

Article

Public Law Liability of the Financial Market Supervisor

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Abstract: This article deals with the liability of the supervisory authority of the financial market. It could be questioned whether the supervisory authority, as the public authority, is liable for the supervisory performance. If the answer is yes, then the question is what kind of liability could be found and if any special conditions (prerequisites) are needed. In general, there could be two lines of public liability found. One is systemic liability for the safe financial market—e.g., financial market stability. The other perspective is individual liability for damages caused by unlawful administrative procedure or maladministration, where unlimited strict liability is granted. This kind of liability might be widely questioned, especially when the central bank is the supervisory authority, like in the Czech Republic, Slovakia, Hungary, and other EU member states. This article aims to evaluate the liability of the supervisory authority in the Czech Republic and Hungary concerning the European level of such liability.

Keywords: liability; financial market; supervisory authority; public liability



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1. Introduction

Financial supervisory authorities play a critical role in maintaining the stability of financial markets. Their actions and inactions can significantly impact the health of the financial system. Supervisory authorities are responsible for protecting the interests of investors and consumers. When these authorities fail to uphold their duties, it can lead to significant financial losses for individuals and institutions. The accountability of financial supervisory authorities is essential for maintaining public trust and confidence in the financial system. If these authorities are seen as ineffective or unaccountable, it can erode trust and lead to market instability.

One area that cuts across all spectrums of the financial market is liability regulation. It can be viewed through the lens of the various liability relationships in the financial market and forms the fundamental premise for proper market functioning. Liability in the financial market stems from the conditions set by regulation, which give rise to obligations and opportunities concerning the liability of individual financial market participants.

The intent and objective of this article is to assess the public law responsibilities of a financial market supervisor whose main objective (in exercising supervision) is to ensure financial market stability through a quality environment while protecting individual financial market participants.

The role and systemic importance of the financial market supervisor are crucial for economic stability. The primary source of the strategic supervisory framework is the Core Principles for Effective Banking Supervision published by the Basel Committee for Banking Supervision in 2012 (hereinafter “Core Principles”). The Core Principles are the de facto minimum standard for sound prudential regulation and supervision of banks and banking systems (Bank for International Settlements 2012). One of the main principles of financial market supervision is the principle of effectiveness of supervision. The principle in question

means that regulation should not provide legal opportunities to evade supervision and that regulation should not encourage or incentivize entities to do so (Sidak et al. 2023). As the limitation of effectiveness is so important, the principles on which financial market supervision is also based are the precise definition of supervisory responsibilities and objectives. This main objective is to ensure the economic system's stability through the legal tools provided by national regulations, with the primary source of regulation in this area being the relevant directives and regulations for European countries.

The supervisory authorities are responsible for achieving the above-specified objective. Nonetheless, they no longer provide an overview or definition of the responsibilities of the supervisory authorities in a situation where the supervisory authorities do not respect these core principles. However, the definition of liability as a consequence of 'poor' supervision needs to be clearly defined in the literature, too. This topic is becoming increasingly important from a European perspective due to the ongoing process of 'Europeanisation' of financial law (Hulkó and Vybíral 2019) and micro- and macroprudential supervision (Kálmán and Janovec 2024).

The hypothesis of this article is that the liability of the financial market supervisor is a liability in the public interest, which, by a mere linguistic interpretation, can be interpreted as not covering the individual claims of victims. This is a level of protection that the liability law does not provide.

This article will first attempt to define liability in general, followed by a theoretical definition of the possible types of supervisory liability. Since the literature does not provide explicit answers to some questions in this respect, we will try to find them in the case law of the European Court of Justice or, where appropriate, some national courts.

2. Materials and Methods

The methodology used in this article consists of using analysis, synthesis, and certain elements to compare liability relations in the financial market. The authors first define the liability possibilities in the financial market and then discuss the possible liability relationships resulting from this, whether between individuals or within claims. These may arise from improper/unlawful official action, where the state is the bearer of liability, or from liability for the state of the financial market.

Regarding the literature review, relevant research in this area has been comprehensively conducted by L. Čunderlík (2018), an expert in the field of financial market law who has dealt with liability issues in some of his publications. Apart from this author, many other authors do not intervene in this area scientifically anymore, so inspiration can be sought, for example, in the relatively new case law of the European Court of Justice (Judgment of the European Court of Justice 2022) and the Opinion of the European Central Bank (ECB 2021).

3. Definition of Liability in the Financial Market

Legal liability is defined primarily by the general theory of law as the application of adverse legal consequences established by a legal norm against one who has violated a legal obligation (Harvánek et al. 2013). In this context, liability can be defined as a new legal relationship arising from foreseeable facts that constitute a breach of a legal obligation arising from law or contract (van Dam 2013). Liability in the financial market refers to the legal responsibility that arises from the conduct of financial market participants, including financial institutions, regulatory authorities, and other entities operating within the market. It encompasses both public and private law liability.

Under private law, liability is defined as adverse legal consequences established by a legal norm, which arise under legally established conditions due to an unlawful act or an unlawful condition (Fiala et al. 2002; Berkes 2020). Private law liability involves the responsibility of financial institutions towards their clients and other private entities. It includes contractual liability, which arises from breaches of contract between financial institutions and their clients. For example, if a bank fails to fulfill its contractual obligations,

it may be held liable for resulting damages. It also includes tort liability, which arises from wrongful acts (torts) committed by financial institutions that cause harm to clients or other third parties. This can include negligence, fraud, or other misconduct leading to financial losses.

However, there is also public liability, specifically on two levels. Public law liability involves the responsibility of regulatory authorities and other public bodies in their supervisory and regulatory roles. This type of liability can be divided into two main categories. The first one is the regulator's liability for supervision. This pertains to the liability of financial market regulators, such as central banks or financial supervisory authorities, for their actions or omissions in overseeing the financial market. If a regulator fails to perform its duties correctly, leading to financial instability or harm to market participants, it may be held liable. The first form of liability of a financial market regulator is systemic liability, which involves the regulator's responsibility to maintain financial market stability and protect the public interest. It addresses the broader impact of regulatory failures on the financial system as a whole. The second form is individual liability, which relates to specific cases where the regulator's actions or inactions cause direct harm to individual entities or persons. It may include damages caused by unlawful administrative procedures or maladministration. The second main category of liability is the liability of administrative and legal financial institutions. This pertains to the responsibility of financial institutions for complying with regulatory requirements and performing their activities within the legal framework. Regulatory bodies can impose sanctions or penalties for breaches of the law.

The subject of this article is the definition and assessment of the public law liability of the financial market supervisor in the exercise of supervision, i.e., the public law liability of the regulator for supervision itself.

If the liability issue is on the agenda, one cannot help but reflect on the liability of whoever oversees the financial market. The question is, what is the supervisory authority's status in terms of supervision responsibility, and whether and how is it responsible for supervision at all? Any private liability is out of the question, given that exercising supervision is exercising public authority. Therefore, the state's liability for performing the supervisory authority's activities is relevant (Nolan 2013). This is only possible because of the existence of sovereign (state) immunity, where individuals are not liable for public authority activities.

State immunity is a concept of international law whose rules govern the extent to which a state is exempt from the jurisdiction of the courts of foreign states, mostly civil courts (Tunks 2002).

National sovereign immunity is granted to entities mostly by constitutional law, and its use is limited only by domestic jurisdiction. These immunities are based on the state's internal sovereignty, which regulates them through its own legislation. The fundamental justification for the existence of this type of immunity is the very principle of the separation of powers within the state, which allows the three basic branches of state power (the different jurisdictions of the state)—legislative, executive, and judicial—to exercise their functions independently of each other (Cassese 2008). This way, the officials working for the supervisory authority are not privately liable for performing their duties as the members/employees of the institution.

Based on this national sovereign immunity, the liability of individuals (private liability) is not working, although it would be theoretically possible in the regime out of law.

4. The Liability of Financial Market Supervisor in the Case Law of the European Court of Justice

The case of *Francovich v. Italy* (Joined Cases C-6/90 and C-9/90) is a landmark decision by the European Court of Justice (ECJ) that established important principles regarding the liability of member states for breaches of European Union (EU) law. The *Francovich* case established the principle that member states could be held liable for damages caused to individuals due to their failure to implement EU directives. This was a significant

development in EU law, ensuring that individuals could seek compensation for losses resulting from a member state's breach of its obligations under EU law. The conditions for state liability are as follows: (a) the directive must confer rights on individuals, (b) it must be possible to identify the content of those rights from the provisions of the directive, and (c) there must be a causal link between the breach of the state's obligation and the damage suffered.

The Francovich case set general principles for state liability due to breaches of EU law, while the ECJ established a key precedent within the legal framework of the European Union regarding the special liability of member states for damages caused by the failures of national financial supervisory authorities (Tison 2004). This application involved refining the conditions under which supervisory authorities could be held liable, ensuring that their duties are aligned with EU law and individual rights. The Peter Paul case (Judgment of the European Court of Justice 2004) centered on the German financial supervisory authority (BaFin) and addressed whether the authority could be held liable for damages caused by financial institutions under its supervision if the supervisory activities were conducted inadequately or negligently.

In 2004, the ECJ delivered a verdict stating that member states could be held liable if supervisory authorities fail to adequately fulfill their supervisory duties, causing direct harm to individuals. The judgment highlighted that member states must ensure the level of protection prescribed by EU law, and if the actions or inactions of national authorities result in the failure to achieve this level of protection, then the member state bears liability for the resulting damages. However, the Peter Paul decision established that the liability of member state supervisory authorities for supervisory activities could be limited. According to the ruling, supervisory authorities can only be held liable for severe breaches of duty where the relevant legal provision directly grants rights to individuals and there is a causal link between the breach and the damage suffered.

The judgment in the Peter Paul case had significant implications for the EU legal system and the practices of member states. It reinforced the principle that member states have a proactive role in enforcing the norms and obligations prescribed by EU law and that supervisory authorities must act effectively to ensure the stability of financial markets and protect individuals. The case illuminated that the decisions and activities of supervisory authorities are not exempt from legal liability, especially when their actions or omissions directly cause harm to individuals.

The ECJ has expressed a relatively exciting view on the issue of liability for damages in its recent case law (Judgment of the European Court of Justice 2022), which addressed the possibility of national legislation binding the supervisory authority to liability for damages. It has been declared that the statutory liability of the central bank for damages in the event of the cancellation of specific financial instruments can be accepted if it emerges in subsequent legal proceedings that such cancellation was not necessary to ensure the financial system's stability. At the same time, the beneficiaries will also receive less than they would have received in insolvency, and this is also accompanied by the condition that the central bank or those acting for it have breached their duty of care. This case law then sets out additional conditions that further reduce this liability obligation; for example, by waiving the possibility for former holders of financial instruments to seek compensation through other legal channels.

The European Central Bank (ECB 2021) also expressed the same view on the limitation of liability for damage in the exercise of the supervisory activities of the central bank (Latvijas Banka). It is stated that the central bank's liability (supervisory authority) is limited to deliberate unlawful acts and gross negligence. This limitation is crucial because it is hard to imagine such action (or inaction) from an authority that is not run by one person but by a group of experts making collective decisions.

5. Situation in the Czech Republic

The supervisory authorities have a specific position, as they are not state administration bodies; they are distinct legal entities that are also administrative bodies, and it follows that they act as administrative authorities (CNB Act: art.1/3). In the Czech Republic, this issue is regulated by Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by Decision or Improper Official Action (from now on referred to as the “Liability Act”). This [Liability Act \(1998\)](#) explicitly identifies the Czech National Bank (hereinafter CNB)—the financial market supervisory authority—as the authority that acts for the state in the context of the CNB’s maladministration (Liability Act: Art. 6/5), thus clearly confirming that the state is the bearer of liability for the CNB in the exercise of financial market supervision.

The state is liable for damage caused by an incorrect official procedure, and the right to compensation is vested in the person to whom the incorrect official procedure caused the damage (Liability Act: Art. 13). The improper official procedure conditions, the damage occurrence, and the causal link between them must always be met.

Therefore, the prerequisite for the right to compensation for damage caused by an incorrect official procedure is the “official procedure” of the public authority. It is an ‘official’ procedure if it is carried out by persons performing the tasks of a public authority, provided that the procedure serves the exercise of public authority. A condition for applying Section 13 of the Act mentioned above is that the public authority shall be responsible for performing its duties. The Act states that the state, through its bodies, must be the holder of public authority in exercising that authority ([Constitutional Court of the Czech Republic 2001](#)). This condition is undoubtedly fulfilled in the case of the CNB’s activities.

Liability, in this case, is established as strict liability. No fault is required for the state to incur liability for damages, and, as the law does not provide for any liberating grounds, it is an absolute strict liability that cannot be waived. It is not explicitly stated that this liability is subsidiary and only comes into play after it has been impossible to assert claims against the entity that caused the damage, but logically, it should be so.

Unlike the right to compensation for damages caused by an unlawful decision, which is associated only with the activity of the public authority, i.e., with the issuance of a decision, the right to compensation for damages caused by an incorrect official procedure may also arise due to the passivity of the public authority, i.e., its inaction ([Patyi 2022](#)). Thus, maladministration is not only a violation of the rules prescribed by legal norms for the actions of a public authority in its activities but also its inaction when that authority should and may act ([Supreme Court of the Czech Republic 2000](#)).

This is undoubtedly a particular area and a particular liability. Still, given that the guarantee of financial market stability ([Kálmán 2023](#)) is “placed” within the competence of a specific regulator, the regulator must also bear a certain amount of liability. That liability lies, in particular, in the high level of expertise of those acting for the regulator and in setting up processes to reduce systemic and individual threats to certain institutions as much as possible. The investors, in particular, are supposed to have a guarantee of market stability in the supervisory authority, which then helps the allocation function of the financial market. All of this entails a considerable degree of liability, which, according to the above, can be assumed by the state.

However, it is necessary to distinguish the two levels of such liability.

- (i) **One level is general, i.e., it is a liability in the public interest**, which, by a mere linguistic interpretation, can be interpreted as not covering the individual claims of victims. This is a level of protection that the liability law does not provide. This statement will be used as the hypothesis to be confirmed or disproved at the end of this article.

However, it is necessary to analyze this hypothesis in more depth and to evaluate it based on sufficient theoretical foundations.

- (ii) **The second level is the individual claim level**, which is not general or in the public interest but in the individual interest. However, it is undoubtedly a public liability.

The question is which level the liability of the supervisory authority falls under. In addition to defining the content of both areas of liability, this question must be answered. The issue will be evaluated below.

6. Situation in Hungary

The Hungarian National Bank (hereinafter: HNB) is responsible for the supervision of financial institutions in Hungary (Vértesy 2020). In Hungarian law, liability for damages is governed by Act V of 2013 on the Civil Code (hereinafter: the Civil Code), which defines liability for damages caused in the exercise of public authority as a special form of liability for damages. Article 6:548 (1) of the Civil Code states that liability may be established for damage caused in the course of exercising administrative powers if the damage has been caused by exercising public authority or by failing to exercise it, and the damage could not be averted by an ordinary legal remedy or an administrative court action. According to Article 6:548 (2) of the Civil Code, the legal person exercising public authority shall be liable for the damage caused in the course of exercising administrative powers. If the person exercising public powers is not a legal person, the administrative organ with legal personality under the auspices of which the proceeding administrative organ operates shall be liable for the damage.

However, the liability rules of the Civil Code are supplemented by an additional condition regarding the liability of the supervisory authority in Act CXXXIX of 2013 on the Hungarian National Bank (hereinafter: HNB Act). Pursuant to Article 56 of the HNB Act, claims for compensation of damages or for restitution may be pursued against the HNB on the grounds of decisions reached within the scope of administrative jurisdiction or for any violation of rights relating to personality, if the HNB decision or nonfeasance was unlawful and the ensuing damages or the violation of rights relating to personality underlying the claim for restitution was caused directly by this, and the ruling against the HNB issued in the administrative action opened in relation to the contested HNB decision or nonfeasance underlying the award of compensation or restitution has become final and enforceable.

The above provision is identical in content to the liability rules of the former supervisory authority, the Financial Supervisory Authority, and can, therefore, be considered a guiding decision in relation to the HNB's liability. The Hungarian Constitutional Court has stated in its decision 653/B/2011 AB that the liability of the supervisory authority for damages caused by a decision of a public authority is a specific case of liability for damages caused by the exercise of public authority under the Civil Code. According to the Civil Code, the former liability may be established if the damage cannot be remedied by ordinary legal remedies or if the injured party has availed himself of the ordinary legal remedies available to remedy the damage; the additional condition is more restrictive than that. The 'direct' element of the supervisory authority's liability for damages means that liability for damages can only be established for damage that would not have occurred in any event without unlawful measures. Both the financial institution and its customer can claim damages, provided that the conditions are met.

One of the conditions for establishing the liability of a supervisory authority is that the unlawfulness of the decision must have been established by a court judgment in an administrative action, i.e., the possibility of legal remedy must be exhausted by the parties concerned. The supervisory authority is responsible for the smooth operation of the financial intermediation system and is responsible for monitoring the activities of financial service providers who may contest the legality of a decision taken in relation to them. The unlawfulness of the decision may be established by the court on the basis of an action brought by the entity to which the decision relates. Since persons contracting with financial institutions are not covered by the decision of the supervisory authority, they are not considered clients in the supervisory authority's proceedings and cannot appeal against the decision.

The other condition for successful enforcement, the “direct” causation of the damage, is additional to the causal link required by the Civil Code: it is not enough that the decision of the authority is part of the causal process, but the decision itself is the cause of the damage. The unlawful decision may cause direct damage to the customer if the financial institution implements it, even if it contests its lawfulness so that its conduct causing the damage is induced solely by the unlawful decision.

In short, the damage must be directly caused by the decision or omission of the supervisory authority in order for it to be liable for damages. The Hungarian courts have not yet established liability towards third parties on the above legal basis.

7. Liability of the Supervisory Authority

Financial regulators have statutory responsibility for authorization, supervision, and enforcement. However, a breach of a statutory function does not automatically give rise to a legal right to damages by a third party. Depositors cannot rely on the fact that the bank is authorized by the regulator and continuously supervised to establish an obligation to protect their individual rights in law, although, in practical terms, a case can be made (Singh 2007).

The exercises of supervision can be a systematic and methodical activity, in which case it is very likely that we are moving in a general direction, in the public interest, not in the individual interest. On the other hand, the supervisory authority is an administrative authority, which may be an administrative—individualized—activity. Therefore, the question is legal, and case law is necessary to look for answers in legally relevant documents.

The Constitutional Court of the Slovak Republic has dealt with this in a fascinating and in-depth manner (Constitutional Court of the Slovak Republic 2017), declaring that “there is no subjective right or entitlement to precise and correct legal banking supervision and the resulting right to compensation for damage in case of failure of supervision. It follows from the nature of banking supervision that it is a conceptual, directly (economic) political activity, not a traditionally administrative—administrative activity, to which the Liability Act refers” (Slovakian Liability Act 2003). Liability of the State for damage caused by an incorrect official procedure requires that the damage suffered result from an incorrect official procedure. This is the case when the official procedure or the outcome of this procedure aims to protect not only the general interest of society but also the injured party against the occurrence of this injury.

This conclusion of the Slovak Constitutional Court presents a very accurate definition regarding the liability of the supervisory authority. It shows the difference in the two activities that can be entrusted to a supervisory authority in some countries (for example, the Czech Republic or Slovakia); namely, systemic activity in the form of supervision and then the activity of an administrative authority—which is individualized. It should be noted that even individualized activity, such as licensing banks, is part of regulation and supervision and is, therefore, an essential subset of systemic supervision. It is also necessary to distinguish this one part of the exercise of supervision from the overall—systemic and methodical—action of the supervisory authority, which is supervision as a whole.

The theoretical basis and starting point for assessing what financial market norms protect (individual or public interests) is the concept of the protective purpose of a legal norm (Nolan 2013). This concept examines whether the claim for compensation falls within the protective purpose of the legal rule in question; in other words, whether the consequences are those that fall within the sphere of the risks for which the legal rule was laid down (Bundesgerichtshof 1958).

According to the theory of the protective purpose of a legal norm, there is no obligation to compensate for damage that would not have occurred if the law had been observed. Still, the purpose of the violated norm was not to protect against the occurrence of that particular damage. According to some authors (Schmiedel 1974), the protective purpose inquiry is nothing more than a special kind of norm interpretation where the meaning of the statutory text is not ascertained but its protective purpose. It is also appropriate to

interpret according to the structure of the norm, its context, and the historical development of its creation.

Damage may occur when a contract or law is broken, but the specific standard/contract does not protect the damaged property. Alternatively, it may protect the asset, but the breach has not materially increased the risk of damage [1]. A third possibility is that the norm or contract is intended to prevent the violation of the legal good but does not prevent the specific harm anymore, which can be documented in the case of a photographer who has a commission for nature photos but cannot fulfill it because the legal norms of nature protection have been violated. While these protect the damage to nature, the damage to the photographer who cannot meet the contract is no longer protected by nature conservation standards (Csach et al. 2011).

For financial market supervision, it is clear from the above that legal norms aimed at protecting the financial market as an economic system are in the public interest and serve to protect the market and its participants, i.e., they are systemic. However, damage can occur in the market through breaches of legal norms that are not related to the financial market and do not protect the financial market at all; i.e., they are not aimed at limiting the occurrence of such damage. In other words, not all harm in the financial market can be harm that financial market law prevents. This is also the essence of the above-quoted case law of the Constitutional Court of the Slovak Republic, which excludes the liability of the state for the exercise of supervision or for individualized damages that arise on the financial market due to alleged supervisory deficiencies.

The European Court of Justice has considered the question of supervision concerning the implementation of the European Deposit Guarantee Directive [Directive 94/19/EC][2] in the context of a preliminary ruling [ECJ—European Court of Justice C-222/02], [Constitutional Court of the Slovak Republic, Case No II ÚS 295/2017]. This preliminary question is related to the nature of the supervision of the financial market and the link with the application of the Deposit Guarantee Directive. The Directive and deposit protection are systemic measures, and their implementation was and is mandatory for the Member States. As such, it lays down a rule in the public interest to protect depositors of credit institutions.

However, the essence and significance of the decision itself lies in the fact that it defines the exercise of supervision as a competence in the public interest, which is not claimable and is thus de facto unaffected by/independent of the interests and motives of individuals or groups. Therefore, the action of the supervisory authority in the form of its various instruments cannot be enforced, nor can a specific action or activity be demanded from the supervisory authority for their benefit (Čunderlík 2018). This judgment has also defined that compensation cannot be claimed for damages beyond the limit of the benefits guaranteed by the deposit scheme.

It can thus be concluded that the very existence of deposit insurance is one of the elements of systemic protection of depositors and is in the public interest. This means that the individualized claims of depositors linked to a financial institution's financial or existential problems cannot be satisfied by a claim against the state. By analogy, the same conclusion applies to all other areas of the financial market and its supervision, i.e., the systemic protection setup excludes the possibility of individualized claims linked to the specific form or method of supervision required.

It also follows that the state cannot be held liable for damages for the supervisory authority's official conduct consisting of the exercise of supervision concerning an individual or group interest. Such liability and consequential damages can perhaps only be claimed if the supervisory authority's official action consists of a systemic 'failure to act', the consequences of which would be borne negatively by all financial market participants or the financial market. However, the question is who would then claim such compensation and be actively legitimized. Thus, the hypothesis mentioned above cannot be rejected. The hypothesis also places the answer to the question posed above as to which level the supervisory authority's liability falls under, because it may be only a methodical, systematic responsibility in the public interest. So, this means it is the general level of liability, i.e.,

liability in the public interest. However, the law on liability for the precise and correct exercise of supervision cannot be used for this.

The Liability Act concerning the CNB can be used when the official procedure is individualized, i.e., in administrative proceedings where the CNB acts as an administrative authority in a superior position. In establishing this liability of the State for the exercise of public authority (e.g., arising from an unlawful decision or maladministration of the central bank), a regime of absolute strict liability is set up, which is certainly no longer appropriate at present.

8. Discussion

The supervisory authority, or more precisely, the central bank, acts independently only within the limits of the law in light of the declared decision of the ECJ. The supervisory authority bears overall systemic liability, and therefore, if it exercises its powers following its mission to ensure the financial system's stability, one cannot claim compensation if such actions have caused any loss to individuals or groups.

There is a different situation concerning liability for damage arising from the administrative procedure of the supervisory authority. In this manner, the liability of the supervisory authority is granted with the unlimited strict liability of the state (representing the public authority—in our case, it is the supervisory authority). Unlimited strict liability should be seriously questioned and preferably removed. This is even more problematic when the supervisory authority is the central bank.

Generally speaking, and as the above illustrates, the legal regime of state liability for damage in the exercise of public authority in the context of central bank supervisory activities is subject to specific criteria in EU Member States. These criteria must be interpreted as relativizing the objective liability of the state (supervisory authority for the exercise of supervision).

In particular, it is necessary to point out the financial independence of the central bank (not only as a supervisory authority) and the prohibition of monetary financing, which is directly defined in the EU primary law (TFEU 2012, Art. 123/1). The prohibition of monetary financing is closely linked to and supports the principle of central bank independence, which implies the protection of states from economic disruption (Blažek and Schweigl 2018). Thus, the central bank is and must be financially independent. Still, this postulate is not matched by objective liability for the performance of their activities; in this case, the performance of supervision. Thus, if we consider that the central bank does not have revenues nor can it have a source of funding from the state budget, and at the same time, that its revenues related to the financial market are limited to administrative fees, the objective liability is in substantial disproportion compared to the revenues realized in the financial market.

As regards the individualized claims that individuals can claim against the state for damage in the exercise of public authority or for maladministration, the premise of strict liability has already been overcome, as confirmed by the above-quoted case law and the ECB opinion. It can, therefore, only be assumed that the limitation of strict liability in this sense will also be formally expressed in the legislation of individual EU Member States.

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References

- Bank for International Settlements. 2012. *Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision*. Basel: Bank for International Settlements.
- Berkes, Lilla. 2020. Public Authority Liability in Hungary. In *Tort Liability of Public Authorities in European Laws*. Edited by Giacinto della Cananea and Roberto Caranta. Oxford: Oxford University Press, pp. 55–60.
- Blažek, Jiří, and Johan Schweigl. 2018. *Právní a Ekonomické aspekty Devizových Intervencí/Legal and Economic Aspects of Foreign Exchange Interventions*. Brno: Masaryk University, p. 84.
- Bundesgerichtshof. 1958. German Federal Court of Justice (Bundesgerichtshof) of 22 April 1958, Case No BGHZ 27. Available online: <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=769> (accessed on 1 March 2024).
- Cassese, Antonio. 2008. *International Criminal Law*, 2nd ed. Oxford: Oxford University Press, 455p, pp. 302–3.
- Constitutional Court of the Czech Republic. 2001. Constitutional Court of the Czech Republic, Case No. II ÚS 93/99, Coll of October 3. Available online: <https://nalus.usoud.cz/Search/GetText.aspx?sz=2-93-99> (accessed on 3 March 2024).
- Constitutional Court of the Slovak Republic. 2017. Constitutional Court of the Slovak Republic, Case No. II ÚS 295/2017 of 9 May 2017. Available online: https://www.ustavnysud.sk/docDownload/8bf6d7c8-4181-4295-8160-2c3ef71e565c/%C4%8D.%2062%20-%20II.%20C3%9AS%20295_2017.pdf (accessed on 11 March 2024).
- Csach, Kristián, Tomáš Doležal, Ján Husár, Jozef Suchoža, and Ľubica Širicová. 2011. *Profesionálna zodpovednosť/Professional liability*. Košice: UPJŠ, pp. 107–8. Available online: https://www.upjs.sk/public/media/1084/Zbornik_27.pdf (accessed on 10 March 2024).
- Čunderlík, Lubomir. 2018. Some Constitutional Aspects of the Status and Position of the Central Bank. In *Sborník příspěvků z mezinárodní vědecké konference ze dne 22–23.2.2018 Ústavnoprávné východiská finančního práva*. Bratislava: Law Faculty of Komenský University, p. 20.
- ECB. 2021. Opinion of the European Central Bank of 26 February 2021 on the reform of Latvijas Banka (CON/2021/9). Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021AB0009> (accessed on 14 March 2024).
- Fiala, Josef, Hurdík Jan, Ronovská Kateřina, and Korecká Věra. 2002. *Občanské právo hmotné/Substantive Civil Law*, 3rd ed. Brno: Masaryk University, p. 346.
- Harvánek, Jaromír, Karin Brzobohatá, Lukáš Hlouch, Tatiana Machalová, Radim Polčák, Martin Škop, Martina Urbanová, and Miloš Večeřa. 2013. *Legal Theory*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, s.r.o., p. 234.
- Hulkó, Gábor, and Roman Vybíral, eds. 2019. *European Financial Law in Times of Crisis of the European Union*. Győr: Dialóg Campus, p. 648.
- Judgment of the European Court of Justice. 2004. Judgment of the Court of 12 October 2004, Peter Paul, Cornelia Sonnen-Lütte, Christel Mörkens v. Federal Republic of Germany (Paul and Others), C-222/02. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62002CJ0222&rid=10> (accessed on 15 March 2024).
- Judgment of the European Court of Justice. 2022. Judgment of the Court of 13 September 2022, Banka Slovenije, C 45/21. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CJ0045> (accessed on 25 March 2024).
- Kálmán, János. 2023. The Concept of Financial Stability in Theory and Law. *Financial and Economic Review* 2: 68–69. [CrossRef]
- Kálmán, János, and Michal Janovec. 2024. The Legal Status of Macro-Prudential Authorities in the EU Member States. *Institutiones Administrationis—Journal of Administrative Sciences*, 4. Unpublished. [CrossRef]
- Liability Act. 1998. Liability Act—Act No. 82/1998 Coll. Of the Czech Republic, on Liability for Damage Caused in the Exercise of Public Authority by Decision or Improper Official Action.
- Nolan, Donal. 2013. The Liability of Financial Supervisory Authorities. *Journal of European Tort Law* 4: 190–222. [CrossRef]
- Patyi, András. 2022. Issues of fundamental procedural rights and procedural constitutionality in the Fundamental Law. *Institutiones Administrationis—Journal of Administrative Sciences* 2: 6–23. [CrossRef]
- Schmiedel, Burkhard. 1974. *Deliktobligationen nach deutschem Kartellrecht. Erster Teil*. Tübingen: Mohr Siebeck Verlag, p. 141.
- Sidak, Mikuláš, Andrea Slezáková, Edita Hajnišová, and Stanislav Filip. 2023. Determination of Public Supervision Aspects and Legal Pillars of Activities of Financial Agents in Central European Countries. *Administrative Sciences* 13: 78. [CrossRef]
- Singh, Dalvinder. 2007. *Banking Regulation of UK and US Financial Markets*. Farnham: Ashgate, p. 141.
- Slovakian Liability Act. 2003. Slovakian Liability Act—Act No. 514/2003 Coll. of the Slovak Republic on Liability for Damage Caused in the Exercise of Public Authority and on Amendments to Certain Acts, as amended.
- Supreme Court of the Czech Republic. 2000. Supreme Court of the Czech Republic, Case No. 25 Cdo 1099/99 of 16.08.2000. Available online: <https://sbirka.nsoud.cz/export/sbirky/?collectionIds=7050> (accessed on 25 March 2024).
- TFEU. 2012. Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01. Available online: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:C2012/326/01> (accessed on 14 March 2024).
- Tison, Michel. 2004. Who's Afraid of Peter Paul? The European Court of Justice to Rule on Banking Supervisory Liability. *The Financial Regulator* 9: 62–71.
- Tunks, Michael A. 2002. Diplomats or Defendants? Defining the Future of Head-of-State Immunity. *Duke Law Journal* 52: 651–82, 652. [CrossRef]

van Dam, Cees. 2013. *European Tort Law*. Oxford: Oxford University Press, p. 654.

Vértesy, László. 2020. *Jog és pénzügyek a bankszektorban*. Budapest: Akadémiai Kiadó, p. 456.

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