

[A pain and suffering as a basic personal injury claim]

Abstract

The thesis deals with the topic of compensation for pain and suffering as a basic claim for personal injury under Section 2958 of Act No. 89/2012 Coll., Civil Code. The aim of this thesis is to form a basic overview of the examined issue in the Czech Republic and England and their subsequent critical comparison. This thesis is divided into five separate chapters, each dealing with a different part of the issue of pain and suffering from the perspective of Czech and English legislation.

In the first chapter, the author discusses important elements and institutes of the previous legal regulation of pain and suffering, especially with regard to their relationship and influence on the current regulation of compensation for pain and suffering under the Civil Code. The author pays special attention to the Decree of the Ministry of Health No. 440/2001 Coll., on compensation for pain and hardship of social employment.

The second chapter of the thesis is devoted to individual claims that victims are entitled to claim in the compared legal systems. Within this chapter, the author further focuses on the strengths and weaknesses of the concepts of compensation for non-pecuniary personal injury as a single claim and as a system of partial claims.

The third chapter focuses on the analysis of the claim for compensation for pain and suffering under Czech law and pain and suffering under English law. The author devotes the major part of the third chapter to the analysis of the institutes of mental anguish, psychological pain and other non-pecuniary harm, especially with regard to the interrelation of these institutes, the definition of their content and the shortcomings of current approaches to them, as well as the disputes that these institutes cause in legal practice.

The fourth chapter presents the central theme of the issue under examination, namely the question of how the general courts should determine the amount of compensation for pain suffered as a result of personal injury. The introductory part of this chapter is devoted to a comparison of the subjective and objective approach to the assessment of pain suffered under Czech and English law. The author then addresses the issue of the scope of pain compensation awarded by the courts. The next part of the chapter focuses on the criteria and aspects that Czech and English courts may or may not consider decisive when deciding on the amount of pain compensation. The chapter

concludes with a discussion of the victim's predisposition to more serious forms of personal injury, its impact on the amount of monetary compensation for pain and the approach to the "the eggshell skull" rule.

In the last fifth chapter, the author critically assesses the Methodology for the Compensation of Non-Pecuniary Personal Injury, especially with regard to the inconsistency of its systematics with the statutory regulation, the circumstances of its occurrence and its nature. It also discusses the method of determining pain compensation under the Methodology for the Compensation of Non-Pecuniary Personal Injury and its shortcomings. The chapter concludes with a discussion of the Guidelines for the Assessment of General Damages in Personal Injury Cases as a contrasting tool for judges in English courts to the Methodology for the Compensation of Non-Pecuniary Personal Injury.

Klíčová slova: [pain and suffering, personal injury, non-pecuniary damage]