proceedings due to the detailed examination of each case	Protracted proceedings in cases involving indirect or complex damages
Insurance and financial risks	The high probability of liability leads to additional costs for employers	The need for professional indemnity insurance
Insufficient employer awareness	Employers are often unaware of the full extent of their liability and the associated risks	Inadequate organisation of employee supervision

Source: compiled by the authors

Analysis of the principal difficulties in applying vicarious liability demonstrates that the efficacy of the legal mechanism depends substantially on the victim's ability to prove harm, the clear delineation of liability boundaries, and the adequacy of internal control mechanisms within enterprises. Technological developments – particularly autonomous systems, artificial intelligence, and digital platforms – pose fundamentally new challenges to the traditional understanding of vicarious liability. The classical doctrine was

premised upon the existence of an “employer-employee” relationship and the imposition of liability for acts of individuals operating within the sphere of organisational control (Nuni, 2016). However, with the deployment of autonomous technologies, a critical issue emerges concerning whether an enterprise can be held liable for harm caused by an algorithm or a self-operating system functioning with a high degree of independence from human intervention. Comparable challenges emerge within the realm of digital platforms,

where the link between the platform and the individual service provider (for example, a ride-hailing driver or a delivery courier) does not always satisfy the classical criteria of employment. In many jurisdictions, an ongoing debate concerns whether platforms should bear vicarious liability for the acts of their “partners”, who may be legally classified as independent contractors but are, in practice, subject to algorithmic control. These technological developments necessitate the adaptation of traditional doctrine and the formulation of new criteria for defining the “sphere of control” and the “connection with the employer’s activity”, thereby opening avenues for integrating classical tort law with elements of digital economy regulation and risk-based liability inherent in the deployment of innovative technologies.

Considering the aforementioned practices, several directions for reform should be examined to improve the legal framework in Albania. In order to enhance the Albanian legal system concerning the application of the vicarious liability principle (employer’s liability for the acts of employees), attention should be focused on a clearer definition of the evidentiary procedures for proving damage and establishing the causal nexus between the employee’s conduct and the harm caused. This would help reduce the burden on the courts and facilitate victims’ access to legal protection. According to information provided by the European Union, the Albanian government does not collect data on compensation payments made in cases of public liability, nor on the reasons for such payments. In November 2021, the Parliament adopted the Law on Co-Governance, granting the Agency for Dialogue and Co-Governance significant powers, including conducting inspections of public institutions based on citizens’ complaints and imposing administrative sanctions or proposing disciplinary measures. This reform has raised concerns regarding its potential impact on judicial independence and the effectiveness of law

enforcement in employer liability cases (European Commission, 2022). Recommendations for improving the legal framework concerning the application of the vicarious liability principle are of a comprehensive nature and envisage several interrelated directions aimed at enhancing the effectiveness of the legal mechanism and ensuring fairness in compensating victims. Firstly, it is necessary to more precisely define the scope of an employee’s professional duties by specifying which acts constitute the performance of employment functions and which are personal or outside the scope of employment. Such an approach will reduce uncertainty in damage cases and facilitate the establishment of a causal link between the employee’s actions and the harm caused, thereby contributing to more predictable and well-reasoned judicial decisions.

An important measure is the introduction of mandatory employers’ civil liability insurance, which would guarantee victims a realistic mechanism for compensation without the need to prove the employer’s personal fault (Nitsenko *et al.*, 2024). This instrument simultaneously incentivises employers to comply with safety standards, creating a preventive effect through risk insurance and recourse claims in cases of intentional or gross misconduct. Equally significant is the improvement of documentation systems and internal controls within companies, which allows for monitoring the performance of professional duties, timely detection of breaches, and reduction of incidents. Such an approach not only helps prevent harm but also facilitates the evidentiary process in the event of disputes.

One of the key reform directions is the organisation of systematic collection and publication of statistical data concerning court cases related to employers’ liability, as well as their outcomes. This will enable assessment of the legal mechanism’s effectiveness, identification of trends in judicial practice, and formulation of

evidence-based recommendations for further legislative improvements. In parallel, it is necessary to provide training and professional development for judges by conducting regular workshops and seminars on the application of vicarious liability and causal analysis in tort cases, thereby enhancing the quality of judicial reasoning and ensuring fair adjudication of disputes. Taken together, the implementation of these measures would improve the effectiveness of the vicarious liability doctrine, create conditions for equitable compensation to victims, and encourage employers to adhere to high safety standards, maintain appropriate employee supervision, and ensure safe working conditions.

Discussion

The conducted research demonstrates that the vicarious liability system is based on an objective approach and primarily seeks to protect victims, while providing limited preventive mechanisms for employers. This is supported by the study of E. Cela *et al.* (2023), who emphasise that during EU integration, there arises a need to harmonise approaches to tort liability, particularly in defining the boundaries between the interests of victims and employers. The present analysis aligns with this view while drawing attention to the risk of excessive standard intensification, which may lead to an imbalance between business interests and victims' rights.

Corporate practice confirms a trend towards extending liability to parent companies for the actions of their subsidiaries, as reflected in the study by X. Feng (2024). However, for Albania, such an approach remains premature due to the lack of consistent practice even within fundamental employment relationships. Further development of this doctrine requires first strengthening national judicial practice in the sphere of employment-related torts. Technological advancements, particularly autonomous systems and digital

platforms, create new challenges for the vicarious liability institution (Lukash *et al.*, 2025). M.C. Gaeta (2018) highlights the need to adapt legal mechanisms to the digital era, where harm may be caused by algorithms or automated systems. This raises the question of the limits of employer liability when acts are performed not directly by a human but through technological tools – an issue of particular importance in the transport and logistics sectors.

Judicial practice indicates that collective and corporate structures are increasingly recognised as bearers of liability (Khamzina *et al.*, 2021). This is consistent with the conclusions of P. Giliker (2023), who views vicarious liability as an institution gradually fulfilling not only a compensatory but also a social function. D. Glavaničová and M. Pascucci (2024) underscore the significance of this risk-distribution approach aimed at balancing the protection of societal interests with individual rights. European jurisdictions are actively consolidating this balance, interpreting employers' liability as an element of social policy. Comparative analysis reveals that various legal systems display differing degrees of flexibility in applying vicarious liability. In the Caribbean region, as shown in the study by G. Kodilinye and N. Corthésy (2022), employers possess greater opportunities to exonerate themselves from liability, whereas Albanian practice remains more rigid and objective. E. Marku (2023) observes that integrating the good faith principle into legal interpretation enhances the predictability of rulings and is gradually gaining traction across European jurisdictions.

The balance between protecting victims and preventing excessive burdens on employers remains pertinent. M.P. Ram Mohan and K. Sai Muralidhar (2023) argue that transferring the entire liability burden onto businesses may undermine their economic sustainability. B. Okpeh (2021) stresses the need to modernise

the doctrine to reflect new labour realities, particularly remote work and the gig economy. In these contexts, the traditional model exhibits significant gaps, as employers often lack full control over workers' activities. In the realm of corporate and criminal liability, D. Ormerod and K. Laird (2021) demonstrate the interconnection between tortious and criminal elements. Comparative analysis by E. Pupe *et al.* (2023) shows that employing hybrid legal models ensures greater legal certainty for employers. K.S. Abraham and G.E. White (2022) highlight that the evolution of European tort law is directed towards developing an integrated approach that accounts for social and economic factors.

The economic efficiency of the doctrine is confirmed by Y. Yin (2023), who shows that vicarious liability encourages employers to enhance employee supervision and implement compliance mechanisms. However, in many European countries, the lack of a well-developed insurance system and preventive measures reduce the practical efficacy of this mechanism. This underscores the necessity for coordinated regulatory solutions at the EU level. The Albanian model, in this regard, generally corresponds to European trends but requires greater flexibility and institutional capacity-building.

The theoretical foundation was laid by J. Cooke (2024), who justified the social function of vicarious liability as a guarantee of compensation irrespective of employer fault. P. Giliker (2023) established that strict models coexist with more flexible systems, wherein the presence of effective preventive measures enables employers to avoid liability. This confirms the multidirectional development of the institution. E. Baginska (2025), in her research, analyses tort law reforms in Central and Eastern Europe, demonstrating that most reforms are aimed at alignment with European standards, yet adaptation of foreign models creates challenges for national legal systems. R.

Aguilera Gordillo (2024), exploring Spanish practice, identified difficulties in transferring liability between corporations, which undermines the effectiveness of compensation mechanisms.

The British doctrine has been thoroughly analysed by C. Beuermann (2022), who identifies difficulties in determining liability forms within complex corporate structures. M. Campbell and B. Lindsay (2024) caution against the dangers of excessive expansion of vicarious liability's scope and propose ways to refine the doctrine to preserve equilibrium. A similar perspective is upheld by M. Cappelletti (2024), who advocates for a pluralistic model that accommodates diverse legal and social contexts.

In their study, A.S.A. Al-Hashmi and A.B.A.O. Al-Nuaimi (2023) focus on administrative liability arising from the activities of public authorities, particularly in the field of public roads. The authors argue that modern legal systems tend towards imposing liability even in cases of indirect fault, underscoring the doctrine's social orientation. B. Tahiri and M. Muharremi (2022) analyse the application of vicarious liability in employment relations across various jurisdictions and emphasise the importance of clearly defining the scope of employment duties, implementing effective internal control mechanisms, and establishing insurance instruments to ensure adequate victim protection.

Summarising the findings, it may be concluded that vicarious liability is evolving towards a synthesis of compensatory and preventive functions. European practice is gradually consolidating the social orientation of this legal doctrine, whereas the Albanian system demonstrates a commitment to objectivity but requires further strengthening of preventive mechanisms and institutional support. Continued harmonisation within the framework of EU law remains a necessary precondition for enhancing the effectiveness and predictability of judicial decisions.

Conclusions

The conducted research provided a detailed analysis of the legal mechanisms governing employer liability for employees' actions in Albania and offered a comparative assessment with the practice of European Union Member States, particularly France, Germany, and Italy. The examination of recent rulings from the Albanian Constitutional Court demonstrates that the vicarious liability doctrine is applied cautiously and methodically in national judicial practice. While expressly rejecting interpretations that impose automatic or solidary liability on employers, Albanian courts have consistently emphasised the need for unambiguous proof of an employment relationship and a functional connection between the employee's conduct and professional duties. In the Albanian tort law system, employer liability is positioned as an objective but precisely defined mechanism of third-party protection. These cases show a judicial commitment to legal certainty and proportionality. Comparative analysis with EU practices has revealed that other jurisdictions frequently provide additional mechanisms enabling employers to be partially exonerated from liability upon proving proper selection, training, and supervision of employees, thereby creating a more balanced framework for the allocation of responsibility. The examination of legislative provisions, case law, and international standards has also allowed the identification of key issues hindering the effective application of the mechanism in Albania, including difficulties in proving damage, defining precise boundaries of liability, and the limited scope of preventive measures available to employers for risk mitigation. The identified challenges underscore the necessity of improving the legal framework and procedural norms to ensure a more predictable and effective system of legal protection for all participants in employment relations.

Drawing on international experience, Albania should establish clear boundaries of employer liability, introduce mandatory civil liability insurance, and further develop internal systems for monitoring and documenting the performance of professional duties. In addition, integrating the principle of good faith into the interpretation of relevant provisions would enhance the predictability of judicial decisions and promote compliance with safety standards.

The analysis of modern employment relations demonstrates that vicarious liability applies not only within traditional employment models but also in the context of digital platforms and remote work, where employees' actions may cause harm to third parties. In such circumstances, it is crucial to establish a functional connection between the performed tasks and the resulting harm, as well as to ensure adequate supervision and preventive measures by the employer, including monitoring of digital processes and the use of insurance instruments to compensate potential risks.

The practical value of this study lies in its applicability for employers, legal practitioners, and consultants seeking to enhance awareness of rights and obligations within the sphere of vicarious liability. For employers, this entails the need to establish internal control procedures, implement staff training, and obtain liability insurance, thereby reducing the risk of legal disputes. For lawyers and consultants, the research provides an analytical foundation for assessing and predicting litigation outcomes, as well as for identifying effective strategies of legal protection for clients.

The limitations of the study stem from the absence of comprehensive statistical data on judicial decisions and the application of emerging technologies within employment relations, which may reduce the accuracy of evaluating the effectiveness of the proposed mechanisms.

Potential directions for further research include assessing the efficiency of preventive mechanisms such as internal control, employee training, and liability insurance, as well as conducting comparative analyses of vicarious liability application across different sectors and examining the impact of digitalisation on emerging risks.

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Conflict of Interest

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Відповідальність роботодавця за шкоду, заподіяну працівником: Дослідження про сурогатну відповідальність

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Анотація

Метою дослідження було визначення ефективності правових механізмів, що регулюють субсидіарну відповідальність роботодавців за шкоду, заподіяну працівниками під час виконання своїх трудових обов'язків. У роботі розглянуто теоретичні основи деліктного права, судову практику та порівняльні підходи в різних правових системах. Методологічна основа базувалася на комплексному підході, що поєднував доктринальний аналіз, порівняльний аналіз положень загального права та європейського права, а також аналіз прецедентного права, включаючи розгляд конкретних справ. Такий підхід дозволив виявити особливості тлумачення та застосування відповідних норм у різних юрисдикціях. Результати дослідження продемонстрували, що субсидіарна відповідальність продовжує відігравати ключову роль у системі деліктного права, оскільки забезпечує ефективну компенсацію потерпілим навіть у випадках, коли працівник не має достатніх фінансових ресурсів. Водночас було встановлено, що правові системи різняться у визначенні обсягу відповідальності роботодавця: тоді як континентальні європейські юрисдикції, як правило, тлумачать його більш широко, країни загального права схильні застосовувати обмежувальні критерії. Аналіз судової практики показав, що суди все частіше віддають перевагу принципам справедливості та пропорційності, прагнучи захистити потерпілих і водночас запобігти надмірному фінансовому навантаженню на роботодавців. Дослідження також виявило неоднозначність у кваліфікації умисних протиправних дій працівників, що вимагає уточнення законодавчих критеріїв щодо меж «виконання службових обов'язків». Отримані результати мають практичне значення: для юристів-практиків вони допомагають у правильній юридичній кваліфікації обов'язків та обсягу відповідальності, а для роботодавців слугують орієнтиром для впровадження превентивних стратегій, включаючи управління ризиками, програми дотримання нормативних вимог та механізми страхування.

Ключові слова: субсидіарна відповідальність; відповідальність роботодавця; деліктне право; неправомірні дії працівника; порівняльне право; шкода на робочому місці