

The project concerns a strictly theoretical topic – the criteria of determination and origins of the duties of care in the tort law. The major issue analysed in the research is the nature of those duties, mainly when they are not clearly established in the statute. The aim of the research is a thorough presentation of this issue in the Polish law in historical and comparative context. This theoretical problem can be considered as one of the most important and also the most controversial problems in the field of law of torts. Although, this problem has been addressed in legal literature on many occasions and it is still an extremely controversial issue, it has not been so far a subject of a separate and thorough monographic elaboration.

The unlawfulness is one of the necessary premises to establish civil responsibility. In the law of torts unlawfulness is generally associated with a breach of duties, which are generally applicable to everyone. The problem of unlawfulness and the liability of the perpetrator usually does not arouse doubts when these duties of care are defined explicitly in the statute. This is very important in practice due to the fact that during the court trial the victim usually needs to prove that the perpetrator was obliged to act in a certain way, omit certain behaviour or ensure that a certain effect will not be materialised due the omission. Without a proven existence of such obligation and certain duty of care, there is no reason to speak about its violation and consequently tortious responsibility for the perpetrator.

The problems which indicate on the unlawfulness of the action or omission causing the damage, in situations where the duties of care are not explicitly expressed in the statute, are controversial particularly in the judiciary. As a basis for the existence of such duties of care, judicature accepts usually rules of social coexistence (Polish: "zasady współ ycia społecznego"), general obligation not to cause a damage to another, precautionary obligations to care for life and health of another people, and even "the common sense" and "the principle of life experience". This interpretation allowed judiciary to proclaim that the perpetrator violated some duties of care, even in the cases when there was no legal ground of them duty in legal statute, however it was justified by the application of the rules of fairness.

On the other hand, it is not possible for any legal system to identify in the statute every behaviour that may cause harm to others. This creates a risk that the behaviour may be considered lawful only because it is impossible to indicate in the legislation the norms of behaviour which were transgressed. This will result in the perpetrator's exclusion of liability for a damage, which could be doubtful in some cases from axiological point of view.

The aim of the project is to verify the genuineness of the aforementioned judgments and describe whether, and if so, in what circumstances, the indicated sources determine the duties of care, which transgression would allow the courts to establish unlawfulness of the perpetrator's action or omission.

The results of the research carried out in the project will have a considerable academic importance. In addition to its scientific value, my analysis should also be useful for courts when deciding in this type of cases. Therefore, my findings are important for the situation of all citizens which could be both perpetrators or victims suffering a potential damage.