Czech Republic

by

Lenka Dobešová

~~Member of the~~ Civil Law Department, Faculty of Law, Masaryk University, Czech Republic

&

Jan Hurdík

~~Head of the~~ Civil Law Department, Faculty of Law, Masaryk University, Czech Republic

This monograph is up-to-date as September 1st 2019 ~~of January 2017~~

2019~~7~~

Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
E-mail: sales@kluwerlaw.com
Website: www.wolterskluwerlr.com

Sold and distributed in North, Central and South America by:
Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

Sold and distributed in all other countries by:
Quadrant
Rockwood House
Haywards Heath
West Sussex
RH16 3DH
United Kingdom
Email: international-customerservice@wolterskluwer.com

The monograph *Czech Republic* is an integral part of *Tort Law* in the *International Encyclopaedia of Laws* series.

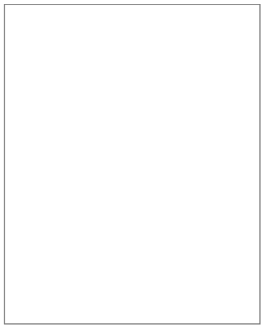
Printed on acid-free paper.

ISBN 978-90-411-1573-7
Tort Law was first published in 2001.

Dobešová, Lenka & Hurdík, Jan. 'Czech Republic'. In *International Encyclopaedia of Laws: Tort Law*, edited by Britt Weyts. Alphen aan den Rijn, NL: Kluwer Law International, 2017.

This title is available on www.kluwerlawonline.com

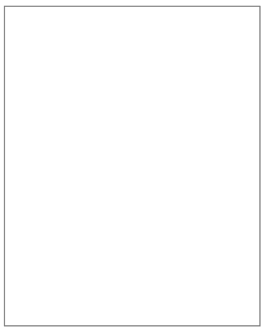
The Authors



Assistant Prof. JUDr. Lenka Dobešová, Ph.D., was born in Brno, the Czech Republic, in 1972 and graduated from the Faculty of Law, Masaryk University, Brno, in 1995 becoming a full-time lecturer in 1996. In addition to giving lectures, doing research, and involving in publication activities (as an author or a co-author she has published five books and more than ten articles and papers in journals and specialized publications), she has been engaged in a number of other activities related to legal practice. She was a member of the Civil Code recodification committee of the Ministry of Justice and also worked as an assistant of a Justice of the

Constitutional Court (2003–2004). She was awarded by the president of Masaryk University the best teacher of MU (2016).

She obtained her Ph.D. for her dissertation entitled 'Liability for Injury to Health'. Currently, she is the member of the Civil Law Department of the Faculty of Law, Masaryk University, Brno.



Prof. JUDr. Jan Hurdík, DrSc, was born in Třebíč, the Czech Republic, in 1951 and graduated from the Faculty of Law, J.E. Purkyne University, Brno (now Masaryk University), in 1976. He was a lecturer in the Department of History of State and Law in 1975–1976, an assistant, and subsequently, a public prosecutor at the Public Prosecutor's Office in 1976–1980. In 1980, he became a member of the Civil Law Department of the Faculty of Law, Masaryk University, Brno, focusing mainly on civil law and private law jurisprudence as well as on civil procedure, also lecturing on civil law at Palacký University, Olomouc. In 1984, he obtained CSc. (then the equivalent of Ph.D.) for his dissertation 'Abuse of Civil Rights'. In 1995, he obtained a higher doctorate (docent) for his work 'Problems of Law of Foundations and Endowments'. In 2001, he was awarded the scientific degree of Doctor of Juristic Sciences (DrSc.) by the Czech Academy of Sciences in Prague for his work 'Legal Persons – General Legal Characteristics'.

Since 2004, he has been a professor of Civil Law. He is the author or co-author of more than sixty books and textbooks on various issues concerning civil law, and numerous articles and papers in specialized publications in the Czech Republic and abroad. In addition, he has been involved in a number of grant projects concerning research and university education in law, in the Government Committee's preparatory work on the new Civil Code and, as the head in a legislative committee preparing a new law on foundations and endowments. Currently, he is the Head of the Civil Law Department of the Faculty of Law, Masaryk University, Brno. He is a member of the Scientific Council of the Faculty of Law, Masaryk University, Brno and Faculty of Law, University of West Bohemia, Plzeň. He is also a member of the European Law Institute, the SECOLA association, and a former member of the Acquis Group.

List of Abbreviations

al.	Para. (a clause within an article or within a § of a code or of an

	act – *see* Para.)
and foll.	et sequential, et sequentes (and following)
Art.	article (of a code or of an act – *see* §)
cf.	compare
Coll.	Collection of Acts of the Czech Republic
e.g.	exempli gratia (for example)
etc.	et cetera (and so on)
i.e.	id est (that is)
Para.	paragraph (a clause within an article or within a section (§) of a code or of an act – *see* al.)
§	section (of a code or of an act – *see* Art.)

Preface

This monograph is part of the encyclopaedia of law, specifically tort law, created within the editorial project of IEL, and outlines the system of tort law in the Czech Republic, describing the situation of the new Czech private law effective since 1 January 2014. The work complies with the outline made by the editor but it inevitably reacts to specific features of the law of tort in the Czech Republic, which brought about the need of adjusting some of the parts of the publication as appropriate.

The current tort law in the Czech Republic has several specific features that should be pointed out. First of all, the sources of tort law in the Czech Republic included, until 1 January 2014, two important acts: The Civil Code (Act No. 40/1964 Coll.) and the Commercial Code (Act No. 513/1991 Coll.). Both the Codes contained specific rules for commercial as well as non-commercial relations and actions but a strict dividing line between the two of them was often missing and thus the application of a particular law to a given case was governed by rather complex rules. The dualism of the Civil Code and the Commercial Code was the source of the specific division of the regulation of tort law: the rules of the Civil Code were aimed at delictual liability, while the Commercial Code was focused on contractual liability. This dualism was overcome in the new Czech Civil Code (Act No. 89/2012 Coll., being in force since 1 January 2014). The Czech tort law forms the main part of Part IV of the Civil Code.

Another feature of the Czech contract law is its dynamic development: following the fall of the Iron Curtain and the change of the political establishment after 1989 the law of contract was, through a number of legislative changes including the Commercial Code recodification, gradually returning back to the democratic standards of contract relationships, overcoming the Communist experiment in law

which was applied in 1950–1989. However, the consistent changing of the system of law necessarily brought about the necessity to carry out a complete recodification of private law as a whole, including the law of contract. Legislative activities involving the complete recodification of the Czech private law were taking place since 1992. The aim of the recodification was to create a comprehensive civil code which would also include family law. As for the basic types of contract, the new Civil Code was supposed to contain all standard contract types including employment contracts and contracts used in commercial relationships and elsewhere (which implies a concept of the Civil Code more emphasizing commercial relationships). The new Civil Code also includes a general part concerned with tort law and the main types of responsibility and quasi-responsibility relations.

After twelve years of preparatory and legislative work a set of laws forming the basis of recodification of private law in the Czech Republic was passed by the Czech Parliament. They are as follows:

- The Act No. 89/2012 Coll., i.e., Civil Code,
- The Act No. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act), and
- The Act No. 91/2012 Coll., on Private International Law.

Subsequently, a set of laws was passed as accompanying legislation which makes it possible to put the recodification into practice.

The acts forming the recodified private law of the Czech Republic came into force on 1 January 2014.

Due to the above-mentioned reasons, this monograph provides an overview of the new Czech tort law which has become part of the recodified Civil Code. The authors are aware of the fact that this is one of the first treatment of the new tort law of the Czech Republic which will undoubtedly be changed in the future. Due to the same reasons, there have been not, in the Czech civil law, a sufficient number of court decisions and scholarly papers yet, concerning the new codification of tort law. Therefore, many important legal questions remain still, i.e. by 1 September 2019, ~~remain~~ open. Their solution can be expected in the near future, though it may not be generally accepted yet.

The authors respect the special terminology of the Czech tort law aiming at the same time to adapt it to the language standards of the 'European' English.

The authors would like to thank Mgr. Radek Šimek, Ph.D., Faculty of Law, Masaryk University, Brno, for the translation of the main part of the text and for the final language correction of the text.

This monograph has been written with the support of Faculty of Law, Masaryk University, Brno.

General Introduction

§1. General Background

I. Geography

1. The Czech Republic (CR) is located right in the heart of Europe, surrounded by the range of mountains, constituting the natural borders of the country. The CR shares its national borders with the Federal Republic of Germany in the west, and partially in the north, with the Austrian Republic in the south, with the Slovak Republic in the east, and with the Polish Republic in the north.

The Czech Republic is situated in the mild climate zone. Because of a great diversity of its landscape, the Czech Republic can produce various agricultural products, especially in the lowlands along the great rivers as Labe (Elbe) and Vltava (Moldau) in Bohemia and along the river of Morava in Moravia. The highest Czech mountain range is Krkonoše, the highest mountain being Sněžka with 1,603 metres above the sea level.

The number of inhabitants of the Czech Republic is more than 10 million people. The greatest Czech cities are Praha/Prague (capital of the Czech Republic) with more than 1 million inhabitants, and Brno (the greatest Moravian city) with nearly 400,000 inhabitants, followed by the cities of Ostrava and Plzeň.

II. History

2. The territory of the present Czech Republic had been, since time immemorial, inhabited by many groups of people. Historical sources refer to Celts, and later also to Romans. Since the Dark Ages till today, the territory has been inhabited by Slavs.

The first historically known state was the so-called Great Moravia. In 863, prince Rostislav introduced Christian religion there brought from the Byzantine Empire.

In the tenth century, Great Moravia came under the power of the Czech dynasty of the Přemyslids who ruled over the Czech and Moravian territory till 1306, from 1222 as Czech kings (on the basis of the Golden Bull of Sicily issued by the Roman emperor Friedrich Barbarossa). During the Middle Ages, the Czech prince/king was one of seven electors of the Roman king/emperor.

After the extinction of the Přemyslid dynasty, the dynasty of Luxembourg (Jean, Charles, Václav, and Sigismund) governed the Czech kingdom from 1310 to 1436.

The Hussite revolution, bound with a movement against the vices in the Catholic Church, was a glorious period of the Czech history (1420–1434). The Hussite ecclesiastic reform was one of the precursors of the European reformation of the Christian religion.

During the following period (1434–1618), the Czech kingdom was one of the centres of ecclesiastic reform, which eventually led to the battle of White Mountain and subsequently to the Thirty Years' War (1618–1648). The war resulted in devastation and depopulation of the Czech kingdom and the end of the independence of the Czech state. The Kingdom of Bohemia and Moravia became part of the Austrian empire (till the end of the Great War in 1918). The period until the early nineteenth century is traditionally referred to as the period of darkness.

In the nineteenth century there started a movement in the Czech population called the renaissance of the Czech nation. As the culmination of this movement, the Czech and Slovak nations gained the state sovereignty in 1918, which was one of the results of the Great War leading to the break-up of the Austro-Hungarian Empire.

In the period of 1918–1938, the Czechoslovak Republic was a democratic and liberal state. After 30 September 1938, cca 30% of the Czech territory became part of the so-called Third German Reich. Later, the Slovak part of the Republic became a separate puppet state of the Nazi Germany (the so-called Slovak State), and in the remainder of the Czech territory (after the occupation by the Nazi Germany troops) the so-called Protektorat Böhmen und Mähren was established.

After the World War II, the newly constituted Czechoslovak Republic got into the sphere of influence of the Soviet Union, becoming a communist state after a coup d'état in 1948. That period was brought to an end by the revolution of 17 November 1989.

The further development of the country went towards liberal democracy. On 1 January 1993, the former Czechoslovak Republic split into two separate states: the Czech Republic and the Slovak Republic.

On 1 May 2004, the Czech Republic became a member of the European Union but it still remains outside the European monetary union.

III. Political System

3. The Czech Republic is a unitary state created after the splitting of Czechoslovakia on 1 January 1993. The Constitution of the Czech Republic was adopted at the end of 1992, coming into force on 1 January 1993. The country is divided into fourteen regions, one of them being the capital Praha/Prague. Since 1 May 2004, the Czech Republic has been a Member State of the European Union. The European law is in force in the Czech territory having supremacy over the Czech law.

The legislative power is exercised by the Parliament of the Czech Republic which consists of the Chamber of Deputies and the Senate. Two hundred members of the Chamber of Deputies are elected in general and direct elections every four years. Eighty-one members of the Senate are elected in general and direct elections for the period of six years. The election takes place every two years in order to renew one third of the Senate. Besides its legislative power*s*, the Parliament has also other important functions. The Chamber of Deputies must pass the annual state budget and the final accounts. The Senate gives its consent to the appointment of judges of the Constitutional Court. The head of the Czech Republic is the President of the Czech Republic elected directly by the citizens of the Czech Republic. The President of the Czech Republic can only be elected for two consecutive terms.

The executive power is partially vested in the Government of the Czech Republic and partially in the President of the Czech Republic. He is part of the executive power, too. He appoints the Prime Minister according to the result of the election to the Chamber of Deputies and also appoints and dismisses each Minister of the Government on the proposal of the Prime Minister. The primary task of the Government is to issue regulations and make decisions needed for implementation of laws.

IV. Economic and Social Values

4. The Czech Republic is an economically developed country. It has few natural resources so its economy is based mainly on the sophisticated work of the Czech people. Among the scarce natural resources are coal (both brown and black), uranium ore, mineral waters, etc. The key industries include mining (of coal), production of electric power, automobiles, machinery, chemicals, electronics, foods, textiles, and shoes. More than 30% of the export goes to Germany, followed by some other member states of the EU.

The agriculture of the Czech Republic is among the developed branches of the Czech economy. The Czech Republic was, for many years, self-sufficient in the agricultural production but recently the agriculture has been losing, step by step, its position due to cheaper imports of agricultural products from other countries.

For a long time (1948–1989), the social system lacked liberal values and was built on the communist principle of social equality. After the so-called Velvet revolution of 1989, the development of the state led to the deconstruction of the communist system of social values and to a large liberalization of the Czech society. Nevertheless, the present social-economic system of the Czech Republic can be described as a mix of liberal society and market economy and a developed social system with many instruments of social policies ensuring the social harmony. The Czech state guarantees a generous system of education, a full system of health insurance, unemployment insurance, pension insurance, access to justice for all, etc.

But the economic situation, especially regarding the financial markets, seems to have worsened in the past years, both in the Czech Republic and in other EU countries, too, with many politicians predicting an inevitable decline of social justice and of the welfare state in general.

§2. Legal Systems, Legal Family and the Czech Law

I. Primacy of Legislation and Codification

5. A legal culture has been in the territory of what is now the Czech Republic since time immemorial. As early as the thirteenth century, land records, i.e., the legal registers of noble estates, existed in Bohemia. At the beginning of the fourteenth century, under the reign of Czech King Wenceslas II, Roman law was partially adopted (ius regale montanorum). From 1620 to 1918, the Czech legal system developed within the framework of the Austrian empire. In the beginning of the twentieth century, the German Civil Code (BGB) influenced the development of the Austrian legal system, including the Czech one. Some elements of the French legal system got into the Czech law after the establishment of the Czechoslovak Republic in 1918. The constitutional system of the Czechoslovak Republic in particular adopted some elements of the Constitution of the French Third Republic. The general system of private law remained untouched until 1950 when the Czechoslovak law came under the influence of the Soviet legal system. Under the communist regime (1950–1989), the democratic principles of civil law were distorted. After 1989, the Czech legal system has been finding its original roots again and some of its new codifications are becoming more and more inspired by modern European codifications, especially the German one.

The new Civil Code, effective from 1 January 2014, even if inspired by various other sources, draws heavily on the non-implemented draft of the 1938 Czechoslovak Civil Code which was a modernized version of the Austrian ABGB from 1811.

6. In the Czech Republic, the law making process is vested in legislature. There is, therefore, no customary law as such. Customs can be taken into account only when a statute refers to them.

Other important sources of law are international treaties and international covenants on human rights. Those international treaties and covenants have a direct binding effect on and supremacy over the Czech legislation. The Czech Republic as an EU Member State is also bound by the EU law concerning protection of human rights.[1]

The Constitution takes precedence over statutes. The priority of the Constitution is especially important with respect to provisions protecting fundamental rights of individuals. All ordinary statutes are void or may be

1 Decision of Constitutional Court, file Pl. ÚS 1/91, file Pl. ÚS 19/93. Available at http://nalus.cz.

declared void insofar as they violate any fundamental constitutional right. The priority of statutory law over administrative regulations results from the subordinate position of the administrative agencies with respect to the legislature. Furthermore, an administrative agency may promulgate legal norms only on the basis of a formal statutory delegation of power which specifies the content, purpose, and scope of the authority so granted. Duties and obligations can be imposed only by statutes, not by administrative provisions.

Two rules govern a conflict between legal norms otherwise having the same priority: a recent law prevails over a prior law and specific norms prevail over more general ones. The mutual conflict of principles (which are one of the sources of the Czech law) is solved on the basis of the so-called proportionality test.[2]

II. Position of the Judiciary

7. Until 1 January 2014, court decisions and papers were not considered to be sources of law, nevertheless, they often had a decisive influence upon courts and administrative authorities. In this context, rules of interpretation are of great importance, such as interpretation of words, grammatical-logical interpretation, interpretation of intentional analogy of statutes, and analogy of legal principles, or principles of natural law.

In order to guarantee a uniform case law, only the Supreme Court and the Supreme Administrative Court can give their opinions on the unification of the case law. Such opinions do not have the nature of a generally binding source of law; however, in practice, they are followed by all courts. With the adoption of the new Civil Code the position of judicial decisions became to be emphasized in the court practice: pursuant to Section (§) 13, Civil Code, courts are bound to follow the judicial decision made in a similar case and a different decision must be convincingly justified.

See the following excerpt of the text of the Civil Code[3]:

Chapter 3

Protection of private rights

Section (§) 12

Anyone who feels that his rights have been prejudiced may claim the protection of a body executing public authority (hereinafter a public body) ~~(public body)~~. Unless otherwise provided by a statute, the public body is a court.

Section (§) 13

Anyone seeking legal protection may reasonably expect that his legal case will be decided similarly as in another legal case that has already been decided and that coincides in essential aspects with his legal case; where the legal case has been decided differently, anyone seeking legal protection has the right to a persuasive explanation of the reasons for such a variance.

8. A special position is granted to the Constitutional Court. The Constitutional Court may declare any statute or its provisions void insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The Constitutional Court may

---

2 In this sense see a number of decisions of the Constitutional Court. Available at http://nalus.cz.

3 The English translation of this legal text has been taken from the website of the Czech Ministry of Justice: www.justice.cz.

declare any administrative regulation or its provision void insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The decisions of the Constitutional Court are the so-called negative source of law. The Constitutional Court is not a law making authority but it can declare the existing sources of law or their parts void.

III. Distinction Between Public and Private Law

9. Until 1950, civil or private law was understood as anything that was not public law, thus including even commercial law. Legal writers for some time used the term 'private law' in a narrower sense excluding commercial law. However, between 1950 and 1989, the distinction between 'private' and 'public' law was considered inappropriate. After 1989, a new discussion on this topic began. An important step towards solving the problem of distinguishing between private and public law was establishing the necessary criteria of such distinguishing. The first of them may be the criterion of involvement and the second one may be the criterion of power.

According to the criterion of involvement, private law respects freedom of individuals while public law protects public interests and the public order. This classification dates back to Roman law as expressed by Ulpianus: *'Publicum ius est, quod ad statum rei romanae spectat; privatum, quod ad singulorum utilitatem'* ~~*'Publicum ius est, quod ad statum rei romanae spectat; privatum, quod ad singulorum utilitatem'*~~. According to the criterion of power, public law expresses the dominant position of the state authority in protecting public interests and the public order. The Czech legislators again accepted the dualism of public and private law after 1991 in several modifications of the Civil Code. The renewal of dualism of private and public law in the Czech legal system was regarded as an instrument of reinforcing legal guarantees of both natural and artificial legal persons and preventing the state from unauthorized interventions in private business activities.

10. The new Czech Civil Code is based on the primary principle of private autonomy to which the principle of equality of the parties is subordinated.

The principle of equality is undoubtedly one of the basic principles of legal regulation of private law. A public authority can influence private law relationships or create their inequality under limited and special conditions:

- A particular interest to protect special categories of civil law relationships, for example, protection of children or protection of persons who are not capable to defend effectively their own interests.
- Protection of some participants in civil law relationships against economic supremacy of other participants which could lead, while respecting formal equality of the participants, to devaluation of the social purpose of the legal relationships, for example, consumer protection, abuse of the dominant position, etc.

11. Due to the distinction made between private and public law, the tort law is influenced in the same way. There is both the criterion of private method of legal regulation and the aim of legal regulation, which determinate the distinction between public and private law, and there is subsequently the content and limits of the sanctions used as the instruments of private law regulation. If the aim of private law is to establish equilibrium of participating persons (parties), then civil sanctions, i.e. tort law, should be a set of instruments serving to the same aim. Thus, the private law remedies are not aimed to the prejudice of one party of private law relation, but to the restoration of the equilibrium of participating persons (parties).~~Due to the distinction made between private and public law, the contract law is influenced in the same way. Apart from typical private law contracts concluded between parties with the private law statuses, there are contracts concluded within the public law regulatory framework (administrative contracts):~~

12. ~~Between public authorities: for example, communities, the state or its regions. These administrative contracts are concluded in situations when statutes do not directly establish a subordinate position between the persons in question. In such cases, rules of private law are applied to administrative contracts.~~
13. ~~Administrative contracts can also be applied as a part of public law relationships created between public authorities and private individuals. In such cases administrative contracts can partially reflect contractual autonomy of participants. For example, a decision on a subsidy granted by a public authority to a private individual can be accompanied by an administrative contract providing for particular conditions of that subsidy, etc.~~

IV. Distinction Between Civil Law and Commercial Law

14. As mentioned above, the Czechoslovak legal system in 1950–1989 did not make any distinction between private law and public law. Thus no discussion was possible about a broader sense of private law or its narrower sense excluding commercial law. Starting from 1948, an extensive state control and central planning of the economy were introduced, and in 1964 the Economic Code more or less established the administrative regulation of economic contracts. Those were more similar to the above-mentioned administrative contracts than to commercial contracts in the sense of the Continental legal systems.

After 1989, the concept of 'private law' was renewed in Czechoslovakia but in a very broad sense including commercial law, too, as a reaction to its previous absence in the Czech legal system. The 1991 amendments to the Civil Code and the introduction of a new Commercial Code in 1991 created a dual codification of private law. The Civil Code represented a general codification of private law including contract law, while the Commercial Code was a special codification designed for commercial contracts and persons in commercial relationships such as commercial companies and cooperatives.

The new Czech Civil Code brought private law and commercial contract law together into one code and abolished the previous Commercial Code. From the previous Commercial Code the second part, i.e., the law of companies, was incorporated into the separate Act No. 90/2012 Coll. on Companies, and the third part, i.e., commercial obligations, was unified with the fourth part of the new Civil Code.

V. Sources of Private Law in General and of Tort Law in Particular

15. As mentioned above, Czech law is of the Continental type of legal orders and belongs to the middle European legal family. The structure of the sources of (Private) Law is built on that basis.

The principal sources of private law in the *formal sense* are as follows:

The recodification of Czech Private Law is based on the following three acts:

The Civil Code (89/2012 Coll.)

The Act on Business Corporations (90/2012 Coll.)

The Act on International Private Law (91/2012 Coll.)

The sources of special private law include:

Labour Law (Act No. 262/2006 Coll., Labour Code)

Commercial Law (esp. Act No. 90/2012 Coll., Business Corporations Act)

International Private Law (esp. Act No. 91/2012 Coll.)

‘European’ Private Law (EU Private Law in a broader sense)

The codification of private law has been completed with the following acts:

Act 256/2013 Coll., Land Registry Act

Act 257/2013 Sb., changing some acts concerning the Land Registry Act

Act 292/2013 Sb., on Special Civil Procedures

Act 293/2013 Sb., changing the Civil Procedure Rules

Act 294/2013 Sb., changing the Bankruptcy Act

Act 303/2013 Sb., changing some acts concerned with the recodification of Private Law

Act 304/2013 Sb., concerning legal regulation of public registries of legal and natural persons

16. In the real sense, the Czech legislator distinguishes, in the new Czech Civil Code (§§ 9 ff.), the sources of Private Law as follows (these sources have to be applied in the given order):

a. A legal case has to be decided on the basis of a provision of the Civil Code or another statute.
b. Where a case cannot be decided on the basis of a legal provision, it is decided under the provisions concerning a case which is, in terms of its content and purpose, as close as possible to the case under consideration.
c. In the absence of such a provision, the case is to be decided under the principles of fairness and the principles underlying the Civil Code in order to arrive at a good arrangement of rights and duties regarding the practice of private life and taking into account the state of legal opinion and the established decision-making practice.

What follows is the original text of Part IV, Civil Code, concerning the tort law[4]:

The application of rules of civil law and the grounds of protection of subjective rights are substantiated in the General Part of Civil Code as follows:

Chapter 2

Application of the rules of civil law

Section (§) 9

(1) The Civil Code governs the personal status of persons.

4 The text has been taken from the official translation of the Czech Civil Code; the complete text of Civil Code is accessible on the website of the Czech Ministry of Justice: www.justice.cz.

(2) Private rights and duties of a personal and proprietary nature are governed by the Civil Code to the extent that they are not governed by other legal regulations. Usages may be considered where invoked by a statute.

Section (§) 10

(1) Where a legal case cannot be decided on the basis of an express provision, it is assessed under the provisions concerning the legal case which is, in terms of its content and purpose, the closest possible to the case under consideration.

(2) In the absence of such a provision, the legal case is to be assessed under the principles of fairness and the principles underlying this Act in order to arrive at a good arrangement of rights and duties, having regard to the practice of private life and taking into account the state of legal opinion and established decision-making practice.

Section (§) 11

General provisions concerning the creation, change and extinction of rights and duties arising from obligations under Book Four of this Act apply, with the necessary modifications, to the creation, change and extinction of other private rights and duties.

Chapter 3

Protection of private rights

Section (§) 12

Anyone who feels that his rights have been prejudiced may claim the protection of a body executing public authority (hereinafter a 'public body'). Unless otherwise provided by a statute, the public body is a court.

Section (§) 13

Anyone seeking legal protection may reasonably expect that his legal case will be decided similarly to another legal case that has already been decided and that coincides in essential aspects with his legal case; where the legal case has been decided differently, anyone seeking legal protection has the right to a persuasive explanation of the reasons for such a variance.

The particular legal regulation of Czech Tort Law is contained mainly in the following provisions of the Civil Code:

TITLE III

OBLIGATIONS ARISING FROM TORTS

Chapter 1

Compensation for pecuniary and non-pecuniary harm

Division 1

Basic provisions

Section (§) 2894

(1) The duty to provide compensation to another for harm shall always involve the duty to provide compensation for harm to assets and liabilities (compensation for damage).

(2) If the duty to provide compensation to another for non-pecuniary harm has not been expressly stipulated, it affects the tortfeasor only where specifically provided by a statute. In such cases, the duty to provide compensation for non-pecuniary harm by providing satisfaction is assessed by analogy under the provisions on the duty to provide compensation for damage.

Section (§) 2895

A tortfeasor has the duty to pay damage regardless of his fault in cases specifically provided by a statute.

Section (§) 2896

If a person declares that he excludes or limits his duty to provide compensation for harm with respect to other persons, it is disregarded. However, if he does so before the harm was incurred, such a declaration may be considered to be a warning against danger.

Section (§) 2897

If a person waives his right to claim compensation for damage caused to a tract of land, and if the waiver is registered in a public register, this shall also have effect against subsequent owners.

Section (§) 2898

A stipulation which excludes or limits in advance the duty to provide compensation for harm caused to the natural rights of an individual, or caused intentionally or due to gross negligence is disregarded; a stipulation which precludes or limits in advance the right of the weaker party to compensation for any harm is also disregarded. In these cases, the right to compensation may also not be lawfully waived.

Section (§) 2899

A person who assumed the risk of becoming a victim, whether or not he did so under such circumstances that it could be considered imprudent, did not thereby waive his right to compensation against the person who caused the harm.

Prevention

Section (§) 2900

If required by the circumstances of the case or the usages of private life, everyone has the duty to act so as to prevent unreasonable harm to freedom, harm to life, bodily harm or harm to the property of another.

Section (§) 2901

If required by the circumstances of the case or the usages of private life, the person who produced a dangerous situation or who has control over it, or where it is justified by the nature of the relationship between the persons, has the duty to intervene to protect another. The person who can, according to his potential and skills, easily avert harm of which he knows or must know that its impending gravity clearly exceeds what must be exerted for the intervention has the same duty.

Section (§) 2902

A person who has breached a legal duty, or who can and should know that he will breach it, shall, without undue delay, notify the person who may suffer the resulting harm, and warn him of the possible consequences. If he fulfils the duty to notify, the victim shall not have the right to compensation for the harm which he could have prevented after the notification.

Section (§) 2903

(1) If the person who is at risk of harm fails to act to prevent such harm in a manner appropriate to the circumstances, everything which he could have prevented is borne by the person.

(2) In the case of a serious danger, the endangered person may apply to the court to impose appropriate and reasonable measures to avert the impending harm.

Section (§) 2904

Accident

Harm caused by an accident is compensated by the person who was at fault for inducing the accident, in particular by breaching a mandate or causing damage to a device intended to prevent accidental harm.

Section (§) 2905

Self-defence

A person who protects himself or another from an imminent or ongoing unlawful attack and, in doing so, causes harm to the attacker, has no duty to provide compensation for such harm. This does not apply if it is clear that, given the circumstances, the attacked person is under the threat of incurring only negligible harm, or the defence is manifestly excessive, especially given the gravity of the harm caused to the attacker by preventing the attack.

Section (§) 2906

Necessity

A person who protects himself or another from an imminent risk of harm does not have the duty to provide compensation for the resulting harm if, given the circumstances, the danger could not have been prevented otherwise, or if he does not cause a consequence which is evidently equally serious as, or even more serious than, the imminent harm, unless the property would have decayed in any case even without the act made under necessity. This does not apply if the actor was at fault for inducing the risk.

Section (§) 2907

In assessing whether or not someone acted in self-defence or under necessity, account is taken of justifiable excitement of mind of the person who prevented the attack or another danger.

Section (§) 2908

A person who prevented imminent harm is also entitled to the reimbursement of reasonably incurred costs and compensation for the harm suffered in doing so against the person in whose interest he acted, but only to the extent appropriate to the harm which he prevented.

Division 2

Duty to provide compensation for damage

Subdivision 1

General provisions

Section (§) 2909

Breach of good morals

A tortfeasor who causes harm to a victim by an intentional breach of good morals has the duty to provide compensation for it; however, if the tortfeasor was exercising his right, he has the duty to provide compensation for the damage only if his main purpose was to harm another.

Section (§) 2910

Breach of a statute

A tortfeasor who is at fault for breaching a statutory duty, thereby interfering with an absolute right of the victim, shall provide compensation to the victim for the harm caused. A tortfeasor also becomes obliged to provide compensation if he interferes

with another right of the victim by a culpable breach of a statutory duty enacted to protect such a right.

Presumption of negligence

Section (§) 2911

If a tortfeasor causes damage to the victim by breaching a statutory duty, he is presumed to have caused the damage through negligence.

Section (§) 2912

(1) If a tortfeasor acts in a manner different from what can be reasonably expected in private dealings from a person of average qualities, he is presumed to be acting negligently.

(2) If a tortfeasor demonstrates special knowledge, skill or diligence, or undertakes to perform an activity for which special knowledge, skill or diligence is required, and fails to apply these special qualities, he is presumed to be acting negligently.

Section (§) 2913

Breach of a contractual duty

(1) If a party breaches a contractual duty, such a party shall provide compensation for the resulting damage to the other party or the person who was evidently intended to benefit from the fulfilment of the stipulated duty.

(2) A tortfeasor is released from the duty to provide compensation if he proves that he was temporarily or permanently prevented from fulfilling his contractual duty due to an extraordinary, unforeseeable and insurmountable obstacle created independently of his will. However, an obstacle arising from the tortfeasor's personal circumstances or arising when the tortfeasor was in default of performing his contractual duty, or an obstacle which the tortfeasor was contractually required to overcome shall not release him from the duty to provide compensation.

Section (§) 2914

A person who, in his activities, uses an agent, employee or another helper shall provide compensation for the damage caused by such a person as if he caused it himself. However, if, in the case of a performance provided by another person, someone has undertaken to carry out a particular activity independently, he is not considered to be a helper; however, if such other person has chosen him carelessly or exercised inadequate supervision over him, that other person is liable as a surety for the fulfilment of his duty to provide compensation for damage.

Damage caused by several persons

Section (§) 2915

(1) If several tortfeasors are obliged to provide compensation for damage, they shall do so jointly and severally; if any of the tortfeasors has the duty under another statute to provide compensation only up to a certain limit, he is obliged jointly and severally with the other tortfeasors within that scope. This also applies where several persons have committed separate unlawful acts, each of whom may have caused a harmful consequence with a high degree of certainty, and if the person who caused the damage cannot be ascertained.

(2) Where there are reasons deserving special consideration, a court may decide that the tortfeasor shall provide compensation for the damage in proportion to his participation in the harmful consequences; if the participation cannot be determined accurately, account is taken of the degree of probability. Such a decision may not be made if a tortfeasor knowingly

participated in causing the damage by another tortfeasor, or instigated or supported it, or if the entire damage can be attributed to each tortfeasor, even where they acted independently, or if the tortfeasor is to pay for the damage caused by a helper where the helper also incurred the duty to provide compensation.

Section (§) 2916

A person who has the duty to provide compensation for damage jointly and severally with others shall settle with them in proportion to their participation in causing the damage.

Section (§) 2917

A person who has the duty to compensate for damage caused by another person is entitled to a penalty against him.

Section (§) 2918

If damage has been incurred, or if it has increased also as a result of the circumstances attributable to the victim, the tortfeasor's duty to compensate for damage is proportionately reduced. However, if the circumstances which are to the detriment of one or the other party have contributed to the damage only to a negligible extent, the damage is not divided.

Section (§) 2919

If the tortfeasor enriched himself at the expense of the victim by an unlawful act or on the basis of another circumstance which caused the damage, the tortfeasor's enrichment is unjust even after the victim's right to compensation for damage has become time-barred. If the victim's right to compensation for damage becomes time-barred, the victim may claim that the tortfeasor give him everything which he acquired, under the provisions on unjust enrichment.

Subdivision 2

Special provisions

Damage caused by a person unable to assess the consequences of his acts

Section (§) 2920

(1) A minor who has not yet acquired full legal capacity or a person who suffers from a mental disorder shall provide compensation for the damage caused if he was capable of controlling his behaviour and assessing its consequences; the victim is also entitled to compensation for damage if he did not defend himself against the tortfeasor because of being considerate to him.

(2) If a minor who has not yet acquired full legal capacity or the person who suffers from a mental disorder was incapable of controlling his behaviour and assessing its consequences, the victim is entitled to compensation if it is fair with regard to the property situation of the tortfeasor and victim.

Section (§) 2921

The person who has neglected to exercise proper supervision over a tortfeasor shall compensate the damage jointly and severally with the tortfeasor. If the tortfeasor does not have the duty to provide compensation for damage, the victim is compensated by the person who neglected to exercise supervision over the tortfeasor.

Section (§) 2922

A person who induces a self-inflicted condition in which he is unable to control his conduct or assess its consequences shall provide compensation for the damage caused in that condition. The persons who are at fault for inducing that condition upon him shall compensate the damage jointly and severally with him.

Section (§) 2923

Damage caused by a person with dangerous qualities

A person who knowingly assumes care for a person of dangerous qualities by providing him with shelter, although the person does not urgently need one, or entrusting him with a particular activity, whether in the home, establishment or a similar place, shall, jointly and severally with that person, provide compensation for the damage caused to another in such a place or during such activity as a result of the dangerous qualities of such a person.

Section (§) 2924

Damage resulting from operating activities

A person who operates an enterprise or another facility intended for gainful activities shall provide compensation for the damage resulting from the operations, whether it

was caused by the actual operating activities, by a thing used in these activities or by the impact of the activities on the environment. The person is released from this duty if he proves that he has exercised all care that can be reasonably requested to prevent the damage.

Section (§) 2925

Damage caused by a particularly hazardous operation

(1) A person who operates an enterprise or another facility which is particularly hazardous shall compensate the damage caused by the source of the increased danger; an operation is particularly hazardous if the possibility of serious damage cannot be reasonably excluded in advance even by exercising due care. Otherwise, the person is released from the duty if he proves that the damage was externally caused by force majeure or that it was caused by the very acts of the victim or unavoidable acts of a third person; if other grounds for the release from the duty have been stipulated, they are disregarded.

(2) If circumstances clearly indicate that the operation has significantly increased the risk of damage, although it can be legitimately referred to other possible causes, a court shall order the operator to provide compensation for the damage to the extent that corresponds to the probability of the damage having been caused by the operation.

(3) An operation is presumed to be particularly hazardous if it is carried out in a factory-like manner or if explosive or similarly hazardous substances are used or handled therein.

Section (§) 2926

Damage to an immovable thing

A person who, albeit lawfully, performs or provides for work which causes damage to an immovable thing of another or which prevents or substantially hinders the possession of such a thing shall provide compensation for the resulting damage.

Damage caused by the operation of a means of transport

Section (§) 2927

(1) A person who operates transport shall compensate the damage caused by the specific nature of such an operation. Another operator of a vehicle, vessel or aircraft has the same duty, unless such a means of transport is driven by human power.

(2) An operator may not be released from the duty to compensate for the damage if the damage was caused by circumstances originating from the operation. Otherwise, the operator is released from the obligation if he proves that he could not have prevented the damage despite having exerted all the efforts which may have been required.

Section (§) 2928

If a means of transport is under repair, the person who took over the means of transport for repair is considered to be its operator.

Section (§) 2929

A person who uses a means of transport without the knowledge or against the will of the operator shall provide compensation for the damage instead of the operator. The operator shall provide compensation for the damage jointly and severally with the person in case he allowed such use of the means of transport due to negligence.

Section (§) 2930

If the operator cannot be determined, the owner of the means of transport is conclusively presumed to be the operator.

Section (§) 2931

Where theft or loss of a thing results in damage being caused to a thing, the operator shall provide compensation for the damage only if the victim had no opportunity to keep the thing safe.

Section (§) 2932

Where the operations of two or more operators collide and in the case of a settlement between the operators, the operators shall settle according to their contribution to the damage caused.

Damage caused by an animal

Section (§) 2933

Where damage is caused by an animal, its owner is to provide compensation for the damage, whether or not the animal was under his supervision or under the supervision of a person to whom the owner entrusted the animal, or whether or not the animal strayed or escaped. A person to whom an animal has been entrusted or who keeps or otherwise uses the animal shall provide compensation for the damage caused by the animal jointly and severally with the owner.

Section (§) 2934

If a domesticated animal serves its owner to pursue his profession or another gainful activity or livelihood, or if it serves a disabled person as a helper, the owner is released from the duty to provide compensation if he proves that, in the supervision of the animal, he did not neglect to exercise the necessary care, or that the damage would have also been incurred by exercising the necessary care. Under the same conditions, the person entrusted by the owner with the care of the animal is also released from the duty to provide compensation.

Section (§) 2935

(1) If a third person wilfully took the animal away from the owner or the person entrusted by the owner with the care of the animal, the third person shall provide compensation for the damage caused by the animal himself if the owner or the person entrusted by the owner with the care of the animal proves that he could not have reasonably prevented the animal from being taken away; otherwise, the third person shall provide compensation for the damage jointly and severally with the owner and the person entrusted by the owner.

(2) The person who wilfully took away an animal may not be released from the duty to provide compensation.

Damage caused by a thing

Section (§) 2936

The person who is obliged to provide a performance to someone and, in doing so, uses a defective thing shall provide compensation for the damage caused by the defect of the thing. This also applies in the case of the provision of health care, social, veterinary and other biological services.

Section (§) 2937

(1) If a thing causes damage by itself, the person who should have had supervision over the thing shall pay compensation for the damage; if such a person cannot be otherwise determined, the owner of the thing is conclusively presumed to be such a person. A person who proves not to have neglected due supervision is released from the duty to provide compensation.

(2) If a thing caused damage by falling, or by being thrown out of a room or similar place, the person who is obliged to provide compensation under Subsection (1) is compensated for the damage jointly and severally with the person who uses such a place, and if the latter cannot be determined, with the owner of the immovable thing.

Section (§) 2938

(1) In the case of a building collapsing or its part becoming separated as a result of a defect or lack of maintenance of the building, its owner shall provide compensation for the resulting damage.

(2) The owner shall provide compensation for the damage jointly and severally with the previous owner if the damage was caused by a shortcoming created during the duration of the latter's right of ownership, and the previous owner failed to inform his successor of that shortcoming, and if the damage was incurred within one year after the previous owner's right of ownership was extinguished. This does not apply to a shortcoming of which the successor must have known.

Damage caused by a product defect

Section (§) 2939

(1) Compensation for the damage caused by a defect of a movable thing intended to be placed on the market as a product for sale, lease or other use is paid jointly and severally by a person who produced, gained, grew or otherwise acquired the product or its component part, and a person who marked the product or its part with his name, trademark or otherwise.

(2) A person who imported the product for the purpose of marketing it within his business activities shall provide compensation for the damage jointly and severally with the persons under Subsection (1).

(3) Compensation for the damage caused to a thing by a product defect shall only be paid in the amount which exceeds the amount in Czech Crowns calculated from EUR 500 using the exchange rate announced by the Czech National Bank on the date on which the damage was incurred, and if the date is not known, on the date on which the damage was discovered.

Section (§) 2940

(1) If the producer cannot be determined under Section (§) 2939, compensation for the damage is also provided by any supplier if, within one month, the supplier fails to inform the victim, when the victim asserts the right to compensation for damage, of the identity of the producer or the person who supplied the product to the supplier.

(2) In the case of an imported product, compensation for the damage is paid by any supplier, even where the producer is unknown, if he fails to inform the victim within a specified time limit of the identity of the importer.

Section (§) 2941

(1) The product is defective within the meaning of Section (§) 2939 if it is not as safe as it can reasonably be expected to be, considering all the circumstances, including, without limitation, the manner in which a product is marketed or offered, the intended purpose of the product, as well as considering the time when the product was placed on the market.

(2) A product cannot be considered defective only because a more advanced product is later placed on the market.

Section (§) 2942

(1) A tortfeasor is released from the duty to provide compensation for damage caused by a product defect only if he proves that the damage was caused by the victim or a person for whose act the victim bears liability.

(2) Such a person is also released from the duty to provide compensation for damage if he proves that:

a) he did not place the product on the market,

b) it can be reasonably assumed, with regard to all the circumstances, that no defect existed at the time when the product was placed on the market, or that it occurred later,

c) he did not produce the product for sale or other manner of use for business purposes, or that he produced or distributed the product in the course of his business activities,

d) the product's defect is due to the fulfilment of the provisions of legal regulations which are binding on the producer, or

e) the state of scientific and technical knowledge at the time when he placed the product on the market did not allow the defect to be discovered.

(3) A person who produced a component of a product is released from the duty to provide compensation for damage if he proves that the defect was caused by the product's structure into which the component was incorporated, or that it was caused by the product's manual.

(4) If the other party waives in advance his right to compensation for damage in whole or in part, it is disregarded.

(5) Stipulations contrary to Subsections (1) to (4) are disregarded.

Section (§) 2943

The provisions of Sections (§§) 2939 to 2942 do not apply if the defect caused damage to a defective product, or damage to a thing intended and used primarily for business purposes.

Section (§) 2944

Damage to a thing taken over

A person who took over from another a thing which is to constitute the subject of his obligation compensates for the damage, loss or destruction of the thing, unless he proves that the damage would have been incurred in any case.

Section (§) 2945

Damage to a thing left at a particular place

(1) If the operation of an activity is typically associated with leaving things at a particular place, and if a thing has been left at a designated place or a place typically used to leave such things, the operator shall provide compensation for the damage to the thing, or loss or destruction of the thing to the person who left it there or, where applicable, to the owner of the thing. Likewise, the operator of a guarded car park or similar type of facility shall provide compensation for the damage caused to means of transport parked in it and their accessories.

(2) If the right to compensation for damage is not asserted against the operator without undue delay, a court shall not grant the right if the operator invokes late assertion of the right. The right to

compensation for damage may be asserted within fifteen days from the date on which the victim must have become aware of the damage.

(3) Where damage was caused to a thing left at a particular place in a means of transport used as public transport, compensation of such damage is only paid under the provisions on compensation for damage caused by the operation of a means of transport.

Damage to a thing brought inside

Section (§) 2946

(1) A person who regularly operates accommodation services shall provide compensation for the damage caused to a thing which a guest brought to the premises reserved for accommodation or the storage of things, or to a thing which was taken there for the guest. This also applies where a thing was taken over for that purpose by the accommodation provider.

(2) If the accommodation provider proves that the damage would have been incurred in any case, or that the damage was caused by the guest or a person accompanying the guest of the guest's own will, the accommodation provider is released from the duty to provide compensation for damage. Stipulations of other grounds for the release from such a duty are disregarded.

Section (§) 2947

The duty to provide compensation for damage does not apply to vehicles or things left in a vehicle, or to living animals, unless the accommodation provider took them over into deposit.

Section (§) 2948

(1) Compensation for damage is to be paid up to the amount of one hundred times the price of accommodation for one day.

(2) If a thing has been taken over for deposit, if the accommodation provider refused to deposit a thing contrary to a statute or if damage was caused by the accommodation provider or a person who works in the operation, compensation for damage is paid without any limits.

Section (§) 2949

(1) If the right to compensation for damage is not asserted against the accommodation provider without undue delay, a court shall not grant the right if the accommodation provider invokes late assertion of the right. The right to compensation for damage may be asserted within fifteen days from the date on which the victim must have become aware of the damage.

(2) The provision of Subsection (1) does not apply if the accommodation provider took over a thing into deposit, if the accommodation provider refused to deposit a thing contrary to a statute or if damage was caused by the accommodation provider or a person who works in the operation.

Section (§) 2950

Damage caused by information or advice

A person who offers professional performance as a member of a vocation or profession, or otherwise acts as an expert, shall provide compensation for damage caused by his provision of incomplete or incorrect information or harmful advice provided for consideration in a matter related to his expertise or skill. Otherwise, only damage intentionally caused by providing information or advice is subject to compensation.

Division 3

Manner and extent of compensation

Subdivision 1

General provisions

Section (§) 2951

(1) Damage is compensated by the restoration to the original state. If this is not reasonably possible, or if so requested by the victim, damage is payable in money.

Non-pecuniary harm is compensated by appropriate satisfaction. Satisfaction must be provided in money unless real and sufficiently effective satisfaction for the harm incurred can provide for satisfaction otherwise.

Section (§) 2952

The actual damage and what the victim lost (lost profit) is paid. If the actual damage consists in the creation of a debt, the victim has the right to be released from the debt or provided with compensation by the tortfeasor.

Section (§) 2953

Reduction of compensation

(1) For reasons deserving special consideration, a court shall proportionately reduce the compensation of damage. In doing so, the court shall in particular take into account how the damage occurred, the personal and property situation of the individual who caused and is liable for the damage, as well as the circumstances of the victim. Compensation may not be reduced if the damage was caused intentionally.

(2) Subsection (1) does not apply if the damage was caused by a person who offered to provide professional performance as a member of a particular vocation or occupation, or by a breach of professional care.

Section (§) 2954

If a tortfeasor caused damage by an intentional criminal offence from which he gained property benefit, a court may, on the application of the victim, decide on satisfaction from the things which the tortfeasor acquired under the property benefit, even if the things are not otherwise subject to enforcement of a decision. Until the right to compensation for damage has been satisfied, the tortfeasor may not dispose of the things specified in the decision.

Section (§) 2955

If the amount of compensation of damage cannot be accurately determined, it is determined by a court on the basis of a fair consideration of each circumstance.

Subdivision 2

Compensation for harm to the natural rights of an individual

General provisions

Section (§) 2956

Where a tortfeasor incurs a duty to compensate an individual for harm to his natural right protected by the provisions of Book One of this Act, he shall compensate the damage as well as non-pecuniary harm thus caused; compensation of the non-pecuniary harm shall also include mental suffering.

Section (§) 2957

The manner and amount of adequate satisfaction must be determined so as to also compensate for the circumstances deserving special consideration. These circumstances shall mean causing intentional harm, including, without limitation, causing harm by trickery, threat, abuse of the victim's dependence on the tortfeasor, multiplying the effects of the interference by making it publicly known or as a result of discriminating the victim with regard to the victim's sex, health condition, ethnicity, creed, or other similarly serious reasons. Account is also taken of the victim's concerns of loss of life or serious damage to health if such concerns were caused by the threat or other causes.

Compensation for bodily harm and death

Section (§) 2958

In the case of bodily harm, the tortfeasor shall compensate the victim for such harm in money, fully compensating for the pain and other non-pecuniary harm suffered; if the bodily harm resulted in an impediment to a better future for the victim, the tortfeasor shall also compensate him for the deteriorated social position. Where the amount of compensation cannot be determined in this manner, it is determined according to the principles of decency.

Section (§) 2959

In the case of killing or particularly serious bodily harm, the tortfeasor shall compensate the spouse, parent, child or other close person for the mental suffering in money, fully compensating their suffering. Where the amount of compensation cannot be determined in this manner, it is determined according to the principles of decency.

Section (§) 2960

Costs associated with health care

The tortfeasor shall also reimburse reasonably incurred costs associated with the care for the health of the victim, his personal care and his household to the person who incurred these costs; if such a person so requests, the tortfeasor shall provide him with an appropriate advance payment for these costs.

Section (§) 2961

Funeral costs

A tortfeasor shall reimburse the person who incurred reasonable costs associated with the funeral; the reimbursement is provided to the extent in which these costs have not been paid by a public benefit under another legal regulation. In doing so, account is taken of usages as well as of the circumstances of each individual case.

Pecuniary benefits

Section (§) 2962

(1) Compensation for the loss of earnings during the period of the victim's temporary unfitness to work is paid in the form of a pecuniary pension equal to the difference between the victim's average

earnings before the occurrence of the harm and the compensation for the amount paid to the victim as a result of an illness or injury under another legal regulation.

(2) A pupil or student is entitled to compensation for loss of earnings from the date on which his compulsory school attendance, study or vocational training should have ended, for a period:

a) by which his compulsory school attendance, study or vocational training was extended as a result of bodily harm,

b) of his incapacity as a result of bodily harm,

c) of the duration of the disability incurred as a result of bodily harm, which usually prevents full involvement in a gainful activity, or

d) of the duration of the disability incurred as a result of bodily harm which partially prevents involvement in a gainful activity, unless he is at fault for missing the opportunity to earn income by carrying out work suitable for him.

Section (§) 2963

(1) After the temporary unfitness to work or disability ends, the tortfeasor shall compensate the victim for his loss by a pecuniary pension, which is to be determined with regard to the difference between the earnings which the victim was gaining before the harm arose and the earnings gained after the temporary unfitness to work ended, including, where applicable, any disability pension under another legal regulation. If bodily harm results in a long-term increase in the needs of the victim, these needs are also taken into consideration in determining the amount of the pecuniary pension.

(2) If, after the end of the temporary unfitness to work, the victim gains earnings only by exerting more effort or increased strain, which he would otherwise not have had to exert had it not been for the loss event, the increased exertion or effort is compensated to him by a pecuniary pension. In determining the amount of pecuniary pension, account is also taken of any increase in the earnings in the respective field, as well as of any likely increase of the victim's earnings in accordance with rational expectations.

(3) If there are serious reasons, a court may decide whether, how and to what extent the tortfeasor shall secure the victim's claim to pecuniary pension; in doing so, the court is not bound by the motions of the parties.

Section (§) 2964

The victim is entitled to compensation for loss of pension in the amount of the difference between the pension to which the victim became entitled, and the pension to which he would have become entitled if the basis used to determine the pension had included the compensation for loss of earnings after the end of the temporary unfitness to work which the victim received at the time decisive for the determination of the pension.

Section (§) 2965

If the victim carried out gratuitous work for another person in the person's household or enterprise, the tortfeasor shall provide that other person with pecuniary pension to compensate for the amount the other person lost.

Section (§) 2966

(1) In the case of killing, the tortfeasor shall provide a pecuniary pension to reimburse the costs of maintenance for the survivors whom the decedent, on the day of his death, was providing or was

obliged to provide maintenance. The survivors are entitled to reimbursement equal to the difference between the pension system benefits provided for the same reason and the amount which the victim could have provided to the survivors from these costs according to reasonable expectations, had he not been injured.

(2) For the sake of decency, a contribution to maintenance and support may also be granted to another person if the killed person provided such a performance to the person without being obliged to do so by a statute.

Section (§) 2967

(1) The amount of reimbursement is determined on the basis of the average earnings of the decedent; the total reimbursement of the costs of maintenance to the survivors or other persons may not exceed the amount to which the decedent would have been entitled as compensation for loss of earnings, or pension, where applicable.

(2) In determining the reimbursement to survivors, account is also taken of how long the killed person would likely have lived had it not been for the injury. When determining the reimbursement to other persons, account is taken of how long the killed person would likely have provided the performance.

Section (§) 2968

Lump-sum payment

If justified by an important reason and requested by the victim, a court shall grant the victim a lump-sum payment instead of a pecuniary pension.

Subdivision 3

Special provisions

Section (§) 2969

Compensation in the case of damage to a thing

(1) The amount of damage to a thing is determined on the basis of its usual price at the time the damage was incurred, taking into account everything which the victim must efficiently incur to restore or replace the function of the thing.

(2) If the tortfeasor has damaged a thing out of caprice or maliciousness, he shall compensate the victim for the sentimental value.

Section (§) 2970

Compensation for an injury of an animal

In the case of an injury of an animal, the tortfeasor shall provide reimburse the reasonably incurred costs associated with health care of the wounded animal to the person who incurred these costs; if so requested by the person, the tortfeasor shall provide him with a reasonable advance payment for these costs. The costs associated with health care have not been incurred unreasonably even if they substantially exceed the price of the animal, provided that they would be incurred by a reasonable breeder in the position of the victim.

Section (§) 2971

Compensation for non-pecuniary harm

If justified by special circumstances under which the tortfeasor caused harm by an unlawful act, including, without limitation, by breaching an important legal duty due to gross negligence, or by causing harm intentionally out of a desire to destroy, hurt or for other especially reprehensible motives, the tortfeasor shall provide compensation for the non-pecuniary harm to everyone who legitimately perceives the harm as a personal misfortune which cannot be undone otherwise.

§3. Function of the Law of Tort (Indemnification, Prevention, Sanction)

17. The general aim of the whole Private Law is to establish, to keep or/and to restore the equilibrium in the participating juridical relations. Its complementary aim, serving the achievement of the first goal, is to prevent the threat (danger) or the infringement of the rights or/and duties arising out of Private Law relations. On the other hand, Private Law is not oriented to the one-side sanctioning of the threat (danger) or the infringement.

Tort law represents one of the most important instruments of Private Law, so its aim cannot be different from the aim of Private Law. The special functions of tort law are in harmony with the general functions of the whole Private Law.

18. The Czech tort law pursues two main functions:

1. Compensatory/indemnification function, which is aimed at the indemnification of the natural or legal person suffering harm, or at their satisfaction in the case where the injury was of immaterial nature. The extent to which the indemnification function is accented in tort law is evident in the different construction of liability for damage based on fault, and special causes of objective liability not depending on fault.[5]
2. Preventive function[6] is aimed at prevention of such behaviour that could result in a harm to a person. This function is nevertheless not generally applied: its general ground is regulated through general clauses of Civil Code.[7] The extent of its application is limited through the legal rules in Sections (§§) 2900–2908 Civil Code.[8] The rule contained in Section (§) 2900 prescribes to everyone, if required by the circumstances of the case or the usage of private life, to act so as to prevent unreasonable harm to freedom, harm to life, bodily harm or harm to the property of another. Section (§) 2900, containing the so-called *general clause* of prevention[9] and based on the limited principle *neminem laedere*, is followed by three sections (§§) concerning the so-called *special prevention*. These include:

---

5 *See* below for more details, Part I, Chapter 1, §§ 1–2, Part II.

6 With preventive function is bound also the predictability of injury. To this topic *see* Sztefek, M., Předvídatelnost škody v novém občanském zákoníku. Jurisprudence, 5/2014, pp. 25ff.

7 *See* Sections (§) 1–14, namely Section (§) 14 of Code Civil permitting everybody to use self-help.

8 *See* above for the whole text of Sections 2900 – 2908: Introduction, § 2, IV.

9 The decision of Supreme Court ruling 8 Tdo 1623/2015, available at www.nsoud.cz.

a. The duty of any person, who has created a dangerous situation or who is dealing with a dangerous situation, or where it is justified by the nature of the relationship between the persons, to intervene in order to protect another.
b. The duty of any person, who knows or must have known that he is able to easily prevent the injury the expenses of which are evidently higher than the expense that must be exerted for the preventive intervention.
c. Preventive duty is also owed by any person who has breached, or who knows that will breach, a legal duty. That person is to notify the potential injured person about the dangerous situation. In that case, the injured person cannot claim compensation for the injury to the extent that could have been prevented through the notification as mentioned above.
d. The preventive duty is also owed by any person who is in danger of suffering harm caused by himself. The person has the duty to avoid danger; otherwise he will bear the impact of the consequences that he could have prevented.
e. In the case of a serious danger the person being in such danger has the right to address a court to take appropriate and reasonable preventive measures.

The former Civil Code did not contain the expressed rule of *casum sentit dominus*. The existing Civil Code imposes, within the frame of preventive rules, consequences arising through an accident for the person whose behaviour caused the harm.

19. The Civil Code defines, as part of preventives rules, some model situations when the person taking preventive steps does not have a duty to compensate for harm incurred by another person due to preventive measures:[10]

a. *Self-defence* allows a person protecting himself or a third person against an imminent or unlawful attack not to provide compensation for the harm arising of such self-defence. A person whose self-defence was evidently inadequate to the existing or threatening attack does not have such right.
b. Person, acting in *necessity* is also free of duty to compensate for the harm caused to another person. A person acts in necessity when he protects himself or another person against imminent risk of harm, but only if the prevented harm is evidently higher than the harm caused during the preventive action.
When considering whether any person acted in self-defence or under necessity, it is necessary to take into account the justifiable excitement of mind of the person exercising the prevention of the harm.
The person acting with preventive goals is entitled to compensation for his reasonable costs and to compensation for his own harm from the part of the protected person. The amount of the costs and compensation is limited by the prevented harm.
c. There is, in some cases established by law or allowed to be agreed by the parties, a possibility to exclude the liability for damage through the consent of the (potentially) insured person.
d. The liability for damage is also excluded in situations established by law concerning injury caused by the exercise of rights or by the fulfilling of duties.

---

10 *See* below for more details, Part IV, Chapter 2.

20. The conception of Czech Private Law does not generally accept the sanction function[11]; nevertheless, the influence of the foreign, especially European, judiciaries causes that in some cases the sanction function (namely, the so-called sanction compensation for damage) is applied in the Czech tort law, too. Even if this is not expressly established by the Civil Code, the 'punitive damages'[12] has been finding, step by step, their place in the Czech law and this question has been broadly discussed by both scholars and judges.

In the Czech Private Law (in practice as well as in theory) it was evident for a long time that indemnification and preventive functions could be in contradiction in some cases. To find a solution of these problems, a system based on prevention and indemnification has been established by the instruments of insurance law, especially by the insurance of liability for damages.[13] The welfare state also complements the social needs of compensation for loss through the system of social security.[14]

§4. Relationship Between Torts and Criminal Law

21. In the Czech Republic, criminal law and civil law are two very different branches of the legal order. Whereas civil law is part of private law, criminal law is part of public law and both branches are distinguished mainly by special methods of legal regulation.[15] The main goal of the former, i.e., compensation for damage, is followed by Private law a part of which is the law of responsibility for compensation of damage, i.e., tort law. In general, the main goal of tort law is to achieve an equality of the existing interests.

Criminal law is focused on prevention of criminal behaviour. It is based on the principle of officiality, i.e., the goals of criminal law are pursued through the activities of the public prosecutor aimed at punishing (natural or legal) persons. The legal regulation of criminal law is contained in the Criminal Code.[16] There is also a difference between criminal procedure and civil procedure: the criminal procedure has its legislative grounds in the Criminal Procedure Code.[17] The basic activity leading to achieving the aims of the private law is in the hands of an injured private individual. The tort law allows the injured person to obtain compensation through a civil action in a civil court. The legal regulation of civil procedure is codified in Act No. 99/1963 Coll., Civil Procedure Code, fundamentally changed for the last time by Act 293/2013 Coll. and by the Act No 296/2017 Coll.

Nevertheless, also within criminal procedure the injured person is permitted to obtain compensation as the result of the so-called adhesive procedure, i.e., on the basis of a special action brought by the victim of a criminal offence eligible for compensation through tort law. The victim can, through the 'adhesive procedure', seek

---

11 Decision of Constitutional Court file I.ÚS 668/15-1, available at http://nalus.cz.

12 *See* below for more details, Part VI, Chapter 7, § 3.

13 *See* below for more details, Part VI, Chapter 6, § 1.

14 *See* below for more details, Part VI, Chapter 6, § 2.

15 *See* above for more details, Introduction, § 2, III.

16 Act No. 40/2009 Coll.

17 Act No. 141/1961 Coll.

compensation for damage as the part of the criminal procedure which is focused mainly on a criminal sanction.

§5. Relationship Between Contractual and Delictual, or Tortious, Liability (Is there a Rule of non cumul; What about Precontractual Liability?)

22. In the former Czech Civil Code, i.e., Act No. 40/1964 Coll., contractual and delictual liability was not distinguished. The former Czech civil law did not need the rule of non cumul. So, while the tendency in some countries, e.g., in the German civil law, was to overcome the differences between contractual and delictual liability for personal or material injury[18], the Czech civil law, after a certain period when these differences were excluded, has returned since 2014 to distinguishing the legal constructions of contractual and delictual liability.

The rule of *non cumul* is not expressly incorporated into the current Civil Code, nevertheless, the court practice does not accept a cumulative compensation for one damage being provided 'twice'. The Czech civil law does not exclude claiming compensation for damage partially as contractual and partially as delictual right.[19]

23. The current Civil Code distinguishes three legal concepts of civil liability for damage:

a. Liability for damage arising from the breach of statutory rule(s)[20];
b. Liability for damage arising from the breach of contractual obligation(s)[21];
c. Special regulation of the liability for damage arising from the violation of *good morals*.[22]

24. Ad a) Liability arising from the breach of statutory rule(s) is divided into two essential groups:

The general concept of this liability requires the following conditions: (a) Breach of a statute[23]; (b) the breach must either (ba) interfere with an absolute right of the injured person, or (bb) interfere with another right of the injured person by a breach of a statutory duty aimed at protection of such a right; (c) the third condition is fault in form of negligence. Negligence is presumed if the tortfeasor acts in a manner different from what can be reasonably expected from a person in his position. Negligence is

---

18 Spindler, G. – Rieckers, O., Tort Law in Germany. Kluwer Law International BV, The Netherlands, 2015, p. 40.

19 There is, nevertheless, one exception: As the Czech civil law allows claiming remedies based on the faulty performance arising out of a contract obligation, the contractual party is not allowed to replace that type of claim by a financial compensation for the damage: *See* the text of Section (§) 1925 Civil Code:

A right from a defective performance does not exclude the right to compensation for damage; however, what can be achieved by asserting the right from a defective performance may not be claimed for any other legal cause.

20 *See* Section (§) 2910 Civil Code.

21 *See* Section (§) 2913 Civil Code.

22 *See* Section (§) 2909 Civil Code.

23 For more details *see* Section (§) 6 Civil Code.

also presumed if the tortfeasor declared to have special knowledge, skill or diligence, or such a knowledge, skill or diligence is required for his performance. The tortfeasor is entitled to exculpating himself if he proves that he did not know or could not know about the danger of his behaviour leading to the harm.

The Czech legislator uses in the *group of special cases* the concept of strict (objective) liability. There are special situations where the situation itself requires compensation of the harm arisen. This type of legal responsibility is also called liability for the result.

The specific types of liability for the result include:

- Damage caused by a person with dangerous qualities (Section (§) 2923).
- Damage resulting from operating activities (Section (§) 2924).
- Damage caused by a particularly hazardous operation (Section (§) 2925).
- Damage to an immovable thing (Section (§) 2926).
- Damage caused by the operation of a means of transport (Sections (§§) 2927 ff.).
- Damage caused by an animal (Sections (§§) 2933 ff.).
- Damage caused by a thing (Section (§§) 2936 ff.).
- Damage caused by a product defect (Section (§§) 2939 ff.).
- Damage to a thing taken over (Section (§) 2944).
- Damage to a thing left at a particular place (Section (§) 2945).
- Damage to a thing brought inside (Sections (§§) 2946 ff.).
- Damage caused by information or advice (Section (§) 2950).

25. Ad b) The breach of contractual duty brings about the duty for the contractual party in breach to provide compensation for the resulting damage. The entitled person is mainly the other contractual party but it can also be the person whose interest has been interfered with through the breach of the contractual duty.

The contractual responsibility for injury is built on the basis of strict, i.e., objective, liability. It means that the tortfeasor is not able/allowed to exculpate himself if he provides a proof consisting in absence his fault. The tortfeasor is only entitled to relieve (liberate) himself if he proves that he was temporarily or permanently prevented from fulfilling his contractual duty due to an extraordinary, unforeseeable, and insurmountable obstacle created independently of his will. The Czech judiciary and civil commentaries call the above-mentioned reasons of liberation *vis maior*.[24] In addition to the breach of contractual duty, the contractual responsibility for injury also requires the foreseeability of the injury that can occur.

Breach of Good Morals

26. Ad c) Following the models of Austrian and German tort law, the Czech legislator incorporated into the text of the Civil Code the concept of liability for the harm caused by

24 *See* Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1574.

an intentional breach of good morals.[25] The concept is taken from Section (§) 1295 Austrian Civil Code (ABGB) and in the same wording from Section (§) 826 German Civil Code (BGB).

This rule combines two model situations:

- The person who caused the harm to another person by an intentional breach of good morals is obliged to provide compensation for the harm (general rule).
- But if the harm is caused by the exercising of the tortfeasor's right this applies only in the case where the tortfeasor acted only with the aim to harm another person.

27. For all types of liabilities Section (§) 2914 is relevant, concerning the occurrence of the harm through the activities of a third person used by the 'principal': A person who, in his activities, uses an agent, an employee or another helper is to provide compensation for the damage caused by such person as if it was caused by himself. However, if, in the case of a performance provided by another person, someone has undertaken to carry out a particular activity independently, he is not considered to be a helper; however, if such other person has chosen him carelessly or exercised inadequate supervision over him, then that other person is liable as a surety for the fulfilment of his duty to provide compensation for damage.
28. The current Czech Civil Code newly incorporated into its text the doctrine of precontractual liability for the harm (culpa in contrahendo)[26] as a part of the general rules of (contractual) obligations.[27] If any person is negotiating a contract, he is free to conclude or not to conclude it and is not liable for the consequences for the other contractual party, unless his initial intention was not to conclude it. Only if the concluding of the contract between the contractual parties seems to be highly probable, the party that caused the failure of the concluding of the contract is considered to have acted unfairly. That party is to compensate the other party for the real damage but this must not exceed the amount of damages arising in similar situations.

§6. Protected Interests

29. Not all interests are protected at the same level in the Czech law of torts. It was mainly the Austrian civil law and the German civil law that served as the model for the creation of the existing legal regulation. Tort Law Principles 2003 was partly used, too.

The Czech law defends most strictly legal relations arising from contract obligations. The contractual party that breached his contractual duty is to provide compensation for the damage arising from it not only to the other contractual party but also to the person (*tertius*) who is not the contractual party but whose interests were supposed to be satisfied by the fulfilling of the agreed contractual duty. The construction of the

25 Section (§) 2909 Civil Code.

26 *See* for example Matula, Z., Culpa in contrahendo. Praha: Wolter Kluwer Česká republika, 2012, 108 pp.

27 *See* Sections (§) 1728–1730 Civil Code, the full text of which is accessible on the website: www.justice.cz.

responsibility for the contractual injury is also built strictly: it has the form of 'objective' no-fault liability. Nevertheless, the party in breach has the right to liberate himself from the duty to compensate for the damage in the case of an unexpected obstacle arisen independently of his will. Within contractual responsibility for the damage all the interests of both contractual parties and third persons interested in the result of the fulfilment of the contract are protected at the same level.

30. The Czech legislator accepted, regarding the breach of legal rules, a different solution. Through the legal construction incorporated in Section (§) 2910 an act is to be compensated for: (a) which breaches a duty imposed by a legal rule, and at the same time (b) infringes the 'absolute right' of the injured person, or 'interferes with another right' of the injured person by a culpable breach of a statutory duty enacted to protect such a right.[28] 'Absolute rights' mean subjective rights given to any person and applicable in relation to all other persons. Absolute rights include especially right to life, right to integrity of body and rights to the personality in general, freedom, property right, possession, copyright, and other immaterial property rights, family status rights, etc.
31. The group of other special interests are protected most frequently by the Civil Code in the strict form of objective liability for injury.[29] These interests include:

a. Protection against unclear extraordinary danger.
   Extraordinary danger is defined either by an extraordinary extent of harm or by a high level of probability of danger.
b. Protection against a danger caused by a defective product or service.
c. Protection against a higher level of risk.
d. Need of proportionality between the expected advantage and the risk taken.
e. Social scope.
f. (and, of course, liability for breach of contract).

Part I. Liability for One's Own Acts

Chapter 1. General Principles

§1. Unlawfulness and Fault

32. As mentioned above[30], the Czech law of torts requires different conditions of construction in different kinds of tort liability:

a. The conditions required in liability for damage arising from the breach of statutory rule(s) are as follows:
   1. unlawfulness of behaviour of the tortfeasor or his helper
   2. the occurrence of a harm to be compensated for
   3. *nexus causalis* between the unlawful behaviour and the occurrence of the harm to be compensated for

---

28 For more details *see* the text of the Civil Code above.

29 For the distinction between subjective and objective liability *see* below, Part VI, Chapter 3, § 1.

30 Introduction, § 5.

4. ~~ad.~~ **fault**

b. The conditions required in liability for damage arising from the breach of contractual obligation(s) are as follows:
   1. breach of contractual duty
   2. occurrence of a damage to be compensated for
   3. *nexus causalis* between the breach of a contractual duty and the occurrence of the harm to be compensated for
      (fault is not required)

c. The conditions required by the special regulation of the liability for damage arising from the violation of good manners/good morals are as follows:
      Generally:
   1. breach of good morals/good manners
   2. Occurrence of a damage to be compensated for
   3. *nexus causalis* between breaching good morals/good manners and the occurrence of the damage to be compensated for
   4. Fault in the form of intention
      Liability arising from the exercise of a subjective right:
   1. Breach of good morals/good manners
   2. Occurrence of a damage to be compensated for
   3. *nexus causalis* between breaching good morals/good manners and the occurrence of the damage to be compensated for
   4. Fault in the form of intention
   5. Specific complementary fault is required in the form of a prevailing intention to harm another (*dolus generalis*).

33. In the Czech tort law, the condition of unlawfulness is considered to be a concept separate from fault (zavinění). Unlawfulness is derived in Czech tort law from the breach of an explicitly imposed statutory rule (it does not exclude deriving the breach per analogiam). The grounds of this strict construction can be found in Article 4, Paragraph 1, the Czech Charter of Fundamental Rights and Freedoms[31] which declares that the duties are allowed to be imposed only on the grounds of a statute and within its limits while respecting the fundamental rights and freedoms.

There has been a discussion in the current Czech tort law in which concept of unlawfulness should be accepted: even if the rule in the Section (§) 2910 is inspired by Section (§) 823, paragraph 1, German Civil Code (BGB), at this moment there is no judicial and/or theoretical solution of the dilemma between the theory of conduct (Lehre vom Erfolgsunrecht) and the theory of result (Lehre vom Handlungsunrecht).[32] The recent commentaries opine that the acceptable solution for the Czech tort law is the theory of conduct which respects the continuity of the Czech development of the concept of tort law and they come to the conclusion that the person who bears a duty (potential tortfeasor) is not capable to consider his behaviour *ex ante* on the grounds of future results.[33] Nevertheless, one can come to the conclusion that the fundamental concept of Czech tort law is largely influenced by the German tort law.

31 Constitutional Act No. 1/1991 Coll.

32 Spindler, G. – Rieckers, O., Tort Law in Germany. Kluwer Law International BV, The Netherlands, 2015, p. 47–49.

For example, the theory of result influenced the concept of self-defence: the victim of an attack cannot take into consideration, in his situation, the unlawfulness of conduct, but the gravity of danger arising from the attack.[34]

§2. Concept of Fault

34. Fault is within some constructions of tort liability (see above) required as a specific condition for the occurrence of the juridical relation of tort liability. The liability which requires fault as its specific condition is called subjective liability[35], unlike objective liability where fault is not required.[3637]

Fault is considered a general condition of tort liability. The tortfeasor has the duty to compensate for the damage, regardless of the fault, only in the cases expressly established by rules of law.[38]

35. The Czech tort law distinguishes the following kinds of fault:

a. Intention (injury is caused knowingly and intentionally), further divided in:
   1. direct intention (a person acts with a direct intention, knowing that he can cause an injury to another, and wants to do so);
   2. indirect intention – *dolus eventualis* (a person acts with an indirect intention, knowing about the danger of injury due to his behaviour, and he is aware, in the case (*in eventum*) of causing the injury, of the damaging consequences;
b. Negligence, further divided in:
   1. knowing negligence (a person acts with knowing negligence, knowing about the danger of injury due to his behaviour, but without sufficient reasons expects not to cause it;
   2. unknowing negligence (a person acts with unknowing negligence, not knowing about the danger of injury in his behaviour, but he could and should have known about it.

---

33 Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1542 – 1546.

34 Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1546.

35 *See* to this subject-matter: Janeček, V., Nerovná subjektivní odpovědnost. Jurisprudence, 5/2016, pp. 15ff.

36 *See* above, Part I, Chapter 1, § 1.

37 There are nevertheless, within the former Code civil, some exceptions of the concept of fault, which perceive the fault as the measure of accountability of the injury to certain person (and not the psychical relation of the acting person to the consequence). *See* Decision of the Supreme Court from 23. 08. ~~Aug.~~ 2016, 23 Cdo 1053/2015. Available at www.nsoud.cz.

38 Section (§) 2895 Civil Code.

The Czech tort law does not know, within the standard system of fault, the term *gross negligence*. It is used as a specific hybrid of unlawfulness, fault, and duty of care (*see* the text below).

36. The essential basis of tort liability is the duty to compensate for the damage caused with fault to another. In subjective liability (requiring a fault) arising from the breach of statutory rules the fault is presumed.[39] The burden of proof in order to exculpate himself is imposed on the tortfeasor who is entitled to exculpate himself by proving that he did not act with fault.

Where the Code requires the condition of fault, generally it does not distinguish the kinds of fault (intention, negligence, etc.). The unknowing negligence is presumed in all cases.

Nevertheless, there are some exceptions:

a. For the requirements of the liability for damage arising from the violation of good manners/good morals (*bonae mores*) to be met, the injured person must prove the fault in the form of intention; in liability for damage caused by the exercising of a subjective right also a specific complementary fault is required in the form of a prevailing intention to harm another (*dolus generalis*).
b. The intentional behaviour of the tortfeasor is also taken into consideration when the court decides about the amount and form of compensation for damage.[40] For example, a reduction of the compensation of damage by the court (Section (§) 2953 Civil Code) is not allowed if the damage was caused intentionally. Another provision of the Civil Code regulates a specific option of the court to satisfy the victim of a criminal offence: Where a tortfeasor caused damage by committing an intentional criminal offence and gained benefit from that the court may decide, at the request of the victim, to redress the injury of the victim from the things which the tortfeasor has acquired as benefit, even if the things were not otherwise subject to the enforcement of the judgement.

In terms of unlawfulness and fault, the term *gross negligence* is given a special place by the Czech legislator.[41]

§3. Duty of Care

37. The current Civil Code, unlike the previous one, gives room to the regulation of duty of care as the standard of behaviour of persons in legally regulated situations.

It establishes duty of care as the general standard of behaviour of one person towards another.

---

39 Section (§) 2911 Civil Code.

40 Sections (§) 2953 – 2954 Code civil.

41 *See* more below.

Most general formulations of duty of care can be found in Sections (§§) 4–5 Civil Code. A distinction is made between the general standard of reasonably acting person and a person acting with professionally care.[42]

If a person has legal capacity, then he is presumed to be able to act reasonably as an average individual.

If a person presents himself as having an occupation or being a member of a profession, he demonstrates in this way his ability to act with the knowledge and care associated with that occupation or profession. If the person fails to act with such professional care, he will bear the consequences of that.

Special cases of duty of care[43] are contained in the Civil Code, the part concerned with tort law.

38. From the general presumption of standard duty of care (see above) a consequence for the presumption of fault in the form of negligence has been developed: If a tortfeasor acts in a manner different from what can be reasonably expected in private dealings from a person of average qualities, he is presumed to be acting negligently.[44]

Subsequently, from the special presumption of duty of care of professionals a consequence for the presumption of fault in the form of negligence has been developed: If a tortfeasor demonstrates special knowledge, skill or diligence, or undertakes to perform an activity for which special knowledge, skill or diligence are required, and fails to apply these special qualities, he is presumed to be acting negligently.[45]

When determining compensation, the Czech tort law draws upon breach of duty of care. Among a number of rules, compensation for damage arising from the faulty information or advice can be emphasized.[46]

39. Here, it is necessary to note that there are in the Czech tort law some overlaps among the terms unlawfulness, fault, and duty of care. An example can be seen in the term gross negligence.

---

42 The decision of Department Court in Plzeň, 25 Co 394/2015. Available at www.aspi.cz.

43 *See* the term ‘duty of reasonable care’“ in the sense of Section (§) 2924 Code civil in the decision of the Court of Department in Plzeň, 25 Co 394/2015. Available at www.aspi.cz.

44 ~~Section (§) 2912, para. 1, Civil Code.~~

45 ~~Section (§) 2912, para. 2, Civil Code.~~

46 ~~A person who offers professional performance as a member of a vocation or profession, or acts otherwise as an expert, is to provide compensation for damage caused by his provision of incomplete or incorrect information or harmful advice provided for consideration in a matter related to his expertise or skill. Otherwise, only damage intentionally caused by providing information or advice is subject to compensation. Section (§) 2950 Civil Code.~~

The definition of gross negligence was made by the earlier case law. There is gross negligence which has a special position not only within the framework of fault. This term means neither the knowing negligence nor the unknowing negligence: it means the higher level of negligence (or a higher level of the breach of duty of care) which can have the meaning of knowing but also unknowing negligence. The criterion of the definition of gross negligence is different from the criteria of the definition of knowing and unknowing negligence. This term means (according to the Supreme Court of the Czech Republic) the negligent behaviour of the utmost intensity which is indicative of careless performance of one's duties and of neglect of such duties in the manner which indicates evident carelessness in relation to other persons. A very careful person cannot act in gross negligence.[47] Currently, the content of the term of gross negligence is developed from the above-mentioned rules of duty of care in the existing Civil Code. Within this legal framework, the current definition of duty of care is being developed towards the legal concept of duty to act with *managerial care*[48], as also duty to act with professional care[49] presenting two different higher levels of (standard) duty of care.

The term of gross negligence is used in some provisions of the Civil Code as a criterion determining limits of the amount of damages, or in similar cases, frequently together with an intentional act. The law especially allows, in the case of breach of an important legal duty due to gross negligence, to claim compensation from the tortfeasor for non-pecuniary harm.[50]

The burden of proof in gross negligence (as in the case of intention) lies on the injured person.

§4. Capacity (Infants, Minors)

40. The Czech private law establishes the concept of personal status.[51] It contains prima faciae legal personality and legal capacity. Legal personality is the capacity to have rights and duties within the legal order. Legal capacity is the capacity to acquire rights and assume duties in order to perform legal acts.

Within the framework of tort law, two types of capacity to bear the consequences of one's own acts are distinguished:

---

47 ~~Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1507.~~

48 ~~*See* Sections (§) § 2336,2342, 2343 Civil Code.~~

49 ~~*See* Section (§) 2426 Civil Code. Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 2035.~~

50 ~~Sections (§) 2544, 2580, 2898, 2971 Civil Code.~~

51 ~~Section (§) 9, para. 1.~~

a. The *legal capacity* which is the basis of the liability for damage caused by breach of a contractual duty; in this case the capacity to provide compensation for damages is bound with the capacity to conclude a contract. An individual acquires full legal capacity upon reaching the age of majority. The age of majority is attained at eighteen years of age. Before reaching the age of majority, full legal capacity may be acquired by being granted legal capacity or by entering into marriage. Legal capacity acquired by entering into marriage is not terminated upon termination or invalidation of the marriage. Minors (natural persons before reaching the age of majority) who have not acquired full legal capacity yet are presumed to be capable of performing legal acts that are, as far as their nature is concerned, appropriate to the intellectual and volitional maturity of the minors of that age. The legal person acquires full legal capacity at the moment when its legal existence is started.
b. The liability built on fault requires a specific form of capacity: the capacity to be liable for torts (*delictual capacity*) which is different from the legal capacity. Its conditions are different from the legal capacity, too: the capacity of a person to bear consequences of his own acts (delictual capacity) arises if the person is able to assess and control them. A natural person acquires full delictual capacity upon reaching the age of majority or by obtaining the legal capacity in any other way and under the condition of the corresponding mental capacity. Before reaching the full legal capacity, minors who have not acquired full legal capacity yet or any persons who suffer from a mental disorder are to provide compensation for the damage caused if they were capable of controlling their behaviour and assessing its consequences. Nevertheless, the Civil Code also permits in the above-mentioned cases the injured person to demand compensation if it is fair with regard to the property situation of the tortfeasor and the injured person.[52]
The legal person acquires full delictual capacity at the moment when its legal existence is started.[53]

Chapter 2. Specific Cases of Liability (Are All Tortfeasors Subject to the Same Rules?)

§1. Liability of Professionals

I. In General (Is there a Higher Standard of Care?)

41. As mentioned above[54], the current Czech Civil Code introduced a larger concept of the standard duty of care into the tort law.

Section (§) 4 Civil Code newly established a general standard of reasonableness and a general standard of reasonable duty of care. Generally, the Code presumed that an individual is able to act autonomously and at his own responsibility as a participant in

52 ~~Section (§) 2920.~~

53 ~~For more details about responsibility of legal persons *see* Part II, Chapter 1, § 3.~~

54 ~~Part I, Chapter 1, § 3.~~

legal relations with respect to the principle '*vigilantibus iura scripta sunt*'. This rule also presumes the ability of an individual to bear the risk of his acting towards another person. At the same time, the rule has the function of prevention and is one of the conditions of responsibility towards another person.

The standard of duty of care is formulated as an ability of every individual to use his legal capacity 'with ordinary care and caution'. This standard is formulated as a disprovable presumption when the other party bears the burden of proof to disprove the presumption.

The Civil Code presupposes, in some situations, a higher standard of duty of care, depending on the required specific knowledge of the acting person (both natural and legal): in that situation it is presupposed that this person has knowledge that is presumed in any reasonable person in the given circumstances.[55]

The liability for damage caused by the breach of contract is based on the legal capacity to conclude the contract in question (see also the decision of Constitutional Court, file II.ÚS 1864/16 from 28.11.2017).

42. The duty of professional care is owed by the person who declares, regardless of whether publicly or in dealings with another person, his professional performance to be that of a member of an occupation or profession. If such a person demonstrates in this way his ability to act with the knowledge and care associated with his occupation or profession, he bears the consequences of his failure to act with such professional care.[56]

The concept of tort law is developed on these legal grounds. The distinction between a person acting at the level of the standard duty of care and a person who declared to have some special knowledge, ability or care, has some consequences in considering the existence of fault:

a. An act of the tortfeasor which is different from acting that can be reasonably expected in private dealings from a person of average qualities is presumed to be a negligent act.
b. The tortfeasor who declared some special knowledge, skill or care/diligence, or declared to perform his duty which some special knowledge, skill or care/diligence and fails to apply these special qualities is considered to be acting negligently.[57]

43. In the Civil Code there are constructions/facts of cases of stricter liability imposed on a person who has a duty to act with professional care. With these rules the legislator introduced into the tort law the concept of the theory of risk-win or higher danger.

Some constructions of strict liability require a generally determined higher, often professional, level of care but without specifying the kind of profession.

---

55 ~~Section (§) 4, para. 2, Civil Code.~~

56 ~~Švarc, Z., Odpovědnost podnikatele za škodu z provozní činnosti. Obchodní právo, 7/2014, pp. 256ff.~~

57 ~~Section (§) 2912 Civil Code.~~

These include:

a. Damage resulting from operating activities. This kind of liability is based on the principle of *risk-win*. An entrepreneur running a business or another facility aimed to make profit has a duty to compensate for the damage resulting from the operating activities[58], including the situation when the damage resulted from a thing used in these activities or if the damage resulted from the impact of the activities on the environment. This liability is a strict one with the possibility to be relieved if the entrepreneur proves that all reasonably expected care was exercised in order to prevent the occurrence of damage.[59]
b. Damage caused by a particularly hazardous operation. This kind of liability requires a higher level of the entrepreneurs' care and its sanction is stricter than in the case of 'simple' liability of entrepreneurs. The entrepreneur (the person operating) running an enterprise or a similar particularly hazardous facility is liable to provide compensation for the damage resulting from that particularly hazardous activity. The law defines a particularly hazardous activity as an operation bringing about the possibility of a serious damage which cannot be reasonably excluded in advance, even if all due care has been exercised. In such a case, there is no possibility to liberate oneself from liability. In other cases, when the damage arose due to other reasons than a particularly hazardous activity the person operating an enterprise or another facility which is particularly hazardous can be released from the duty if the damage was caused by force majeure, or by the very acts of the injured person or by unavoidable acts of another (third) person. An operation is presumed to be particularly hazardous if it is carried out in a factory-like manner or if explosive or similarly hazardous substances are used or handled therein.[60]
c. A special level of duty of care can also be required from a person who performs or provides work. If such a person causes damage to an immovable thing, then he is obliged to provide compensation for it. The liability has a strict (objective) form. The question when the responsible person can be released or not is not expressly dealt with in the text of the Civil Code,[61] and has been not decided yet by courts, being still broadly discussed.
d. There is also a requirement to act with a higher level of duty of care when operating a means of transport. The operating person is obliged to pass an exam verifying the special knowledge and ability to operate a means of transport, and subsequently to obtain a special permit to operate a means of transport. These procedures are supposed to ensure that the operator is able to act with the required higher level of duty of care and to avoid standard danger arising from the traffic. Consequently, there is strict liability imposed for damage arising from the operation of means of transport. The construction is the same as in the case of damage arising from particularly

58 ~~Tomsa,M., Odpovědnost za škodu způsobenou při podnikatelské činnosti. Obchodní právo, 5/2015, pp. 1ff.~~

59 ~~Section (§) 2924 Civil Code.~~

60 ~~Section (§) 2925 Civil Code.~~

61 ~~Section (§) 2926 Civil Code.~~

hazardous operations: in the case of a damage caused by circumstances originating from the operation strict liability is imposed on the operator without a possibility to be released. In the case of damage caused 'only' by the specific nature of operation in question, the strict liability arises, too, but the operator is allowed to be released from the duty to compensate for the damage (to be liberated) if he proves that the damage could not have been prevented despite having exerted all the efforts that may have been required. The responsible person is the operator, and if the operator cannot be determined the owner of the means of transport is presumed to be the operator.[62]

e. The special duty of care and the following special type of responsibility is imposed in the case of damage caused by a defective product. There is the harmonised European directives on consumer protection. According to them a business placing a movable thing on the market as a product to be sold, leased or otherwise used, is liable jointly and severally with the person who produced, gained or otherwise acquired the product or its part, and also with the person who marked the product or its part with his name, trademark or otherwise.[63]
f. The special duty of care and the strict liability is also borne by a person who has taken over from another person a thing that is the subject of his obligation. In the case of damage caused to this thing, this person has a duty to compensate for it. He can liberate himself by proving that the damage would have occurred in any case (*vis maior*).[64]
g. Similarly, as in the previous case, a higher level of duty of care is required and stricter liability is borne by the operator of the activities typically associated with leaving things at a particular place (e.g., in the waiting room of a medical practitioner, etc.). There is also a reason for liberation if one proves that the damage would have occurred in any case (*vis maior*).[65]
h. Also, a person who regularly operates accommodation services is obliged to provide compensation for the damage caused to a thing which a guest brought to the premises reserved for accommodation or the storage of things, or to a thing which was brought there for the guest. There is a possibility of liberation if the provider of accommodation proves that the damage would have occurred in any case, or that the damage was caused by the guest or a person accompanying the guest at the guest's will. In such a case the provider of accommodation is released from the duty to provide compensation for the damage. Other grounds for the release from such duty are disregarded.[66]
i. The damage caused by information or advice is a kind of liability for damage, newly incorporated into the Civil Code so there is a lack of court decisions and commentaries explaining legal questions connected with this subject-matter. The responsibility is imposed on the person who offers professional performance as a

62 ~~Sections (§) 2927 – 2932 Civil Code.~~

63 ~~For more details *see* Sections (§§) 2939–2943 Civil Code.~~

64 ~~Section 2944 Civil Code.~~

65 ~~Section 2945 Civil Code.~~

66 ~~For more details *see* (§) 2946 – 2949 Civil Code.~~

member of a vocation or profession, or otherwise acts as an expert, and if he provides in this position payable, incomplete or incorrect information or harmful advice. This liability is considered (without an expressly formulated legal text) to be a strict (objective) one. The text of the Code also lacks a formulation about the conditions of liberation. Nevertheless, some authors hold the view there is a possibility to be released when proving *vis maior*.[67]

If the information or advice was not given as a payable one (being gratuitous), the responsibility arises only when the damage was caused intentionally.[68]

It is also of less importance if the damage arises *ex contractu* or *ex delicto*: the liability is built in both cases on the legal grounds contained in Section (§) 2950 Civil Code.

This type of liability can be applied in a number of situations when a person provides information or advice in the position of a professional with the corresponding level of professional knowledge and carefulness. Typical situations where this kind of liability for damage can be applied are as follows: legal practitioners (esp. attorneys, notaries, and tax advisers), economic advisers, or other professionals.

There are also the other situations of special duty of care than is stated expressly in the Code Civil: so, the Supreme Court decided in the file NS 25 Cdo 493/2015 from 20.5.2015 (available at www.aspi.cz), that evident excess from regular style of football can result in the liability for injury.

II. Medical Practitioners

44. The duty of care of medical practitioners, who may cause injury to the physical and psychical integrity of individuals, is logically the subject of great attention of the legislators and court practitioners. The former concept of health care in Czechoslovakia and later in the Czech Republic had the character of a public relation arisen from the duty of public authorities to take care of the patients and from the publicly organised health care. Since 1989 (the change of the communist social and economic regime into the capitalist one) the grounds and the organisation of health care have been changed step by step: the prevailing legal grounds of health care became the private ones, based on a private contract between the medical practitioners and the patient. Nevertheless, there still exists an area of public health care where the duty of an individual to take care of his own health has the character of a public duty and a public legal relation, established in the legal acts on public health.[69] In many cases, the public duty of health care leads, on the grounds of the duty to conclude a contract, to the conclusion of a contract of health care.

---

67 Hurdík, J. Die Haftung für Information und Rat nach dem neuen tschechischen Zivilgesetzbuch. In em. o.Univ.- Prof. DDr. h. c. Dr. Rudolf Welser. Rat und Auskunft als Grundlage der Haftung bei der Veräu3erung von Wertpapieren nach dem Recht der CEE-Staaten mít Beitragen zur Haftung von Ratingagenturen. Erste Auflage. Wien: MANZ ´sche Verlags- und Universitätsbuchhandlung, 2016, p. 60 – 61.

68 Section (§) 2950 Civil Code.

69 Act No. 258/2000 Coll., on Public Health.

45. The ‘private part’ of health care is currently regulated by two statutes. The contractually established health care can be found in the Civil Code as part of the set of types of contractual obligations.[70] Another part of health care is regulated in a special act on medical services.[71]

The above-mentioned legal regulation of health care is accomplished by regulatory acts.[72]

Two kinds of liability for damage can be applied within the framework of the provision of medical services:

a. The stricter type of liability is connected with the fulfilling of the duty of performance for another person and with using a defected thing. The duty to compensate for the damage caused by using a defected thing is to be applied, as the Civil Code expressly establishes[73], when medical services are provided.[74] The term ‘medical services’ is to be understood in the sense used by the Act No. 372/2011Sb./Coll., on Medical Services. Medical services have a large extent, including the ambulatory and clinical health care, the care provided by medical doctors (both general practitioners and specialists), other medical staff, pharmacies, etc. The term ‘used thing’ for the performance of the duty can mean, for example, a defective hypodermic needle/syringe, a defective dental borer, a defective X-ray machine, contaminated transfusion blood, a defective medicinal drug, etc.[75]
b. In other cases of liability, the medical practitioners can be liable for medical malpractice. This liability is built on the grounds of a required duty of care, called here acting *lege artis*. For the arising of this (general) kind of liability the breach of acting *lege artis* is required (e.g., a false diagnosis, therapy, and other care which is necessary to be provided with a high standard of medical art and science). It depends on the character of the breached duty of care (contractual or delictual) if there is a subjective or objective liability.[76] Nevertheless, in both kinds of duty of care (contractual and delictual), the medical practitioner is a professional provider and guarantor of the patient’s health (his physical and mental integrity). The

70 ~~*See* Sections (§) 2636–2651 Civil Code, the full text of which is accessible on the website: www.justice.cz.~~

71 ~~Act No. 372/2011 Coll. on~~ Medical~~Legal Services and Conditions of their Performance.~~

72 For example: Act No. 123/2000 Sb./Coll., on Medical Means, or Act. No. 3788/2007 Coll. on Medicaments.

73 The same conclusion can be found in the Decision of the Supreme Court 2 Cdon 662/96. Available at www.nsoud.cz.

74 Section (§) 2916 Civil Code.

75 Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1638.

76 *See* above the General introduction, § 5.

Supreme Court declared that it is necessary to prove, as the condition of this kind of liability, that there was *nexus causalis* between the use of the thing and the occurrence of the damage. Further, the Supreme Court also decided that *nexus causalis* exists only where the dangerous character of the used thing was proved.[77] The liable person cannot be released from the duty.[78] Within the framework of medical care there are more cases that can be labelled *hard cases*. The practical difficulties connected with the necessity to prove the causal link of both the predictability[79] of the injury and the breach of duty of care on one side and the occurrence of the damage on the other led in the development of judicial practice to the moderation of the above-mentioned conditions. A model was found in the Austrian court practice where it suffices for the arising of the liability to give prima facie evidence. For example, the patient proves that the defective medical care *could have* led (i.e., it did not lead with certainty) to an injury.[80] The Czech courts supported this tendency in their decisions.[81] Another source of inspiration was found in the theory of *loss of chance*, elaborated mainly in the French private law. This way towards the moderation of the strict conditions for compensation of damage does not consist in establishing *nexus causalis* but in replacing the traditionally considered damage with the loss of chance. On the grounds of the Czech limited legal concept of the damage allowed to be compensated for[82], the theory of loss of chance cannot be acceptable in any case but only when the loss of chance has an immaterial character. In that case, the compensation for non-pecuniary loss can be claimed.

The injured person´s position has been newly reinforced through the decision of Constitutional Court file ÚS 14/17 from 9.5.2018 (available at http://nalus.cz), which pronounced the reverse of burden of proof case the lack of proof had been caused by provider of health care.

---

77 The Decision of the Supreme Court 25 Cdo 508/2005, available at www.aspi.cz.

78 There exist, though, some doubts about the strict (objective and absolute) character of liability formulated in Section (§) 2936): *see* Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1637.

79 Sztefek, M., Předvídatelnost škody v novém občanském zákoníku. Jurisprudence, 5/2014, pp. 25ff.

80 The Decision of the Austrian Supreme Court (OGH) 6 POb 3/98d; *see also* Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1572.

81 The Decision of the Supreme Court 30 Cdo 332/2007; *see also* Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1572.

82 Section (§) 2956 Civil Code.

III. Legal Practitioners

46. The legal regulation of attorney's liability for damage can be found in Act No. 85/1996 Coll., on Attorneys. Section (§) 2, paragraph 1, a) and Section (§) 3, paragraph 2, allow attorneys to perform their professional activities within the Czech Republic in all branches of the legal order.

Pursuant to the Section (§) 24, paragraph 1, of the above-mentioned Act, the attorney is liable for damage caused to his client while exercising his profession. The attorney has also a duty to compensate for the damage caused by a third person employed by the attorney for performing his obligation to the client.

IV. Builders and Architects

47. The duty of care and liability for damage of builders and architects is not established in a specific legal regulation. Even though buildings – due to their complexity and risks connected with the building site – require an evidently higher level of care, the legal solution is derived from the general duty of care of professionals[83] and its construction of liability (the subjective one, i.e., with fault) is presumed to be negligence, 'if a tortfeasor demonstrates special knowledge, skill or diligence, or undertakes to perform an activity for which special knowledge, skill or diligence is required, and fails to apply these special qualities'.[84] The liability can be based (more frequently) on a contract concluded by a builder or an architect and a contractual party. Then the liability of the builder or the architect has the character of strict liability with the possibility of being released in the case of vis maior.[85]

There is also a statutory liability of the architect or the builder so the following is required: damage resulting from operating activities[86], damage to an immovable thing[87], and damage caused to a thing taken over from another which is the subject of his obligation.[88]

V. Others (Tax Advisers)

48. The liability of tax advisers is established in Act No. 523/1992 Coll. on the Profession of Tax Advisers and on the Chamber of Tax Advisers. The tax advisers are unified in a special association of professionals performing professional advice for payment.

Pursuant to Section (§) 6 of the above-mentioned Act, the tax adviser is liable to his client for damage caused by him, by his employees or by his substitutes, while exercising his profession. There is a possibility of being released from liability if the tax adviser proves that there was no possibility to avoid the damage.

---

83 Section (§) 5 Civil Code.

84 Section (§) 2912, para. 2, Civil Code.

85 Section (§) 2913 Civil Code.

86 Section (§) 2924 Civil Code.

87 Section (§) 2926 Civil Code.

88 Section (§) 2944 Civil Code.

§2. Liability of Public Authorities

49. The first legislation regulating liability of the state for damage caused by the exercise of the state power was incorporated into the Czech legal order in 1969.[89] Currently, there is in force a special act[90] regulating largely the responsibility for damage caused by authorities exercising the public power. The responsible persons are:

a. State – within the exercise of the state power.
b. Territorial self-governing units with a transferred scope of authority – by the exercise of public power entrusted to them by a statute within the scope of their autonomous authority.

The conditions of the responsibility of the state are

1. a damage[91] caused:
   - by the state organs;
   - by the legal and natural persons during the exercise of the state power or state administration on the basis of a statute (including notaries and judicial distrainors);[92][93]
   - by organs of territorial self-governing units for the damage resulted from the exercise of state administration.
2. a damage caused:
   - by an official decision;
   - by an incorrect administrative procedure.[94]

The procedure of application of the responsibility of the state is as follows:

- The ministries and other organs of state administration act on behalf of the state.
- Illegal decisions must be annulled or changed.
- All instruments of protection of rights must be applied.
- The condition of liability arising from taking a person to custody or prison is the factual act of taking the person in custody or in prison.
- The incorrect official procedure also includes failure to act in a case where the state bodies should have acted.
- The claim for compensation is to be applied with the departmental organ of state administration.
- If the injured person is not satisfied within six months from filing his application, the injured person can bring his claim to the court.

---

89 Act No. 58/1969 Coll.

90 Act No. 82/1998 Coll., on Responsibility for Damage Caused during the Exercise of the Public Power.

91 How to specify the amount of damage to be compensated *see* e.g. the Decision of the Supreme Court from 16 Sep. 2015, 30 Cdo 1290/2014 (Sbírka rozhodnutí/Collection of decisions No. 54, vol. 5, 2016, pp. 746–757.

92 In cases established in Section (§) 4 Act No. 82/1998 Coll.

93 About the shared liability of both victim and state organ exercising the public power *see* the decision of the Supreme Court 30 Cdo 3069/2014. Available at www.nsoud.cz.

94 About the responsibility of the state for the injury caused by the breach of the right to be informed *see* the Decision of the Supreme Court from 16 Sep. 2015, 30 Cdo 3629/2014. (Sbírka rozhodnutí/Collection of decisions No. 55, vol. 5, 2016, pp. 758–763).

Unlike the state, the procedure of applying responsibility of territorial self-governing units is modified with regard to the differences of territorial self-governing units.

In matters not dealt with in the special legal regulation the Civil Code is to be applied.

Personal liability of an official towards the injured person is not legally regulated. It was only Act No. 82/1998 Coll. that established that the state or territorial self-governing bodies are entitled to claim the damages paid to the injured person to be delivered by the official and the territorial self-governing unit with transferred scope of authority.

§3. Abuse of Rights (i.e., Injury Caused in the Exercise of Legal Rights; Abuse of Legal Procedure)

50. The current Civil Code adopted various elements of the concept of abuse of rights taken from the Swiss, German, and Austrian Civil Codes. The result is as follows:

a. If there is an evident abuse of rights, protection of the exercise of rights is refused. The theory of abuse of rights has been elaborated in the Czech law but it has not been stabilized yet. The majority opinion sees the conception of abuse of rights in terms of intention to harm. The legal consequence of an evident abuse of a right is not, as in the Section (§) 226 German Civil Code (BGB), inadmissibility of such right, but, as in Article 2, paragraph 2, Swiss Civil Code (1907), refusal of legal protection of such right.
b. The above-mentioned explanation of the basic concept of abuse of rights can be supported by the model of responsibility for the damage caused by an intentional breach of good morals. The second part of this rule contains a special rule establishing that if the tortfeasor caused the damage by breaching good morals and if he exercised his right '*he has the duty to provide compensation for the damage only if his main purpose was to harm another*'.[95] It is possible to deduce that the legislator accepted the criterion of abuse of rights based on the theory of *exceptio doli generali.*[96]

Abuse of legal procedure is not considered to be abuse of rights. While the concept of abuse of rights belongs to the private law or to the legal position of a private individual (which could also be applied in public law but only with an impact on a private person), abuse of legal procedure of public servant should be considered as a delict within public law, usually called *exceeding of authority***.** The term 'abuse of rights' cannot be part of the terminology of the exercise of public power as a public authority cannot abuse its rights but only abuse its powers.[97]

---

95 Section (§) 2909.

96 Cf. Motive zu dem Entwurfe eines Bürgerlichen Gesetzbuches für die zweite Lesung des Entwurfs des Bürgerlichen Gesetzbnuches, Bd. 1, 1897, pp. 476 ff.

97 This opinion was elaborated very clearly in the French legal doctrine. *See* Hauriou, Traité de droit administratif, Paris 1921, p. 455.

§4. Injury to Reputation and Privacy (of Natural and Legal Persons)

51. The former Czech Civil Code emphasized mainly the regulation of material subjective rights and suppressed personal rights. The new Civil Code endeavoured to give an equal position to both parties within the Civil Law regulation. Nevertheless, the rules regulating the personal rights are not systematically interwoven with the material rights. One of the consequences is an incorrectly functioning system of liabilities arising from breach of personal rights and material rights.

The main part of (individual) personal rights is concentrated in the General Part of the Civil Code.[98] Within the framework of the regulation of legal persons only a limited extent of the so-called personal rights belonging to them can be found.[99]

Protection of individual personal rights is based on Section (§) 2910 Civil Code. The injury to reputation and privacy can bring responsibility under Section (§) 2909 Code Civil if it is intentional and contrary to good morals (*contra bonos mores).*

The infringement of individual personal rights is sanctioned by specific means enumerated in Section (§) 82 Code Civil and also by general parts of the Civil Code dealing with liability for damage. The injured person can claim:

a. refraining from the unlawful interference (*actio negatoria*);[100]
b. rectification of the consequence of the unlawful interference (*restitutio in integrum*);[101]
c. compensation for material damage;[102]
d. compensation for immaterial loss which also includes mental distress.[103]

After the death of a natural person whose personal rights were infringed any close person[104] of him may claim the protection of the infringed personal rights.[105]

---

98 Sections (§§) 81 – 117.

99 Section (§) 135.

100 Section (§) 82, para. 1, Civil Code.

101 Section (§) 82, para. 1, Civil Code.

102 Section (§) 2910 Civil Code.

103 Section (§) 2956 Civil Code.

104 Section 22, para. 1, Civil Code, defines 'close person' as follows: '*a relative in the direct line, sibling and spouse or a partner under another statute governing registered partnership (hereinafter a "partner"); ~~a "partner");~~ other persons in a familial or similar relationship shall, with regard to each other, be considered to be close persons if the harm suffered by one of them is perceived as his own harm by the other. Persons related by affinity and persons permanently living together are also presumed to be close persons*'.

105 Section (§) 82, para. 2, Civil Code.

52. A legal person, too, has its personal rights protected but only to the extent expressly defined by the Civil Code:

a. protection against unlawful infringement of the right to the (trade) name of a legal person;
b. protection against unlawful infringement of goodwill of a legal person;
c. protection against unlawful infringement of privacy (private life) of a legal person;[106]

The infringed legal person may claim:

a. refraining from the unlawful interference (*actio negatoria*);[107]
b. rectification of the consequence of the unlawful interference (*restitutio on integrum*);[108]
c. compensation for material damage.[109]

The compensation for immaterial loss is reserved only for natural persons.[110]

A specific type of a hard case is the potential or real conflict of two or more personal rights. The Czech Constitutional Court found a solution of this conflict in the proportionality test, similarly as the Constitutional Council in Germany and other European courts.[111]

§5. Interference by a Third Person with Contractual Relations

53. The contractual relations principally affect only the contractual parties. The interference by a third person is to be considered unlawful, unless the third person proves that his interference was lawful.[112] On this ground, the contractual party may be released from duty to compensate the damage arising to the other party through the interference by a third party when he proves that the interference was vis maior, i.e., that he was temporarily or permanently prevented from fulfilling his contractual duty due to an extraordinary, unforeseeable, and insurmountable obstacle arising independently of his will.[113]

---

106 Section (§) 135, para. 1,2, Civil Code.

107 Section (§) 82, para. 1, Civil Code.

108 Section (§) 82, para. 1, Civil Code.

109 Section (§) 2910 Civil Code.

110 Section (§) 2956 Civil Code.

111 An elaboration of this test can be found in Ronald Dworkin´s work Taken rights seriously.

112 As, for example, the situation described in Section 2913 para. 1, i.e., lawful interference of a third person interested in the performance of the contract.

113 Section (§) 2913, para. 2, Civil Code.

§6. Others

54. The Civil Code regulates several types of special liability for one's own acts or for the acts of any other person than the tortfeasor. These kinds of liability also include, besides those mentioned above-mentioned[114] and below[115], various situations dealt with by courts in their practice.[116]

Part II. Liability for Acts of Others

Chapter 1. Vicarious Liability

§1. Employee/Employer

55. The Civil Code does not regulate a special liability of an employer for the damage caused by his employees within the framework of the employment relation. Nevertheless, in such cases the general type of liability for the damage caused by a helper[117] may be used.

The Czech Civil Code distinguishes a specific liability caused when *fulfilling a debt* and other situations generally regulated in Section (§) 2914.[118] When the fulfilling a debt it does not matter what position the helper holds: either a position depending on the debtor, or the position of an autonomous subcontractor. It does not matter, either, if the debt resulted from the contract or from a legal rule, for example, from unjust enrichment.

There is also liability for damage caused by a member of a body, an employee or another representative of a legal person.[119]

In other cases, when an activity is exercised by a helper the rule of Section (§) 2914 is to be applied.[120]

---

114 *See* Part I, Chapter 2.

115 *See* Part II.

116 An enumeration of them can hardly be made because of the number, overlaps with the judiciary and missing statistical data.

117 Section (§) 2914 Civil Code.

118 The decision of Supreme Court 1641/2014, available at www.nsoud.cz.

119 Section 167 Civil Code, towards this regulation *see* the text below, Part II, Liability for Acts of Others.

120 *See* Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář., 1. vydání. Praha: Nakladatelství C. H. Beck, 2014, p. 1578.

The essential idea of liability for the helper is similar to the rule of Section (§) 831 German Civil Code (BGB): the principal is to compensate for the damage caused by the helper. Nevertheless, the concrete construction of his liability is rather different.[121]

The specific features of liability for the helper are as follows:

The liability of the principal is not built on the fault of the principal: the principal who wants to profit from the helper's activity should also bear the risk of the helper's fault, and is liable for the choice of his helper. At the same time, the position of the injured person cannot get worse when compared to the personal acting of the principal. The principal may not release himself from liability with the proof that he chose, instructed and supervised the helper with all necessary care.

56. In legal relations among the employees, a specific rule is to be applied: when an employee, as a helper of the employer, caused in the course of his work damage to another employee, the employer has the duty to compensate the damage suffered by the employee-injured person.[122]

A necessary condition of the liability for the helper is the subordinate position of the helper in relation to the principal. Subordination is to be understood factually, not legally. The dependence must be functional, really existing, and really executed. This functional relation influences the considering of cases of excess: for example, the Supreme Court held that the helper could still act in the interests of the principal even if he acted while being drunk.[123]

57. The subsequent damage caused by an employee in the position of the helper of the employer may be compensated for, according to Section (§) 2914 Civil Code, by the employee to the employer according to the rules of Labour Code.[124] Labour relations are governed by their own special regulation of liability for damage and the cornerstone of this regulation is Section (§) 250. This provision states that: 'The employee is responsible to the employer for the damage that he caused him by misconduct in the performance of work tasks or in direct connection with the performance.'

The prerequisites of the employee's liability for damage caused by him are:

- Misconduct in the performance of work tasks or in direct connection with them.
- The occurrence of a damage.
- A causal link between the breach of work duties and the damage.
- Fault of the employee.

It is therefore the personal employee's responsibility (for his fault) and the fault must be proven by the employer. However, it is sufficient to prove negligent fault.

---

121 Compare Spindler, G. – Rieckers, O., Tort Law in Germany. Kluwer Law International BV, The Netherlands, 2015, p. 67 – 73.

122 Section (§) 265, para. 2, Act No. 262/2006 Coll., Labour Code.

123 The Decision of the Supreme Court Rc 55/71. Available at www.nsoud.cz.

124 Act No. 262/2006 Coll., Labour Code.

58. The employer is liable for damage caused by his employees pursuant to Section (§) 265–Section (§) 268 Labor Code. The employer's responsibility under these provisions is divided into:

a. General liability for damage, Section (§) 265 Labor Code.[125]
b. Liability for damage to personal belongings left by his employees, Section (§) 267–Section (§) 268 Labor Code.
c. The employer's liability for damage in relation to an employee which he suffered while preventing some damage, Section (§) 266 Labor Code.

59. Ad a) The prerequisites of general liability of the employer for damage caused by his employees are:

- A breach of legal duties, or an intentional conduct against good morals by the employer, a breach of legal obligations by the employer's employee acting on his behalf.
- The occurrence of damage caused by the employee.
- A causal relationship between the occurrence of the damage and the breach of legal obligations.

The employer's liability for damage caused by employees is therefore conceived as an objective liability where fault is not required. An exception is liability for damage caused by intentional conduct against good morals, where a qualified form of fault in the form of an intention of the employer is required.

60. Ad b) The employer has a duty to protect the things that an employee, in connection with the fulfilment of his work tasks, left in a designated location or at the usual venue for their storing. Most often it is lockers in the locker room, office desks, etc.

Things that are not normally taken to work, e.g., large amounts of money, jewellery or other valuables, may be taken into a special custody by the employer (e.g., in a vault). If he takes them to custody, then he is obliged to compensate fully the damage that may occur. However, if the employer has not taken the above-mentioned things into a special custody, he is obliged to pay compensation to the employee only up to the amount of CZK 10,000. If, however, it is found out that the damage to these things was caused by another employee of the employer, the employer is obliged to pay full compensation.

The right to compensation for damage extinguishes if an employee fails to report its occurrence to the employer without undue delay, i.e., within fifteen days at the latest since the day he learned of the damage.

61. Ad c) The employer must compensate the employee for the damage that arose when the employee was preventing damage that was threatening to the employer's life or health if the damage did not occur due to a deliberate act of the employee and the employee acted in a manner proportionate to the circumstances, i.e., he has not committed an excesses. Then the employee has also the right to reimbursement of reasonable costs incurred. The right to damages in this case also belongs to an employee who was

125 Section (§) 265 Labour Code.

preventing imminent danger to life or health, if the employer would have been liable to compensate the damage.

§2. Independent Contractors

62. In some cases it is difficult to determine when the relation of the principal and the helper is ended according to Section (§) 2914.[126] That is why this Section (§) also includes another provision regulating the liability for damage caused by a person not subordinate to the 'principal' but being in an autonomous position fulfilling the obligations of the principal (subcontractor).

In other situations, Section (§) 2914, second sentence, is to be applied.

Also, in the described situations it necessary to take into account the specific rule mentioned above[127] which regulates the contractual relations among the creditor, the debtor, and the debtor's subcontractor as established in Section (§) 1935. Section (§) 1935 is *lex specialis* in relation to Section (§) 2914.

Also, in the case the subcontractor's liability for damage, it is not distinguished whether the obligation has resulted from a contract or from a legal rule.

Some conditions not important in the case of a depending helper are of great importance in the case of the subcontractor:

A person different from the debtor who has undertaken to carry out a particular activity independently (subcontractor) is not considered to be a helper in the sense of Section (§) 2914, first sentence.

The subcontractor acts (performs his duty) on his own and at his own responsibility.[128]

The debtor has a duty in relation to the subcontractor: (a) to choose carefully the subcontractor (*cura in eligendo*), (b) to supervise carefully the fulfilment of the duty of the subcontract by the subcontractor (*cura in custodiendo*).

If the debtor has chosen the subcontractor carelessly or exercised an inadequate supervision over him, another person is liable as a surety for the fulfilment of the duty to provide compensation for damage. If the debtor proves that he fulfilled both the duties (*cura in eligendo* and *cura in custodiendo*) he can release himself of the duty to stand surety for the subcontractor.

§3. Liability of Legal Entities for Acts of Their Organs (and for Acts of Persons Entrusted with the Power to Act Without Being an Organ)

63. The Czech Civil Code defines the term 'legal person' (or 'juridical person', or 'legal entity') as 'an organised body whose legal personality is provided or recognised by a

126 The decision of Supreme Court 25 Cdo 2492/2014, available at www.nsoud.cz.

127 Section (§) 1.

128 *See* the Decision of Constitutional Court, file II. ÚS 3629/15 – 1. Available at http://nalus.cz.

statute. A legal person may, without regard to its objects of activities, have rights and duties consistent with its legal nature'.[129] The main concept of legal persons[130] is therefore built on the theory of fiction. A clear consequence of this conception is the necessity to declare expressly the legal personality of each (kind of) legal person in a statute. Currently, there does not exist in the Czech legal order the (kinds of) legal persons without being recognized by a statute.[131]

The Czech Civil Code does not accept the capacity of the legal person to act autonomously, *per se*. The legal person is considered to be 'an empty organizational structure' incapable to perform legal acts by itself. Therefore, its organs or other (natural) persons act on behalf of legal persons as established by statutes. The personal status of legal person constitutes *inter alia* the capacity to act, which is divided into (a) the legal capacity as the capacity to manage its legal acts and (b) the delictual capacity, as the capability to be liable for its illegal acts.[132] Generally, both capacities are linked with the legal existence of the legal person and (unlike natural persons) have the same legal construction.[133]

64. The capacity of the legal person to bear legal consequences of its own delictual behaviour (delictual capacity) arises at the moment of the formation of the legal person (most frequently at the moment of incorporation of the legal person into the public registry).[134] Similarly, the delictual capacity ends at the moment when the legal person ceases to exist (most frequently at the moment when it is expunged from the public registry).[135]

As mentioned above, the legal person is not capable to act as an empty structure; its capacity to act is realized through its organs and other representatives and through the accountability of legal persons for acts of their organs and other representatives.

Generally, the acts of legal persons are performed by the following (groups of) persons: (a) organs of a legal entity within the extent established by law or by the memorandum of association of the legal person[136]; (b) employees to the extent typical

---

129 Section (§) 20, para. 1, Civil Code.

130 *See* the first part of the sentence in Section (§) 20, para. 1, Civil Code. The second part ('*...whose legal personality is… recognised by a statute ...*') seems to be – as an unsuccesfull attempt to create the concept built on the theory of reality – without a practical and functional impact on the concept of legal person.

131 For different kinds of legal persons recognized by the Czech law, *see* mainly the Civil Code and the Act No. 90/2012 Coll., on Business Corporations.

132 For delictual capacity *see* the text above, Part I, Chapter 1, §4.

133 *See* Sections (§§) 161–167 Civil Code.

134 *See* Act No. 403/2013 Coll., on Public Registration of Natural and Legal Persons; *see* Sections (§§) 128 ff., Sections 168 ff. Civil Code.

135 Sections (§§) 168 ff. Civil Code.

136 Sections (§§) 151 ff. Civil Code.

with respect to their position or title, the decisive aspect being how they are perceived by the public. Provisions on the representation of a legal person by an employee are applied by analogy to the representation of a legal person by its member or a member of another body not registered in a public register[137]; (c) other appointed representatives (i.e., the persons empowered by the organs of legal persons to act on their behalf which are neither the organs nor the employees on the grounds of the points (a) and (b) mentioned above.

The liability of a legal person for the delictual behaviour of certain other persons has developed in a slightly different manner than their standard legal capacity. The legal person is liable for: (a) an unlawful act, (b) which was committed during the performance of its duties (c) by: (ca) a member of an elected organ, (cb) an employee or (cc) another representative (d) against a third person.[138]

The enumeration of the representatives of a legal person in Section (§) 167 Civil Code does not deal with the regulation of some situations which occur in everyday life and call for a legal regulation. For example, the legal person uses for the performance of its duties a different person than those enumerated in Section (§) 167 Civil Code and this results in a damage caused to another person by this 'factual representative'. The solution of this situation may be application of the rule of liability for the helper as *lex generalis* in relation to Section (§) 167 Civil Code.[139]

Among the situations considered within the framework of this chapter some cases can be found difficult to define. For example, some employees can act without control and without directives how to act. This case, even if formally falls under the liability of employees according to Section (§) 2914, could be considered as the case of liability of employees of a legal person according to Section (§) 167 Civil Code.

Chapter 2. Liability of Parents, Teachers and Instructors or Other Persons with Mandatory Supervision (Minors, Mentally Ills, Persons with Hazardous Properties)

65. Czech Civil Code also regulates situations where damage is caused by a person who cannot assess the consequences of his actions, or by a person who has hazardous properties. This person may be:

a. A minor who has not acquired full legal capacity.
b. A person who suffers from a mental disorder.
c. A person who knowingly brings himself into such a state in which he cannot control his conduct and consider its consequences.
d. A person with hazardous properties (aggressive people, alcoholics, people acting rashly, etc.).

---

137 Section (§) 166, para. 1, Civil Code.

138 Section (§) 167 Civil Code.

139 Section (§) 2914 Civil Code. For more details *see* Part II, Chapter 1, § 1.

§1. Liability for Minors

66. A minor who has not acquired full legal capacity is a person before attaining the age of 18. A person with full legal capacity may also be someone who was granted legal capacity before attaining the age of 18 by a court, the so-called emancipation[140], or who gained legal capacity by marriage.[141] A minor who has not acquired full legal capacity will be obliged to compensate for the damage caused by him if he was capable to control his behavior and assess its consequences (Section (§) 2920, paragraph 1, Civil Code) Determining what a minor is able to control and asses is based on an objective assessment with regard to his age and with regard to the subjective factor which refers to the personality of a particular minor person (his properties, intellect, family background, etc.). Therefore compensation must be provided even by a minor without full legal capacity if he has the so-called tort capability.
67. Tort capability is defined in Section (§) 24 OZ in the following manner: 'every person is responsible for his actions, if he is able to assess and control them'. The injured person has the right to compensation even if he did not resist the tortfeasor because of fear of harming him. For example, he feared his own physical or mental superiority over the minor and did not intervene sufficiently in order to prevent damage. This 'friendly' acting towards the minor cannot be a breach of prevention duties which are otherwise imposed on everyone (Section (§) 2900[142], Section (§) 2901, and Section (§) 2903[143], Civil Code) and the injured person cannot be blamed for that. The injured person will be entitled to compensation even in situations where a minor could have controlled his actions and asses their consequences, but because of the financial situations of the minor tortfeasor and the injured person this seems fair. Therefore, it is always necessary to judge not only whether there was tort capability of a minor tortfeasor but also the personal and financial circumstances of the two parties of this legal relationship.

§2. Responsibility for the Actions of Mentally Ill Persons

68. A person suffering from a mental disorder is liable for damage under the same conditions as a minor person. For deciding whether or not he will be liable to pay damages to the injured person it is not essential that he has been, due to mental disorder, limited in his legal capacity by the court. What is decisive is whether he was able to control his actions and assess their consequences. On the contrary, if a person has been restricted in his legal capacity by the court because of a mental disorder, it may happen, in rare cases, that at the time of his unlawful acting he had full tort capability (i.e., the capability to control his actions and assess their consequences). In

---

140 Section (§) 37, Civil Code, the court will grant full legal capacity to a minor over sixteen who is not fully *sui juris* at his request or at the request of his legal representative if he proves his ability to earn his living and take care of his affairs.

141 Section (§) 30, para. 2, in connection to Section (§) 672, para. 2, Civil Code, allows in exceptional cases to enter into marriage to a minor who is not fully *sui juris*, if he/she is sixteen and if it is authorized by court.

142The decision of Supreme Court, file Tdo 757/2015, available at www.nsoud.cz.

143 The decision of District Court České Budějovice, file 35C 453/2013, available at www.aspi.cz.

the case of a person with legal capacity restricted by the court, however, the burden of proving the existence of tort capability lies with the injured person.

§3. Responsibility for the Conduct of a Person who Knowingly Put Himself into a Condition in Which He is not Able to Consider His Actions

69. The person who has knowingly put himself into a condition in which he is unable to consider his actions is liable to pay compensation for the damage caused by him in this condition. This condition is usually brought about by the ingestion of alcohol or other addictive substances. Even if a person is unable to control his actions and assess its consequences in such a condition he is considered to be fully capable of tort, having committed a violation of preventive obligations established in Section (§) 2900 Civil Code. If he was brought into this condition by someone else (e.g., someone got him drunk), then they will be liable to pay compensation jointly and severally.
70. Minor persons as well as people suffering from a mental disorder may pay compensation for the damage caused either by themselves or jointly and severally with the persons who were supposed to supervise them. These persons are mostly parents but they may also include grandparents, guardians, school teachers, employees of health care facilities, and others. Pursuant to Section (§) 2921, Civil Code, there will be joint and several liability for damages arisen for persons who should have exercised supervision together with the actual tortfeasor provided that the tortfeasor was at the time of the unlawful conduct capable of tort and the person who should have supervised him neglected such supervision.[144] For example, the supervision that a parent has of a child or a teacher of a pupil is not a permanent one but such that must be exercised with regard to the minor's age and with regard to his intellectual abilities and maturity. An appropriate supervision during everyday activities, such as taking a walk or playing in the park has different requirements for the conduct of those with mandatory supervision, and others in a situation where minor children, e.g., at the age of seven, manipulate the putter (or in any other sport). Supervision of minors does not only mean to prevent injury at the moment when it occurs but first of all to create conditions (by organizing games, by practical training, etc.) to prevent the possible occurrence of risk.[145]
71. The persons that are obliged to exercise supervision may be exclusively obliged to pay damages to the injured person by themselves. This situation occurs when they neglected supervision and the tortfeasor himself was not capable of tort. The fact that supervision was not neglected has to be proven by the supervising person. Liability of persons obliged to supervise someone is limited to the extent to which the damage itself is possibly caused by the injured person himself. Other circumstances on his part are also taken into consideration if they contributed to the harmful effect in some way.

In the event that e.g., a minor was not capable of tort and the parent proves that he did not neglect supervision, no one will be obliged to pay damages. It should be noted again that there is the possibility of applying Section (§) 2920, paragraph 2, according to which, if it were fair with regard to the financial situations of the tortfeasor and the injured person the liability for damages may arise even for a person not capable of tort.

---

144 The Decision of Constitutional Court, file I. 1587/15-1, available at http://nalus.usoud.cz.

145 The Decision of Supreme Court, file 25 Cdo 4507/2010 available t http://kraken.slv.cz//.

§4. Liability for Damage Caused by a Person with Hazardous Properties

72. Liable for compensation under this provision is the person who consciously will take care of a person with hazardous properties in the sense that he will provide such a person, without his being in need of it, with a shelter or will make him perform a particular activity.[146] This activity can be performed at home, in a shop or in any other similar location. If the person with hazardous properties causes damage during this activity the person who has taken care of him will be liable jointly and severally with the tortfeasor and will have to pay damages to the injured person.
73. It is a classic 'culpa in eligendo', i.e., a special legal regulation accompanying the general regulation, which is vicarious liability for employees, agents or assistants as well as liability for work activities. A person who has joint liability with the tortfeasor is liable for choosing such a person to perform certain activities and for the risk that is associated with his dangerous properties.

The assumptions of this joint liability are as follows:

- The person who has taken care of that particular person has known about the hazardous properties.
- The tortfeasor has hazardous properties (aggressiveness, excessive alcohol consumption, considerable carelessness, etc.).
- The damage was caused by the person with hazardous properties and due to these hazardous properties during the activity which he performed for the other person.

Chapter 3. Liability for Things and Animals

74. A thing is defined in the Civil Code as 'anything that is different from a person and that serves the needs of people' (Section (§) 489, Civil Code). A live animal has special importance and value as a living creature gifted with senses. A live animal is not a thing and the provisions about things are to be applied to it mutatis mutandis only to the extent in which it does not contradict its nature (Section (§) 494, Civil Code). However, in the area of civil liability for damage caused it is necessary, considering the special legislation, to make a difference between 'things' and 'animal'.
75. When damage is caused by a thing it is necessary to distinguish the following situations:

a. Damage caused by defective goods which are the subject of a contractual relationship (this also applies to the provision of medical, social, veterinary, and other biological services), Section (§) 2936 Civil Code.
b. Damage which the thing causes by itself, Section (§) 2937, paragraph 1, Civil Code.
c. Damage which was caused by throwing a thing out of a room or a similar place, Section (§) 2937, paragraph 2, Civil Code.
d. Damage caused by the collapse of a building or the separation of a part of a building because of defects in that building, Section (§) 2938, Act No. 89/2012 Coll.
e. Damage caused by a defect in a product Section (§) 2939, Civil Code (*see* Part Three, Chapter Two).

76. When the damage is caused by an animal we distinguish the following situations:

a. The damage was caused by an animal which was under the supervision of its owner (Section (§) 2933, Civil Code).
b. The damage was caused by an animal which was under the supervision of another person (Section (§) 2933, Civil Code).

---

146 Section (§) 2923 Civil Code.

c. The damage was caused by a domestic animal which was used for work or commercial activities (Section (§) 2934, Civil Code).
d. The damage was caused by an animal which serves as an assistant to a disabled person (Section (§) 2934, Civil Code).

§1. Damage Caused by Defective Goods When Fulfilling an Obligation (Section (§) 2936 Civil Code)

77. Until the Civil Code No. 89/2012 Coll. came into effect, liability for damage caused by things only applied to cases where there was a damage due to an inherent property in the device or another thing that have been used in fulfilling an obligation or in providing medical, social, veterinary and other biological services (~~Section (§) 420~~section (§) 421a, Act No. 40/1964 Coll.). This provision unjustifiably encumbered professionals who proceeded lege artis without violating any legal obligation. Liability was thus restricted to cases where damage was caused by a defect in a thing used during the performance. Therefore, under the current legislation, the provider of health services will not be liable in situations where he provided the service absolutely lege artis and within this service he used a thing that was flawless. If, even in such a case, the patient suffers damage (e.g., if there is an extraordinary and unpredictable reaction of the patient's body) the provider of medical services will not be liable for damage to health. The patient (the injured person) is not entitled to damages in such cases and he can only use his commercial insurance for unforeseen consequences. If the thing used when fulfilling an obligation was defective, the provider of the service (e.g., health care services) is always obliged to pay damages to the injured person. The injured person then will not have to demand compensation from the manufacturer (or the supplier) of the defective product but from the person who had provided him with the service (e.g., a medical intervention).
78. For the correct definition of 'a thing used when fulfilling an obligation' one should see the decision of the Supreme Court, file ~~ref.~~ 25 Cdo 834/2012 ~~Coll.,~~ of 27. 02. ~~February~~ 2013. In that case, the plaintiff sought compensation for damage caused by the flooding of the premises that were rented out by the defendant. The plaintiff argued that the damage occurred by the thing that the defendant was renting. The Supreme Court, however, found that the leased space was not 'a thing used during the performance of the obligation' but the actual subject of the obligation. Therefore, in such cases the provision of Section (§) 2936, Civil Code, does not apply. One should consider liability for breach of contract, e.g., in the form of the right to rent reduction, the right to withdrawal from the concert, etc.
79. If a damage resulted from the special nature of a medicinal product, a special regulation of the Act on Drugs No. 378/2007 Coll. will be applied. The holder of the decision about the registration is liable for the damage caused by the special nature of the medicinal product only to the extent of the damage caused by the side effects that are not listed in the summary of the product, and then for the damage caused by the side effects specified therein if he caused the damage.

§2. The Damage Caused by the Thing Itself

80. Pursuant to this provision the person liable to pay compensation will be:[147]

- the person who had supervision of the thing and at the same time;
- neglected this supervision.

147 Section (§) 2937, para. 1, Civil Code.

If such a person cannot be determined the owner of the thing that caused damage is liable for that damage.

81. The person who has the duty of supervision can be a fiduciary, a lessee, a borrower, or another holder from various legal reasons. It does not matter if it is a fair or unfair holder. If there is no such person, or he cannot be determined, then the liability lies with the owner of the thing.

This is strict liability for failure in the supervision of things. If the person with the supervision duty proves that he has not neglected the supervision then he will be released from the duty to pay damages (liberation).[148]

§3. Damage Caused by a Thing Due to its Falling Down or being Thrown Out of a Room or a Similar Place

82. The person liable for the damage caused by a thing thrown out of the room or another similar place (e.g., roof, scaffolding) is:[149]

- A person who should have supervised the thing and neglected the supervision.
- And together with him the person, jointly and severally, who uses the room out of which the thing fell down or was thrown out.
- If the person who uses the room cannot be found then the owner is liable.

It is absolute liability for which there is no possibility of liberation.

83. There may be the following various combinations of persons liable for damage under Section (§) 2937/2 Civil Code: The person who should have supervised 'the thing thrown out the room' may be solely liable if he was also the person who used the room (regardless of whether legally or illegally). However, if these were two different persons, i.e., one person was liable for the supervision of the thing and another person used the room, these two persons are liable jointly and severally. The injured person may therefore claim damages from any of them and any of these persons is liable for damage. If it is not possible to identify the person who uses the room, then it is the property owner who is liable. The property owner can be liable jointly and severally with the person who should have supervised the thing, if there is no such person, he himself will be exclusively liable.

This is again strict (absolute) liability where the tortfeasor's fault is not is required.

§4. Damage Caused by a Collapse of a Building or Separation of Its Part Due to Defects of the Building or Inadequate Maintenance of the Buildings

84. This legislation meets the standards on which civil codes of continental Europe are based and which were not previously included in the Czech legal order. It is a special aspect of the damage caused by a thing.[150]

85. Requirements for liability for damage caused by a collapse of a building or separation of its part are as follows:

---

148 The decision of District court Jihlava, file 9C 30/2012 – 262, available at www.aspi.cz.

149 Section (§) 2937, para. 2, Civil Code.

150 Section (§) 2938 Civil Code.

- A collapse of a building or separation of its part due to defects in the building or poor maintenance of the building.
- Damage.
- Causal relationship between the collapse (the separation) and the damage.

This is strict liability where the tortfeasor can liberate himself if he proves that the reason of the collapse or separation of a part of the building was not a defect or lack of maintenance but that this event occurred as a result of force majeure (e.g., the effect of natural forces on an otherwise impeccable construction).

86. Protection of the new owner, or his partial protection, is dealt with in Section (§) 2938/2, Civil Code. According to it, the previous owner, too, will be liable jointly and severally for the damage incurred by a collapse of a building or by separation of its part if the damage had its origin at the time when he had the title to building and if he did not inform the new owner (successor) about it. This joint liability arises, if there is damage within a year since the termination of the title. The original (previous) owner will not be liable if there was an evident defect which the new owner (successor) must have been aware of. Neither will be the original owner of the building liable jointly and severally if he transferred, under Section (§) 1918 CC, the title to the thing (building) as was.

§5. Damage Caused by Animals

87. An animal is not considered by the Civil Code a thing in the legal sense of the word. It has a special importance and value as a living creature gifted with senses.[151] The provisions on things will be applied to an animal mutatis mutandis only to the extent that does not contradict its nature (Section (§) 494 Civil Code[152]). An animal and a thing are also clearly distinguished for the purposes of liability for damage, and therefore, if the damage is caused by an animal, the provisions on the damage caused by things will not be applied but instead of it a special provisions will be applied (Section (§) 2933 et seq. Civil Code). Tort capability can be granted only to a person or a legal entity and therefore it is not possible for an animal, though being, unlike things, a living creature, to be liable for the damage it has caused.

88. For the purposes of damage caused by an animal the Civil Code distinguishes:

- An animal normally reared, without a special farming purpose.
- An animal that serves the owner for performance of his profession or for another employment or for making his livelihood.
- An animal which serves as an assistant to a disabled person.
- An animal which was arbitrarily taken from the owner by a third party.

89. If the damage was caused by an animal (without further specification) it will compensated for by its owner. There is an obligation of objective supervision in such a case, i.e., it is irrelevant whether the animal was directly supervised by the owner or the person to whom the animal was entrusted by the owner. The person to whom the animal

151 Sections (§§) 2933 ff., Civil Code.

152 *See* Section (§) 494 Civil Code, according to which '*a live animal has already a special significance and value as a living creature with senses. A live animal is not a thing and provisions on a thing will only be applied to a thing mutatis mutandis to the extent that it does not contradict its nature*'.

was entrusted by the owner or who rears, or uses otherwise, the animal will be liable jointly and severally with the owner. The injured person may therefore claim damages from either of these two persons (Section (§) 2933, Civil Code). In this type of liability the tortfeasor has no possibility of special liberation. There could be applied only general liberation grounds, such as fault or contributory fault (partial liberation) of the injured person. For example, this could be proving that the animal was provoked by the injured person.

90. With the damage caused by an animal that serves the owner for the performance of his job or for another gainful activity, or for making his livelihood, or as an assistant of a person with disabilities (Section (§) 2934 Civil Code), there is a special liberating reason for the owner of the animal. He may be released from the duty of compensation if he proves that he has not neglected due care when supervising the animal, or that the damage would have occurred even when exercising due care. The same liberating reason is also available for the person who the owner entrusted the respective animal to.
91. If the animal was arbitrarily taken by a third party (regardless of whether the animal was in the possession of the owner or the person to whom the owner entrusted it), then this third party is liable for damage. The owner or the person who it was entrusted to and subsequently withdrawn from must prove that he could not have reasonably prevented the withdrawal. Negligent behaviour of the owner who failed to prevent withdrawal of the animal means, for example, not closing the gate of the garden in which the animal is kept, or not having the animal on the leash in open areas. If the owner (or the person to whom the animal was entrusted) behaved negligently and due to that he failed to prevent the withdrawal, he will be obliged to pay damages jointly and severally with the person who arbitrarily withdrew the animal. The liability of the person who arbitrarily withdrew the animal is absolute, without a possibility of liberation (Section (§) 2935, Civil Code).
92. The compensation for the damage caused by specially protected animals is governed separately by special legislation. This legislation is Act No. 115/2000 Coll.[153] (hereinafter the 'Act on Compensation for Damage') which regulates providing compensation for damage by the State to the injured persons which was caused by specially protected animals, namely, the European beaver, the river otter, the great cormorant, the elk, the brown bear, the lynx or the wolf. A prerequisite for granting compensation under the Act on Compensation for Damage is that the animal was, at the time when the damage occurred, specially protected under the Act on Nature and Landscape Protection.[154] In the event that any of the animals ceases to be specially protected under the above-mentioned Act, compensation will not be granted. The reason of the existence of the Act on Compensation for Damage is an effort to moderate somewhat conflicting situations between the interests of nature conservation on the one hand, and the interests of the owners of lands, ponds, or domesticated animals on the other hand.
93. Damage under Section (§) 2 of the Act on Compensation for Damage means an injury caused by any of the above-mentioned specially protected animals to life or health of a

153 Act No. 115/2000 Coll., on Providing Compensation for Damage Caused by Some Especially Protected Animals, as amended, newly by the Act No. 100/2019 Coll.-

154 Act No. 114/1992 Coll., on the Nature and Landscape Protection,~~Environment Protection,~~ as amended.

natural person or to the property referred to in Section (§) 4. b)– i) of the Act on Compensation for Damage, namely:

- to life or health of a natural person;
- to specified domestic animals;
- to dogs used for guarding specified domesticated animals;
- to fish;
- to colonies of bees and apiaries;
- to unharvested field crops;
- to permanent greens;
- to closed buildings;
- or to movables in closed buildings.

Part III. Forms of Strict Liability

Chapter 1. Road and Traffic Accidents

94. Operating transport means puts increased requirements on prevention from the part of the operators. If the liability for damage caused by operating transport means were judged in terms of general liability for damage which requires the tortfeasor's fault, it would put the potential injured parties into a very disadvantageous position. Therefore, the liability for damage caused by transport means is provided for in Sections (§§) 2927–2932, Civil Code, as special and strict liability.

95. Persons liable for compensation under this legislation are:

- The transport operator.
- Another vehicle operator.
- The vessel operator.
- The aircraft operator.
- The operator of the workshop that took to repair a vehicle for the duration of the repair.
- The person that used a vehicle without the knowledge of or against the will of the operator.
- The owner of the vehicle.

§1. Damage Caused by a Transport Operator and Damage Caused by Another Vehicle Operator

96. For a transport operator to be liable to pay compensation under Section (§) 2927, paragraph 1, it is required that operating transport means is the main object of his work.[155] It does not matter what kind of vehicle it is, nor how it is powered. The elements of liability of a vehicle operator for damage caused by the operation are as follows:

- Operation of a transport means.
- Damage caused by the special nature of this operation.
- The causal nexus between the specific nature of the operation and the damage.

97. This is strict liability for which there is no possibility of liberation if the damage resulted from the circumstances which have their origin in the nature of the operation. For his eventual liberation the operator must prove that:

- The damage did not result from the circumstances which have their origin in the nature of the operation and at the same time.
- He could not prevent this damage even with all the efforts that may be reasonably required.

155 Section (§) 2927 Civil Code.

98. The essence of liability for damage caused by a transport operator is defined e.g., in a decision of the Supreme Court of 18 March 2015 pursuant to which a motor vehicle is in operation even if, due to the failure of the driver, it creates for other road users (and for the traffic of another kind) an obstacle which brings for them an imminent threat of collision, regardless of whether the engine of such a vehicle is at the moment of the event working or not, or whether the vehicle has become immobile immediately before the event and on what grounds.

Failure of the driver means any voluntary and involuntary behaviour that is causally related to the occurrence of the damage, ranging from intentional behaviour (suicide attempt, assault by vehicle, intentional damage to the vehicle), through negligent conduct (common accidents caused by violation of traffic rules), to non-fault conduct (the mismanagement of complex traffic situations, health problems).[156]

A circumstance which has its origin in the nature of the operation may include, according to the current case law, for example, a failure or lack of activity of persons employed in the operation, flaws or defects in the material, even the hidden ones, or the technical condition of the vehicle.[157]

99. Regarding the driving power of the vehicle, the Civil Code does not make difference between operating a motor vehicle or a motorless one. According to the authors of the Civil Code, there is, for example, no material reason to establish a different extent of liability for the operator of a motor vehicle, even if the vehicle is pushed by people without using the engine power or if it is going downhill due its own weight, and the operator of a motorless vehicle in the same situation. For these and other similar reasons, the legislation puts emphasis on the special nature of the traffic rather than on the nature itself of the vehicle. This fact is reflected in specific rules, e.g., in Act No. 168/1999 Coll., on Insurance of Vehicles, where even a motorless vehicle is considered to be a vehicle unless it is pulled or pushed by a walking person.

100. The vehicle operators within the meaning of the second sentence of Section (§) 2927, Civil Code, will include persons who are not covered by the first sentence (the phrase ‘another operator’) – it will most frequently be the owner of such a vehicle but this may not always be the case. The operator can also be a person who has such rights and privileges to the means of transport to enable him to use the vehicle for organized and usually lasting activities.[158]

§2. Damage Caused by a Means of Transport Under Repair

101. If a means of transport is being repaired, the person liable for damage caused by this means of transport is the one who has taken the means of transport to repair.[159] For the liability for damage the following requirements must be met under the given provision:

---

156 The Decision of the Supreme Court of the Czech Republic, 25 Cdo 3925/2013, of 18 Mar. 2015, www.aspi.cz.

157 The Decision of the Supreme Court of the Czech Republic, 25 Cdo 948/2010, of 29 Mar. 2011, www. aspi.cz.

158 The Decision of the Supreme Court, file 25 Cdo 3434/2009, available at www.nsoud.cz.

159 Section (§) 2928 Civil Code.

1. A means of transport has been taken over to be repaired.
2. A damage was caused by the means of transport due to the particular nature of the operation.

102. Liberation reasons for the person who has taken the vehicle to be repaired are as follows:

- The damage resulted from the circumstances that do not have their origin in the nature of the operation.
- The person proves that he has made every effort that may reasonably be required to prevent damage.

103. The period of repair covers the time from the receipt until the release of the means of transport. For this period the person who has taken the means of transport to be repaired is liable for damage that could be caused by this means of transport, including situations when it was operated outside the premises of the garage or during private drives of an employee of the garage. The term 'repair' also includes inspections that are not directly related to the repair.

104. It is necessary to realize the potential impact of the general provisions on discharge of obligations because the relationship between the person who sent the vehicle to be repaired and the person who took it in for repair is without doubt an obligation from legal conduct. If the operator of the vehicle who gave his vehicle to a repair shop failed to pick the vehicle up from the repair shop within the agreed time, it may lead to the application of Section (§) 1976 Civil Code which provides that 'if a thing is the subject matter, the creditor shall borne the risk of damage to the thing for the period of his default, regardless of the cause of the damage; this does not apply if the damage was inflicted by the debtor'. The vehicle operator would thus bear negative consequences of his delay (as the creditor) in picking up the vehicle from the repair shop.

§3. Damage Caused by a Person Who Used a Means of Transport Without the Knowledge of or Against the Will of the Operator

105. In spite of the strict liability put on the operator of the vehicle or its owner it would not be fair for him to be exclusively liable for the damage caused by a means of transportation in a situation where the means of transport was used by a person without his knowing or against his will.[160]

106. The provision of Section (§) 2929 distinguishes these two situations:

1. The means of transport was used without the knowledge of the operator.
2. The means of transport was used against the will of the operator.

In both cases the person that used the means of transport is liable to pay compensation.

107. If the operator of the vehicle enabled the use of it by negligence there will be joint and several liabilities for the operator of the vehicle and the person who used the vehicle. To meet the condition of negligence of the vehicle operator it is sufficient to prove unwillful negligence. The burden of proof lies on the injured person as for the conditions of liability being met.

160 Section (§) 2929 Civil Code.

108. The Supreme Court of the Czech Republic dealt with the question of who is liable for damage caused by a motor vehicle used by a lessee.[161] The Supreme Court came to the conclusion that in the case of the so-called leasing it is necessary, when determining the vehicle operator, to consider what extent of rights the vehicle owner has transferred to the lessee. According to the cited decision the lessee cannot be considered the vehicle operator if, under the contract, he was entitled to use the vehicle for a fee in the usual way without being allowed to make technical modifications of it except for necessary repairs, and he was only supposed to pay for the maintenance and repairs of the vehicle and was not required to insure the vehicle (except for an extra insurance when traveling abroad) while the vehicle insurance, including 'legal insurance', was included in the 'rental fee'.

According to the current case law, to meet the condition for negligence it suffices to commit unwillful negligence that is a psychological relationship of the operator to the effect predicted by law, which is the possibility of misuse of his means of transport and which is characterized by the fact that the operator did not want his means of transport to be misused and did not know that his way of ensuring it is not sufficient and enables misuse of his means of transport, although, given the circumstances and his position or personal situation, he should and could have known that.[162]

Negligence of the operator means, in the judicial practice, usually a breach of an obligation imposed on operators by legislation, for example, getting away from the vehicle without the possibility to immediately intervene in case of need and without properly securing the vehicle such as locking it (cf. Assessing the levels of judicial decision-making in matters of liability for damage caused by the operation of vehicles, Cpj 10/83 and Pls 2/83, published under No. 3/1984, Collection of court judgments and opinions). The operator will be liable jointly and severally for the damage, even if he negligently enabled the vehicle being misused in another way than by breaching a legal obligation (cf. the Decision of the Supreme Court of 26 January 2006, Ref. No. 25 Cdo 2157/2004).

109. In all the above-mentioned cases of liability for damage caused by operation of a means of transport there is a rule provided for in Section (§) 2930, Civil Code under which it applies that if the operator cannot be determined then it is the owner of the vehicle who is considered to be the operator. It is a manifestation of the principle that 'ownership obliges' which is established in Article 11, paragraph 3, the Act No. 2/1993 (Charter of Fundamental Rights and Freedoms). For injured parties it is a desirable effect of the law principle of certainty.

§4. Damage Caused by a Collision of Two or More Operations

110. This provision deals with the particular method of settlement of damage which occurs as a result of a collision of two or more operations. Similarly, there exists strict liability for

161 The Decision of the Supreme Court, file 25 Cdo 2563/2005, of 27 Nov. 2007, in Sbírka soudních rozhodnutí a stanovisek/Collection of court decisions, vol. 6, 2009.

162 The Decision of the Supreme Court, file 23 Cdo 1766/2012, of 26 Sep. 2013.

other operators regardless of fault.[163] The fault of one of the operators, however, may have an impact on determining the extent of his obligation to pay damages. It follows from the current case law that the settlement depending on the participation in the conflict of the two operations presupposes to take into consideration all the facts of a particular conflict of the operators, especially those that were the major causes of the incurred damage. The objective extent of the participation in incurring the damage is also expressed by a potential act based on a fault or an omission of either of the operators (some operators) when it was the cause of the damage. In the case of such circumstances or such an act or omission with which the harmful outcome was not causally related, the basic condition of participation in the incurred damage is not met and thus no liability arises nor a reason to settle.[164]

111. As a collision of operations of vehicles within the meaning of Section (§) 431 Civil Code (since 1 January 2014 Section (§) 2932, Civil Code) one must also consider the impact of a moving motor vehicle on a stopped motor vehicle which the driver put to calm or interrupted its driving but left it standing without the possibility of intervening when necessary so he has not ceased to be a road user with that vehicle.

Chapter 2. Product Liability

112. This liability is a kind of special liability for damage caused by things. The special nature lies in the fact that a thing, according to this provision, is only a movable object intended to be introduced to the market as a product for sale, lease, or another use.

The product is any movable thing produced, extracted, or otherwise obtained regardless of the degree of its processing, being intended to be marketed. Products are also parts and accessories of movable and immovable things. An example of a product is also electricity.

113. The product is defective (as defined in Section (§) 2939 Civil Code) if pursuant to Section (§) 2941 Civil Code:

– It is not safe as it can be reasonably expected with regard to all circumstances, in particular to:

- the manner in which it was marketed or offered;
- for the purpose it should serve;
- taking into account the time when it was introduced to the market.

A product cannot be considered defective only because of the fact that another better product was later introduced to the market.

114. The tortfeasor, i.e., the person liable for damage caused by a faulty product, is (pursuant to these provisions) anyone who:

- made;
- extracted;
- grown;
- or otherwise obtained the product or its components for sale, lease, or another use;
- Jointly and severally with him will also be liable anyone who marked the product or its part with his name or trademark or in another manner (Section (§) 2939, paragraph 1, Civil Code).

163 Section (§) 2932 Civil Code.

164 Decision of former Supreme Court of Czech socialist Republic, R 64/1972, available also at www. aspi.cz.

- Jointly and severally with the persons referred to above will also be liable the one who imported the product for the purpose of marketing it within his business (Section (§) 2939, paragraph 2, Civil Code).
- If the liable person cannot be determined as described above, then the damages will be paid by each supplier if he does not, within 1 month from exercising the right to compensation, tell the injured person who supplied the product to him (Section (§) 2940, paragraph 1, Civil Code).
- In the case of an imported product damages will be paid by each supplier, even if the producer is known, if he does not, within the stipulated period, tell the injured person who the importer was (Section (§) 2940, paragraph 2, Civil Code).

115. Damage to a thing caused by a faulty product is to be compensated for only with the amount which exceeds the amount calculated from 500 EUR at the exchange rate announced by the Czech National Bank on the day of the occurrence of the damage. If that day is unknown, then it is the day on which the damage was discovered.

116. The liability for damage caused by a faulty product is strict liability arising under the following conditions:

- A defect in the product.
- Damage.
- The causal link between the defect in the product and the damage.

117. The tortfeasor can liberate himself (i.e., he can be released from the obligation to pay compensation) if:

- he proves fault of the injured person (Section (§) 2942, paragraph 1, Civil Code);
- or fault of the person for whom the injured person is vicariously liable (Section (§) 2942, paragraph 1, Civil Code);
- he proves that the product was not introduced to the market by him (Section (§) 2942, paragraph 2, Sub-Para a), Civil Code);
- it is reasonable to assume, with regard to all the circumstances, that the defect existed at the time of the introduction of the product to the market or that the defect occurred later (Section (§) 2942, paragraph 2, Sub-paragraph b) Civil Code);
- he proves that he did not manufacture the product for sale or for another use for business purposes, or that he did not manufacture the product in the course of his business activities (Section (§) 2942, paragraph 2, Sub-paragraph c) Civil Code);
- the defect occurred due to the manufacturer's performance of binding regulations (Section (§) 2942, paragraph 2, Sub-paragraph d), Civil Code);
- the state of scientific and technical knowledge at the time when he introduced the product to the market did not allow discovery of the defect (Section (§) 2942, paragraph 2, Sub-paragraph e), Civil Code);
- If he made just one component and the defect was caused by the product design or the product manual (Section (§) 2942, paragraph 3, Civil Code);

118. The injured person cannot, in advance, waive the right to compensation, not even partially. The agreements which would be in conflict with liberation grounds provided for in Section (§) 2942 Civil Code are to be disregarded.

119. This liability does not apply to situations where:

- a defect of the product caused damage to a defective product;
- a defect of the product caused damage to a thing designed and used primarily for business purposes.

Chapter 3. Liability for Service

120. Services are provided on a contractual basis and the nature of liability is governed by liability from the contract.[165] The nature of contractual relationships, which arise on the basis of freely expressed wills of two or more parties which in turn give rise to rights and obligations of these contracting parties, is a reason of the existence of a specially regulated civil liability. Such liability occurs in a situation where one of the parties breaches an obligation under the contract and as a result of this breach some damage is suffered by the other contracting party or by a third party[166],[167] that should have obviously benefited from the fulfilling of the agreed obligation. Unlike liability arising for the tortfeasor due to a violation of law (generally regulated in Section (§) 2910 Civil Code) and for which the existence of the tortfeasor's fault is required a breach of a contractual obligation constitutes strict liability of the tortfeasor. The main differences between contractual and non-contractual obligations to pay damages consist in the fact that an obligation to pay damages due to a breach of contract does not require a fault and that the amount of damages is determined by its predictability.[168]

121. The elements of liability for breach of contractual obligations (Section (§) 2913, paragraph 1, Civil Code):

1. The existing contractual relationship.
2. Breach of contractual obligations.
3. Damage.
4. Liberation reasons.[169]

122. The tortfeasor is relieved from the duty to pay damages if he proves that his fulfilling an obligation under the contract was prevented temporarily or permanently by an extraordinary and unpredictable and insurmountable obstacle arising independently of his will. However, if the obstacle had its origin in the tortfeasor himself, i.e., in his personal circumstances, or at the time when the tortfeasor had already been in default with the fulfilment of contractual obligations, then the tortfeasor is not relieved from his duty to pay compensation. Neither can be a liberation reason an obstacle to the overcoming of which the tortfeasor previously pledged himself in the contract.

Foreseeability

165 Section (§) 2913 Civil Code.

166 The Decision of the Supreme Court, file No. 25 Cdo 1417/2006, of 29 Jul. 2008, and then the Decision of the Supreme Court, file No. 23 Cdo 3495/2008, of 23 Jun. 2010; from the given decisions it followed that 'a breach of a contractual obligation had an impact on the legal sphere of a third party'.

167 The decision of the District Court in Plzeň, 64 Co 115/2016, availalbe at www.aspi.cz.

168 *See* the Explanatory Note on § 2913 Civil Code.

169 Section (§) 2913, para. 2, Civil Code.

123. Foreseeability[170] in everyday speech means the subjective knowledge of future events. However, predictability as a legal term in the context of damages is an objective fact as it relates to the average knowledge and personal qualities of the tortfeasor.[171] The Principles of European Tort Law (PETL), establishing predictability as a criterion for determining the extent of damages in Article 4:102 in the context of the regulation of the required standard of behaviour, are also based on the objective criterion of the concept of foreseeability of damage.

Chapter 4. Environmental Liability

124. The environment in the Czech legal system is protected mainly by public law. The Constitution as the law of the supreme legal force generally establishes protection of the environment in its preamble stating: 'We, the citizens of the Czech Republic, ... (are) resolved to guard and develop the natural and cultural wealth handed down to us...'. The Preamble of the Charter of Fundamental Rights and Freedoms includes a reminder that everyone carries 'his share of responsibility towards future generations for the fate of all life on Earth'.

125. In the Charter of Fundamental Rights and Freedoms, protection of the environment is included in Chapter Four which lays down the economic, social and cultural rights. Article 35 establishes as one of the fundamental human rights the right to a favourable environment within which:

1. Everyone has the right to a favourable environment.
2. Everyone has the right to timely and complete information about the state of the environment and natural resources.
3. In exercising his rights nobody may endanger or harm the environment, natural resources, the wealth of natural species, and cultural monuments beyond limits set by the law.

126. Public-law protection in particular features plenty of regulations of various legal force that relate to various protected goods under the protection of the environment. These include e.g., the Act no. 289/1995 Coll., on Forests, the Act no. 201/2012 Coll., on Air Protection, the Act no. 254/2001 Coll., on Water Protection, the Act no. 114/1992 Coll., on Nature and Landscape Protection, and others. These regulations govern the factual bases of delicts the occurrence of which establishes an obligation for the tortfeasor to suffer an administrative-legal penalty, for example, the obligation to pay a fine. The general regulation of delicts, including the procedural rules governing the way the delicts are dealt with, can be found in the Act no. 200/1990 Coll., on Administrative Delicts. In cases where special regulations explicitly do not govern a specific delict, it is possible to apply the factual basis of the so-called other administrative delicts of individuals. This means that for dealing with the given delict the Act on Administrative Delicts is not

---

170 Csach, K. Predvídateľnosť vzniku škody a jej význam (nielen) v obchodnom práve, In: Bejček, J. (ed.) Historie obchodněprávních institutů: An anthology of papers from the conference held by the Department of Commercial Law, Faculty of Law, Masaryk University, on 10 Jun. 2009 in Brno, Brno 2009, p. 134.

171 A similar opinion is shared by O. Hruda saying that 'the concept of causation limited by the theory of adequate causation became also reflected in the second sentence of § 379 of the Commercial Code'. *See* HRUDA, O. Náhrada škody (nejen) ve věcech nekalé soutěže I. – předvídatelnost škody, zavinění rušitele a spoluzavinění poškozeného. Právní rozhledy, č. 13-14/2012, p. 465. The second part of the Prague textbook of civil law contains the same opinion, *see* ŠVESTKA, J. – DVOŘÁK, J. a kol., c. d., p. 413.

applied but it is only special procedural provisions contained in a given special law and the administrative procedure that are applied.

127. If the tortfeasor's interference in the environment is of greater proportions he may be subject to the Act no. 40/2009 Coll., Criminal Code. The crimes against the environment are governed in the second part of Chapter VIII. The individual factual bases are generally defined in such a way that an offense is committed by an offender if he damages the environment to a greater extent or in a larger area. The natural assets are protected by the Criminal Code in the following provisions:

- Damaging and endangering the environment in general in Section (§) 293 Criminal Code.
- Damaging and endangering the environment by negligence, Section (§) 294 Criminal Code.
- Damage to water sources, Section (§) 294a Criminal Code.
- Damage to forest, Section (§) 295 Criminal Code.
- Unauthorized discharge of pollutants, Section (§) 297 Criminal Code.
- Unauthorized waste disposal, Section (§) 298 Criminal Code.
- Unauthorized manufacturing and disposal of ozone-depleting substances, Section (§) 298a Criminal Code.
- Illegal handling of protected wild fauna and flora, Section (§) 299 Criminal Code.
- Damage to protected parts of nature (e.g., a memorial tree, a cave), Section (§) 301 Criminal Code.
- Cruelty to animals, Section (§) 302 Criminal Code.
- Failure to care for an animal due to negligence, Section (§) 303 Criminal Code.
- Poaching, Section (§) 304 Criminal Code.
- Unauthorized manufacturing, possessing, and handling of drugs and other substances that affect the performance of the livestock, Section (§) 305 Criminal Code.
- Spreading contagious diseases of the livestock, Section (§) 306 Criminal Code.
- Spreading contagious diseases and pests of crops, Section (§) 307 Criminal Code.

128. Environmental protection has also been one of the main concerns of the EU legislation. It gave rise to the European Community Environmental Law which affects national legislation in ~~27~~ EU member countries. Member states have to transpose the European Community Environmental Law into their national legislations. The sources of the European Community Environmental Law include the primary ones, that is mainly the Treaty establishing the European Community (TEC), and the secondary ones, including regulations, directives, decisions, recommendations, and opinions. Another source is international conventions but these only if a particular Member State adopts (ratifies) them.

129. Private-law environmental protection is reflected in the Czech legal system in Section (§) 1013 Civil Code. That provision is called 'restriction of rights of the owner' and commonly is referred to as the so-called neighbours' rights. Section (§) 1013 paragraph 1 Civil Code obliges owners to refrain from all that would cause:

- waste;
- water;
- smoke;
- dust;
- gas;
- smell;
- shadow;
- noise;
- shocks;
- or similar phenomena (emissions).

to have an impact on the land of another owner (neighbour) to a disproportionate extent, significantly restricting the usual use of the land. The same applies to animals coming to someone else's land.

130. An action to repel a claim (negatory action) cannot be brought, pursuant to Section (§) 1013, paragraph 2, Civil Code, by an owner if an air pollution has its origin in an officially licensed enterprise of his. However, if the air pollution exceeds the normal level and significantly restricts the use of his neighbour's land, the neighbour has the right to damages. Pursuant to the fourth part of the Civil Code (see Chapter 3), within the context of damages, priority is given to restoration to the former state (i.e., restitution in integrum). This method of compensation is not possible in the case of air pollution from an enterprise exceeding the usual level and restricting the use of the neighbouring land. That is why Section (§) 1013, paragraph 2, Civil Code, specially establishes the tortfeasor's obligation to provide financial compensation.

Chapter 5. Others

§1. Liability for Damage to a Thing Left at a Particular Place

131. Liability for damage to a thing left at a particular place presupposes:[172]

- performance of an activity with which leaving a thing is usually connected;
- leaving a thing in a designated or usual location;
- damage, loss or destruction of a thing;
- a causal link between the damage occurred and the fact that a thing was left in a particular place in connection with the use of the service provided at a designated or customary place.

132. The operators of activities who are usually connected with leaving things at particular places in the sense of Section (§) 2945 Civil Code are as follows:

a. unspecified operators of activities which are usually associated with leaving things at particular places, for example, theatres, swimming pools, cafes, medical facilities, schools, cinemas, and others;
b. operators of guarded car parks or facilities of similar nature.

Ad a): This is the operation of services where it is generally required that a person should leave a thing at particular place. It is essential that the thing is left at a place reserved by the operator for leaving things, and if such a place was not determined by him, then at a usual place. If, for example, the operator reserves for leaving things a hanger and the injured person leaves the thing on a chair or on a window pane, then the operator will not be liable for any loss or damage to the thing. This rule does not apply if, for example, the hanger was so packed that thing could not be put there. A unilateral declaration of the operator that the he is not liable for potential damage to left things does not relieve him from liability.

Ad b): The responsibility falls on those operators who operate guarded garages or car parks as their principal activity but also on those who operate them as a secondary activity (e.g., in addition to operating shopping centres). The point is that it always has to be a guarded garage or a guarded car park and that the customer (the

172 Section (§) 2945 Civil Code.

injured person) expects such service from the operator. The way of guarding is not essential. The responsibility falls on operators of both electronic (e.g., CCTV cameras) and personal surveillance. Conversely, if it is not a guarded garage or car part, then there is no liability under Section (§) 2945 Civil Code. The operators of guarded garages (car parks) are only liable for damage that was caused directly to the parked vehicle, or to its components and accessories (e.g., tires, reserve wheel, built-in GPS or radio). If, however, the injured person left, for example, a notebook or some shopping in his car, then the operator of the garage (car park) is not liable for damage to or loss of these items pursuant to Section (§) 2945 Civil Code. Such a situation will be dealt with using the general regulation of liability for damage (Sections (§§) 2910 and 2911 Civil Code) which is based on the assumed fault of the tortfeasor.

133. Persons entitled to damages under Section (§) 2945 Civil Code

The person primarily entitled to claiming damages is the one who left the thing at a usual or designated place in the shop, or who parked his car in a guarded car park or in a guarded garage. In both cases it must be the person who put the thing or parked his car there in order to enjoy the services offered in these (or adjacent) premises of the operator. The owner of the thing is secondarily entitled to claiming damages, too, but only if there exists a claim of the primary person (the visitor to the premises) and such person has not asserted his right (for whatever reason).

134. Deadlines for asserting the right under Section (§) 2945, paragraph 2, Civil Code

The injured person is obliged to assert his right to damages without undue delay. If he does not do so and the operator objects that the injured person exercised his right while being in default, then the court will not recognize the right to claim damages. Regardless of other circumstances the right to claim damages expires if not exercised within fifteen days since the date when the injured person learned of the damage.

135. The extent of compensation for damage

Unlike the previous legal regulation of this liability which was contained in Section (§) 433, the Act no. 40/1964 Coll., the extent of compensation for damage to things left at a particular place is not particularly limited nor in the case of valuables. Pursuant to the original legislation, damage to valuables, jewellery and money was compensated for only at the amount specified in an executive regulation which limited the amount to CZK 5,000.[173] Under the current legislation, it is only possible to consider application of the so-called moderation power of the court established in Section (§) 2953 Civil Code. The operator could seek reduction of disproportionately high damages with respect to his personal and financial situation, or with respect to a disproportionately high value of the damaged items.

136. Things left in a means of transport

---

173 Government Decree No. 258/1995 Coll.

If damage was caused to a thing left in a public means of transport, the provision for damage caused by operating a vehicle will be applied (Section (§) 2927 and Section (§) 2931 of the Civil Code), *see* Part III, Chapter 1.

137. The nature of liability established in Section (§) 2945 Civil Code

The legal responsibility for things left at a particular place is strict liability without possibility of the operator's liberation. In the event that the injured person somehow participated in the damage, it could affect the possible limitation of the damages.

§2. Liability for Damage to Things Brought In

138. The prerequisites of liability for damage on things brought in are as follows:[174]

- regularly providing accommodation services;[175]
- bringing things by the lodger in the spaces designated for accommodation or for storing, or taking things over by the landlord;[176]
- the causal link between the operation of accommodation services and damage to the thing.

139. Operators of accommodation services as persons liable for damage under Section (§) 2946 Civil Code

The essential difference between damage caused to a thing left at a particular place and damage caused to a thing brought in is the nature of the activity in which the damage occurs. Pursuant to Section (§) 2945 it suffices for the factual basis that it is any unspecified activity with which leaving a thing in a designated or usual place is associated.[177] Liability for damage to things brought in is exclusively related to the regular operation of accommodation services.

140. Persons entitled to damages

The person entitled to claiming damages is the lodger who brought a thing into a space designated for accommodation or for leaving things (room, ski room, locker room).

141. Things for which liability under Section (§) 2947 Civil Code does not apply

For the operator of accommodation services liability does not arise pursuant to this provision if there is damage to a vehicle, to the things left inside the vehicle or to animals, except for the cases where the operator of accommodation services also accepted such things for safekeeping. If damage occurred to the things belonging to the accommodated person it is possible to claim compensation under the general provisions on damages pursuant to § 2910 Civil Code. In such cases the fault of the operator of accommodation services is required.

142. The extent of damages under Section (§) 2948 Civil Code

---

174 Sections (§§) 2946–2949 Civil Code.

175 The decision of Supreme Court 25 Cdo 2557/2012, available at www.nsoud.cz.

176 The decision of Supreme Court 25 Cdo 3283/2014, available at www.nsoud.cz.

177 The decision of Supreme Court 25 Cdo 5758/2015, available at www.nsoud.cz.

The damage is compensated for up to the amount of one hundred times the price of accommodation for one day. This limit does not apply and the operator pays full damages if:

- The thing was taken into custody.
- The custody was unlawfully denied by the operator of accommodation services.
- The damage was caused by the operator of accommodation services or by someone who works on his premises.

143. The time-limit for claiming damages under Section (§) 2949 Civil Code

The injured person must exercise his right to compensation without undue delay. The court will not admit the right if the operator of accommodation services objects that the right was not asserted in time. The injured person must claim damages within fifteen days at the latest since the date when he must have learned of the damage. This time-limit does not apply in the cases mentioned above as exceptions to the limitation of damages.

§3. Damage Caused by Information or Advice

144. This provision affects liability of a wide range of people who professionally provide information or advice.[178] They include, for example, lawyers, tax, and financial advisors, experts in the field of construction (such as structural engineers), health experts, and various alternative medicine advisors. This liability is also supposed to function as a deterrent of providing poor quality advice and information that could cause other persons harm.[179]

145. Elements of liability under Section (§) 2950 Civil Code are as follows:

- The person providing advice or information is in the position of an expert.
- The provided advice or information is incorrect or incomplete.
- The occurrence of damage.
- The causal link (*nexus causalis*) between the advice and the damage.
- Accepting remuneration for advice or information.

146. Any statement made by the information and advice provider that he is not liable for any damages does not exempt him from the obligation to pay compensation. It could only have relevance as a warning of possible danger, and only if this warning was provided before the occurrence of the damage (Section (§) 2896 Civil Code).

If the requirement of ‘professionalism’ and ‘payment for the provided advice’ is not met, liability arises for the provider of advice only if he has inflicted the damage knowingly.[180]

---

178 Section (§) 2950 Civil Code.

179 Pavlů, R., Baier, J., Odpovědnost za škodu způsobenou informací nebo radou dle § 2950 NOZ Rekodifikace a praxe, 5/2014, pp. 6ff.

180 Pavlů, R., Baier, J., Odpovědnost za škodu způsobenou informací nebo radou dle § 2950 NOZ. Rekodifikace a praxe, 5/2014, pp. 6ff.

Part IV. Defences and Exception Clauses

Chapter 1. Limitation of Action (Suspension and Interruption)

147. Illegality is the basic term for clarification of the circumstances that may exclude it. Illegality is also a prerequisite for the arising of the duty to pay damages, i.e., liability of the tortfeasor to pay compensation for the damage incurred. Illegality means a contradiction of a person's behaviour with the objective law[181] which is a collection of laws as binding rules of conduct established by the State.

148. Illegality in private law can result:

- From the effects of the conduct (the so-called illegality of the effect).
- Directly from the conduct (the so-called illegality of conduct).[182]

illegality of the effects of such conduct may have, for example, the form of injury to health due to air pollution, or killing a pedestrian due to operation of a vehicle which had faulty brakes. Illegality resulting directly from the conduct may lie in the immediate bodily harm to another person due to a tortfeasor's attack.

149. Private law is based on the principle that 'everything that is not expressly prohibited is allowed'. Therefore, an unlawful conduct is such that is contrary to the prohibition. This prohibition can result:

- directly from the law (e.g., it is forbidden to provide information for payment which will cause damage);
- from a contract (e.g., a contractor has pledged himself to deliver the goods properly and on time, i.e., he contractually agreed on prohibition to perform the contract otherwise than in the proper and timely manner).

150. A breach of the above-mentioned prohibitions (i.e., a legal or contractual obligation) gives rise to a certain obligation, namely:

- an obligation to compensate for a damage (harm);
- an obligation to surrender unjust enrichment.

151. There are certain situations, though, directly specified in legislation that will make the given conduct exempt from unlawfulness. Although the conduct otherwise exhibits characteristics of illegality, due to the extraordinary nature of the situation and in particular due to the protection of higher interests of the society such conduct is not subsequently seen as unlawful. In certain situations, directly governed by the law, previous voluntary (contractual) statements of the tortfeasor or the injured person have also relevance for assessing unlawfulness of the conduct (see below). Such situations that make a kind of conduct exempt from unlawfulness are known as defences and exemptions.

---

181 Hendrych, Dušan a kol. Právnický slovník. 3. vyd. Praha: C.H. Beck, 2009, p. 552.

182 Petrov, Jan. *Protiprávnost a obecná prevenční povinnost.* Právní rozhledy. 2007, roč. 15, č. 20, p. 745.

Chapter 2. Grounds of Justification

§1. Consent

152. An agreement of the injured person may, under certain circumstances, result in the exemption of the tortfeasor's conduct from unlawfulness.[183] The injured person cannot, however, give consent to any action taken by the tortfeasor and the tortfeasor cannot, in most cases, act with the assumption that his actions will not be subsequently considered unlawful. In private law, the consent of the injured person is most associated with the approval of a person with an intrusion in his bodily integrity. This is regulated in Sections (§§) 84–89 in connection with the intrusion in a person's image, depiction, and dissemination of that depiction, and then with the infringement of his privacy, using his documents of a personal nature, portraits, and audio or video recordings, which is regulated in Sections (§§) 93–103 Civil Code. Subsequently, the consent of a person is regulated in connection with rights of a person taken to a medical institution as established in Sections (§§) 104–110 Civil Code, and then in relation to the handling of human body parts as established in Sections (§§) 111–112 Civil Code.

Generally, the injured person may only give his consent to an intrusion in such interests of his (or assets) which he has the right to decide about without restrictions, and this consent must be given voluntarily, seriously, definitely, and understandably.[184]

153. A consent of a person with the intrusion of another person in his image and privacy (Sections (§§) 84–90 Civil Code)

A person has the right to give his consent to any form of portraiting his appearance and making it possible to determine his identity according to that image. If consent is given properly (by a legally capable person, freely, seriously, clearly, and definitely), then the conduct of the person in terms of this consent in accordance with the law.

A person's consent is also required for spreading his portrait. If the person spreading the portrait has not obtained such a consent, then his conduct is unlawful with all liability consequences.

If someone gave his consent to spreading his portrait under circumstances from which it is apparent that the portrait will be disseminated, it is considered that the permission also applies to reproduction and dissemination of the portrait in the usual way which the person giving consent could have reasonably expected in the circumstances.

Invasion of privacy may also occur either on the basis of a legitimate reason, or after the respective person has given consent to that. This consent may concern disruption of his private premises (a visitor, a tenant), monitoring his private life (video), and using such or other recordings of his private life made by a third party or disseminating such recordings of his private life.

183 The decision of Supreme Court, file 30 Cdo 156/2016, available at www.nsoud.cz.

184 *See* for example the Decision of Supreme Court, file 30 Cdo 156/2016, about the consent of victim as the exemption clause. Available at www.nsoud.cz.

A person's consent to use his documents of personal nature, portraits, audio, or video recordings is a revocable consent. This withdrawal of consent can be made, even if the consent was granted for a definite period of time. However, if the other party suffered damage due to the consent withdrawal before the expiry of the agreed period of time the person who has withdrawn his consent is obliged to compensate for the damage.

154. Without consent a portrait or a video or audio recording of a person can be made only in the following cases:

- for exercising or protecting other rights or legally protected interests of other persons (Section (§) 88, paragraph 1, Civil Code);
- for official purpose under law;
- for appearing in public in matters of public interest (Section (§) 88, paragraph 2, Civil Code);
- adequately for scientific or artistic purposes, i.e., the so-called scientific and artistic license (Section (§) 89 Civil Code);
- for print, radio, television, and similar news, the so-called reporting license (Section (§) 89 Civil Code).

For all the above-mentioned legal interferences in the privacy of another, or for using his portraits, documents of personal nature or audio or video recordings, the following conditions must be met:

- an adequacy of intervention in the protected rights;
- compliance with the legitimate interests of the person.

155. A consent to intrusion in the integrity of a person

- The integrity of a person can only interfered with in a way that is allowed by law. Otherwise, such intrusion is possible only with his consent. A person's consent to an intrusion in his integrity must be granted:
  1. with his knowledge of the nature of the intrusion (Section (§) 93 Civil Code);
- with his awareness of the consequences of this intrusion (Section (§) 93 Civil Code).
- If a person has given his consent to being seriously harmed, then such a consent is to be disregarded. The conduct of a person who would cause the other person harm after being given a consent of that person will be illegal and such a consent would not be considered a defence.

There is an exception when intrusion in a person's integrity is necessary in the interests of his health or life.

156. Section (§) 94 of the Civil Code regulates the nature of the so-called informed consent which is applied especially in the health care law. According to it, the person who wants to perform surgery on another person's body is required to comprehensively explain the nature of the surgery to that person. The explanation must include:

- the method of the surgery;
- the purpose of the performed surgery;
- the expected consequences of the surgery;
- possible health risks;
- an outline of any alternative procedure.

All the above-mentioned parts of the explanation must be made so as to fit the age and intellectual maturity of the person on whom the surgery will be performed.

The form of consent is required to be in writing if, in accordance with Section (§) 96 of the Civil Code:

- an unrecoverable part of the human body is to be separated;
- a medical experiment is to be performed on a person;
- if surgery that is not necessary in terms of human health is to be performed (this does not apply to cosmetic surgery without any permanent or serious consequences).

Consent to the intrusion in the integrity of a person may be revoked at any time and in any manner (Section (§) 97 Civil Code).

157. Consent of a legal representative to intrusions in the bodily integrity of a minor

A legal representative can give consent to an intrusion in the integrity of the represented person only if it is of direct benefit to the person represented who is unable to give consent himself (Section (§) 93, paragraph 2, Civil Code). In the case of the informed consent which is to be granted for another person by his legal representative, an explanation must be given in such a way so that it could understood even by the represented person with regard to his capabilities and capacities (Section (§) 94, paragraph 2, Civil Code).

158. Intrusion in the integrity of a person who is unable to express his will

If a person cannot give his consent due to his inability to express his will, either temporarily or permanently, and he does not have a legal representative, then the consent may be given by the present

- husband;
- parents;
- other close persons.[185]

If none of these people is present the consent of the husband or wife is required, and if they are not present, the consent of a parent or another person if they can be found. This applies on the condition that any delay would not endanger the person whose medical condition requires surgery. If there is none of the above-mentioned persons, then the consent to the surgery may be given by anyone present who can prove a particular interest in the respective person (Section (§) 98 Civil Code).

If there should be an intrusion in the integrity of a person who is incapable of judgment and the surgery is to leave permanent, irreversible, and serious consequences, or it is associated with serious danger to his life or health, the

185 Section (§) 22, para. 1, Civil Code: '*A close person is a relative in the direct line, sibling and spouse or a partner under another statute governing registered partnership (hereinafter a "partner"); ~~"partner");~~ other persons in a familial or similar relationship shall, with regard to each other, be considered to be close persons if the harm suffered by one of them is perceived as his own harm by the other. Persons related by affinity and persons permanently living together are also presumed to be close persons.*'

consent is to be given by a court (Section (§) 101 Civil Procedure). The court must take into account the benefit of the person, and may give consent only after seeing the person and fully recognizing his personality.

If a surgery was performed on the person whose consent could not have been obtained in advance, the person who performed the surgery must immediately, as soon as the condition of the operated person allows, explain the nature of the surgery performed and its possible consequences.

159. Special legislation for the consent of a minor patient under the Act on Medical~~Health Care~~ Services[186]

The issue of consent and informed consent of a patient is regulated, besides the Civil Code, also by the Medical ~~Act on Health Care S~~Services Act. In the case of a minor patient it is necessary, pursuant to Section (§) 35, paragraph 1, the Medical Services Act~~Act on Health Care Services~~, to find out his opinion on the intended health services if it is reasonable in relation to his intellectual and volitional maturity. This opinion must be taken into account and its importance is growing in proportion to the age and degree of mental and volitional maturity of the minor patient. For the actual expression of the consent of the minor patient the laws regulating the legal capacity of natural persons will be applied, i.e., the new Civil Code since 1 January 2014, establishing that the minor patient may be provided with the intended health care services on the basis of his consent (the consent of his legal representative is not required) if the execution of such surgery is appropriate to the mental and volitional maturity corresponding to his age.

160. The Medical~~Act on Health Care~~ Services Act further establishes that where the health care services are provided on the basis of the consent of a minor patient, it does not prevent the attending medical worker from giving the information about the provided health care services or the health of the minor patient to his legal representative. If the consent of a minor patient cannot be obtained, the Medical~~Health~~ Services Act sets forth, in Section (§) 35, paragraph 3, that the provision of health services concerning emergency care which does not meet the conditions for the provision of medical services without the consent according to Section (§) 38, paragraph 4, Medical ~~Act on Health Care~~ Services Act or for the provision of emergency care, and provided that the consent of the legal representative of the minor patient cannot be obtained without undue delay, the attending medical worker will decide about the provision of medical~~health care~~ services.

---

186 The legal regulation of the relationship of the patient and his doctor is now included primarily in Act No. 372/2011 Coll. on Medical Services and Conditions of their Providing ~~(Medical Services Act)~~, as amended (hereinafter the 'Medical Services Act') which has been effective since from 1 Apr. 2012. § 28, para. 1, the Act on Medical Services, establishes that medical services can be provided to the patient only with his free and informed consent unless the Medical Services Act provides otherwise. This legal regulation is a special one in relation to the Civil Code.

Pursuant to Section (§) 38, paragraph 4, Medical ~~Act on Health Care~~ Services Act, one can provide a minor with medical services without his consent in the following cases:

- in the case of urgent care when treating a serious mental disorder;
- if, without the surgery being performed, the patient was most likely to suffer a serious injury;
- if these are medical services necessary to save life or prevent serious injury.

161. The Civil Code regulates the issue of consent of minors a little differently from the Medical ~~Act on Health Care~~ Services Act. Legislation contained in the Civil Code is also to be applied to legal relationships subject to the Medical Services Act~~Act on Health Care Services~~ since the legislation in the Civil Code clarifies and supplements the rules contained in the Medical Services Act~~Act on Health Care Services~~. Pursuant to Section (§) 100 Civil Code, if there is to be an intrusion in the integrity of a minor who has attained the age of fourteen, has not achieved full legal capacity, and is seriously objecting to the surgery, although his legal representative agrees with it, the surgery cannot be performed without a court approval. This applies even if the surgery is to be performed on an adult person who is not fully legally capable. Still, for providing medical services consisting in the provision of emergency care that does not meet the conditions for providing health services without consent pursuant to Section (§) 38, paragraph 4, the Medical Services Act~~Act on Health Care Services~~, or for providing emergency care, the provisions of Section (§) 38, paragraph 4, and Section (§) 35, paragraph 3, the Medical Services Act ~~Act on Health Care Services~~, are applied.

162. A consent to disposal of parts of the human body (Sections (§§) 111–112 Civil Code)

The consent of a person is needed:

- for separating parts of his body for medical, research and scientific purposes;
- for unusual purposes when an explicit consent is always required.

163. Every person has the right to know how the separated part of his body was dealt with. The method of dealing with a part of the human body must always be respectful and not endangering public health. The same regulation that applies about the parts of the human body also applies about anything that has its origin in the human body.

When dealing with human body parts after the death of a person we distinguish the regime for the needs of transplantations and the regime of other ways of use (for the purposes of science, research, manufacture of medicines, etc.). Disposal for the purposes of transplantations is regulated by the Transplantation Act[187] which establishes that it is possible to carry out an organ extraction only if the deceased person, during his lifetime, clearly did not express his disapproval with that. For other uses, parts of the body or the whole body can only be used if the deceased person expressed, during his lifetime, a provable consent. A provable consent can also be given by a person who is close to the deceased person.

187 ~~Act no. 285/2002 Coll. on Donation, Extractions and Transplantations of Tissues and Organs (Transplantation Act).~~

§2. Necessity

164. If a person finds himself in the so-called state of necessity and causes damage or harm to another person in such a state, he is not obliged to provide compensation as necessity excludes any possible illegality of actions in such a state.[188] Necessity can be defined as a situation where there is a direct risk of injury to life and property of the acting person or other persons. The requirements for acting in necessity, being considered circumstances excluding illegality, are as follows:

- direct danger of injury (it cannot be a permanent, continuous state);
- inability of another prevention under the circumstances, i.e., without causing damage or injury;
- not causing the same serious consequence or even a more serious one than the one that was threatening (proportionality).

165. If it were a continuous state in which a person would act and cause damage (harm) to another person, then he would commit the so-called excess. He would be liable for the damage caused and would have to pay damages.

An excess would be committed by a person acting even if he did not use another option to prevent an impending danger. For example, if it were possible to prevent danger from an angry dog by quickly closing the gate, and he would not do so and instead he would throw a stone at the dog and hurt it.

166. The third and most common excess is the situation when the acting person does not properly assess the relation between the impending harmful result due to the state of necessity and the consequence caused by his actions.

167. Justifiable excitement of mind

The Civil Code included in the Czech law the concept of 'justifiable excitement of mind'.[189] It is a legally relevant mental state of a person acting in necessity (even in self-defence) which may affect the assessment of whether the conduct was a circumstance excluding illegality or whether it was already an excesses. The court takes into consideration the age, mental, and volitional maturity of the acting person, his physical condition and any previous bad experience with situations of that kind. The excusable excitement of mind can be taken into consideration if a person acting in necessity uses a seemingly excessive means against a wild dog because he has been previously attacked by another dog and suffered a serious health injury with a trauma persisting for the rest of his life.

§3. Self-Help and Self Defence

168. Self-help concerns rules regulating the extent of the person's protection with his own force[190] and not on the grounds of justification in its own sense.

---

188 ~~Section (§) 2906 Civil Code.~~

189 ~~Section (§) 2907 Civil Code.~~

190 ~~*See* Section (§) 14 Civil Code: *Self-help*~~

A person who causes another person damage or harm when acting in self-defence is not obligated to compensate for such damage or harm. Self-defence is another circumstance excluding illegality.[191]

169. For being considered circumstances excluding illegality the requirements for acting in self-defence are as follows:

- A directly imminent or ongoing attack, the so-called subsidiarity of acting in defence.
- A threat of injury appears to be greater than minimal (considering the circumstances of the person under attack – a subjective element), the so-called proportionality of acting.
- Defence is obviously not entirely unreasonable, especially in relation to the seriousness of the injury of the attacker caused by preventing his attack (an objective element), the so-called proportionality.

170. If a person acting in self-defence defended himself against an attack that has already ended (e.g., the attacker has already refrained from attacking, turned and is leaving, and the person fires at him), it would be an excess. The person would then be liable for damage (harm) caused to another person and would be obliged to pay damages for it.[192]

Proportionality in acting in self-defence is defined differently from proportionality in acting in necessity. While for necessity it is clearly stated that the consequence of acting must not be equally serious as, or even more serious than the one that threatened due to the state of necessity, then for the assessment of proportionality in acting in self-defence it must considered whether or not the injury is apparently insignificant with regard to the situation of the person under attack and whether or not the defence is clearly disproportionate to the seriousness of the injury. Unlike acting in necessity it may be generally admitted that in some cases a circumstance excluding illegality is even such self-defence due to which a person causes equally serious or even more serious consequence than the one that threatened.

171. An important factor for assessing both subsidiarity and proportionality of a person's conduct is also the aforementioned justifiable excitement of mind (Section (§) 2907 of the Civil Code, see above). In the case of acting in self-defence, this can be illustrated with the example of a twenty-year-old girl who knows that near her residence a 'serial killer' lurks and therefore she kills an attacker who had attacked her, raped her, and was going to steal her purse, e.g., stabbing him with a knife or hitting his head with a stone.

There are often cases when it is necessary to distinguish between the situation when a person is attacked by an animal regardless of having been instigated by another man, and the situation when an animal is instigated to attack someone. The former situation is assessed as acting in necessity, the latter as acting in self-defence.

~~*(1) Anyone may, in a reasonable manner, help himself to his rights, if such rights are endangered and it is evident that public authority action would come too late. (2) Where an unlawful interference with one's right is imminent, anyone so threatened may use effort and resources that a person in his position and under the given circumstances must consider appropriate to avert such encroachment. However, if self-help is only aimed at securing a right that would otherwise be frustrated, the person exercising self-help must, without undue delay, contact the competent public body.*~~

191 ~~Section (§) 2905 Civil Code.~~

192 ~~The decision of Supreme Court, file 30 Cdo 3069/2014, available at www.nsoud.cz.~~

§4. Others

172. Other grounds of justification include law enforcement and fulfilling a duty. These two facts are not directly regulated by a statute. They only result from the logic of the legal system. If any rule allows or even orders someone a certain action and if the acting person does not commit an excess, then the consequence of the exercise of a certain right by the acting person cannot be sanctionable. If, for example, the executor interferes with the privacy of a person (the official authority, see above), it is not illegal invasion of privacy. If the physician is obliged to do everything to save the life of a human being, then his intrusion (if being in compliance with the procedure lege artis) cannot be subsequently considered to be illegal. The same thing can be said about intrusions of rescue teams, armed forces, etc.

Chapter 3. Contributory Fault

§1. Holding the Injured Person Liable for Damage

173. From the general duty of prevention it follows that everyone is obliged to behave so that his actions should not cause unreasonable harm to freedom, life, health or property of another person (Section (§) 2900 Civil Code).[193] This provision can be understood as a general duty of conduct imposed on any person in any situation.[194] Therefore, it is not possible to exclude completely the conduct of the injured person from the liability relationship and from deciding about the duty to compensate for the damage (harm) incurred. Although the provisions of Section (§) 2918 of the Civil Code mention 'contributory negligence of the injured person', one can imagine a situation when on the side of the tortfeasor there is strict liability (e.g., for damage caused by a business operation, Section (§) 2924 of the Civil Code), and also the injured person himself will be held liable together with the operator, for example, if the injured person ignored the safety rules of a business operation. The amount of damages to be paid by the operator to the injured person should then be reduced proportionately. If the damage has occurred, or has increased, as a result of the facts for which the injured person is held liable, the tortfeasor's duty to pay damages is to be reduced proportionately. However, if the facts for which either party can be held liable are only negligible in relation to the damage, then the damages are not divided (Section (§) 2918 Civil Code).

§2. Violation of the Duty to Act

174. A breach of prevention duty and a possible contributory fault of the injured person are also associated with the duty to act owed by the person endangered with injury.[195] The passive or insufficiently active conduct of the person in danger of injury affects the arising of his duty to bear part of what would otherwise be borne by the tortfeasor. The person in danger has a possibility to act in order to prevent injury either by acting in necessity or in self-defence. If the circumstances permitting, he may, in serious

193 ~~Section (§) 2918 Civil Code.~~

194 ~~Kocina, J., Přípustné riziko ve sportu. Bulletin advokacie, 1/2016, pp. 28ff.~~

195 ~~Section (§) 2903 Civil Code.~~

endangerment, ask the court to impose appropriate and proportionate measures to prevent the injury.[196]

Chapter 4. Exemption Clauses

§1. Legal Regulation of Contractual Exclusion of Liability for Damage Until 1 January 2014

175. The former Czech Civil Code No. 40/1964 Coll. did not include special rules on waiver of future rights to compensation. However, it generally prohibited waiver of future rights, namely, in Section (§) 574. That provision established that an agreement by which someone would waive a right yet to arise in the future is invalid. If the right to compensation for damage has already arisen, nothing prevents an agreement being made about the injured person waiving the right to damages or about his consenting with a reduction of their amount. The only option (illustrating the inconsistency of legislation) how to exclude in advance the right to compensation was to agree on a contractual penalty. The contractual penalty fulfilled (and continues to fulfil) the function of general compensation. Therefore, in cases where a breach of contractual obligation is covered by a contractual penalty, and unless agreed otherwise, the injured person has no right to claim damages in addition to contractual penalty.

The former Commercial Code[197] (Section (§) 386) allowed to waive the right to compensation or to restrict this right in relations that were then governed by the Commercial Code (especially the relations among entrepreneurs), even before the breach of a contractual obligation. This option was not allowed in the case of deliberately caused damage.

§2. Legislation of Contractual Exclusion of Liability for Damage after 1 January 2014

176. The Civil Code no. 89/2012 Coll., effective since 1 January 2014, did not take over the legislation of waiving the right to compensation for damage which is to occur in the future. Generally, it has been possible, since 1 January 2014, to waive the right to compensation or to restrict this right. This legislation is one of the symptoms of the enlarged autonomy of the will of persons under private law which the Civil Code substantially strengthened. However, the autonomy of will in this respect is not completely unlimited even today. Pursuant to Section (§) 2898 of the Civil Code it is not possible to waive in advance the right to compensation for damage caused to a person's natural rights, or caused intentionally, or due to gross negligence. Such arrangements would be disregarded. Likewise, agreements that in advance preclude or restrict the right of the weaker party to compensation for any loss will be disregarded. In such cases neither contractual nor unilateral waiver of one's right is possible.

Another case when the Civil Code expressly regulates the impossibility of waiver of the right to compensation for injury is Section (§) 2942 paragraph 4, according to which an arrangement by which the other party waives the right to compensation for damage caused by a defective product is disregarded.

196 ~~Section (§) 2903, para. 2, Civil Code.~~

197 ~~Act no. 519/1991 Coll., Commercial Code, which ceased to be effective on 1 Jan. 2014 when the Civil Code came into effect.~~

Conversely, pursuant to Section (§) 2897 it is possible to waive the right to compensation for damage to land. This right can also be agreed upon as a substantive right and can be enrolled in the public list (cadastre).

Pursuant to Section (§) 2899 of the Civil Code, one who has assumed the risk of being injured, regardless of the fact that he did so in circumstances that may be considered imprudent, has not waived the right to compensation against those who caused him the injury. Neither is there waiver when a person puts himself in danger by his actions while putting his own life, health, or property at risk. This provision could be applied mostly in risky sports (the so-called extreme sports).

Part V. Causation (Concept; Joint and Several Liability)

177. Causality is a universal and objectively existing logical relationship between certain realities in the outside world, where due to the appearance or disappearance of a certain phenomenon (cause) another phenomenon (result) arises, changes or disappears.[198] It is both a natural and social phenomenon and studying it has importance in many areas of human activities.

Causality is the third essential prerequisite of the liability relationship and also of the right to compensation for damage. Causality is a relationship between the unlawful conduct (or a legally relevant harmful event) and the occurrence of the damage. It is accompanied by the fact that a particular harmful consequence resulted from a particular legal conduct (or a particular legal event).

178. Theoretically, there are two basic levels that are considered to be causality in terms of liability for damage. It is factual causality and legal causality. Deciding on liability for damage and thus on meeting the condition of causality is a complex mental process in which both meanings of causality must be taken into account. This distinction is also supported by the legal regulation of causality in PETL where causality is expressly distinguished in the forms of:
    a. factual causality (*conditio sine qua non*);[199]
    b. legal causality (the scope of responsibility).

The factual causality (***conditio sine qua non***) is a reflection of the fact that the unlawful conduct of the tortfeasor is part of a chain of events leading to damage and its consequences. The factual causality deals with the question what events preceded, in terms of time and matter, the damage and what events were involved in its occurrence.

198 ~~Causation is a phenomenon that has a universal importance in terms of the technical description of the reality as well as in the philosophical sense. For a deeper analysis of causality in the natural sense with an emphasis on philosophical connotations of his phenomenon, *see* e.g. K~~istler~~ISTLER, M. *Causation and Laws of Nature*. New York: Routledge, 2006, p. 264, or P~~exidrEXIDR, K.; Demjančuk~~DEMJANČUK, N. *Kauzalita*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2009., p. 266.~~

199 Chapter 3, Part 2, PETL.

It is essential to determine whether a particular breach committed by a person is part of that chain of causes leading to the damage.[200] Regarding factual causality, there is a generally accepted theory of a necessary condition of the damage occurrence (*conditio sine qua non*). According to this theory, such condition is required without which the damage would not have occurred. It must be such a cause that cannot be ruled out without excluding at the same time the damage incurred. [201]

The factual causality means that a particular unlawful conduct of a person can be the cause of only such damage that is the necessary consequence of that conduct, and excludes compensation for such damage that would have occurred even without the unlawful conduct of that specific person.

179. Legal causality is necessarily added to with some limitation mechanisms which are based on the so-called legal causality. Without this, the assessing of liability of the tortfeasor could be inappropriately harsh. Legal causality thus expresses the legal significance of the relationship of cause and effect. Legal causality selects from the string of possible legally relevant causes only that cause which is 'close' to the occurrence of the damage. The theory of legal causality thus examines whether a specific connection between the illegality and the damage is sufficiently intense for determining liability for damage.

Given the rather inadequate legal regulation of causality, there is an important role of case law in this issue. As a representative example of the contemporary Czech case law one decision of the Supreme Court[202] can be chosen according to which a causal link exists if there is damage as a result of the tortfeasor's breach of a legal obligation or a legally qualified circumstance, i.e., if his conduct and the damage are in the mutual relationship of cause and effect. It means that if there had been no unlawful act (or harmful event), then the damage would not have occurred. If another fact was the cause of unlawful conduct, the liability for damage does not arise. The cause of damage may be a circumstance without the existence of which the harmful consequence would not have arisen and it need not be only one cause. It suffices if it is one of the causes which has contributed to the negative consequence which should be compensated for, and the cause must be a substantial one. If there are more causes that over time have effects consecutively (the so-called chain of gradually emerging causes and effects), their relation to the damage must be so

---

200 Cf. Saidov, D. Causation in Damages: The Convention on Contracts for the International Sale of Goods, The UNIDROIT Principles of International Commercial Contracts, The Principles of European.
Contract Law. In: *Review of the Convention on Contracts for the International Sale of Goods (CISG), 2004-2005.* München: Sellier. European Law Publishers, 2005. p. 226.

201 Towards this *see* e.g. Bydlinski, F. Causation as a Legal Phenomenon. In: Tichý~~ICHÝ~~, L. (ed.) et al.
Causation in Law. Praha: Univerzita Karlova, 2007. p. 15.

202 ~~The Decision of the Supreme Court, file No. 25 Cdo 1437/2006 of 20 Mar. 2008, at www.epravo.cz.~~

interconnected that even from the effect of the root cause one can reasonably infer the material association with the occurrence of the harmful effect. The time aspect is not the decisive and sole criterion, and the causal link cannot be mistaken for the time link since the injury may be the result of a harmful event although it did not occur at the time of the harmful event, but later.

The whole issue of causation is inextricably linked with the question of evidence. The existence of a causal link must be proven by the injured person. In some cases, this may seem very aggravating for the injured person, especially where it is not possible to prove a 100% certainty of the relationship of one particular cause and a particular damage. Therefore, in cases where the mental process would be so complex and where considerable expertise would be required, it is appropriate to compromise on the requirement of 100% certainty. There are two ways of alleviating the difficult burden of proof borne by the injured person. First, in certain situations the legislator will admit that it is not always necessary to have 100% certainty of the relationship between a specific cause and a given effect. The second option is in terms of legal application when the case law allows, in certain circumstances, for the causal nexus to be established even where there is a high (hypothetical) probability of a certain cause and a harmful consequence.

Part VI. Remedies

180. Civil Code includes provisions governing compensation in general (Chapter III, Part 1, section 3, Sub-section 1) and then various special kinds of compensation of damage (harm) (Chapter III, Part 1, section 3, Sub-section 2 and Sub-section 3).

Chapter 1. General Principles

181. The way the tortfeasor is supposed to compensate the injured person for damage was fundamentally changed by the adoption of the Civil Code with effect from 1 January 2014. Previously, the tortfeasor was obliged to provide compensation principally in money (financial restitution), but if the injured person asked for that, and where it being possible and practical, the tortfeasor was obliged to provide compensation by restoring the previous state (restitutio in integrum).[203] Under the current legislation effective from 1 January 2014, the regulation of the manner of compensation is just the opposite. The tortfeasor is now obliged to provide compensation by restoring the previous state. If it is not possible, or if requested by the injured person, compensation is provided in money.[204] All that remained consistent with the previous legislation is the legal structure in the form of the so-called facultative alternative which differs from the simple alternative (a simple choice from two options – either money or restoring the previous state) in that the latter variant is linked to its objective possibility, or impossibility, and a request explicitly made by the injured person).

203 ~~*See* Section (§) 442, para. 2, Act No. 40/1964 Coll., in force until 31 Dec. 2013.~~

204 ~~Section (§) 2951, para. 1, Civil Code.~~

There is a special regulation of the method of compensation for immaterial harm. [205] The tortfeasor is obliged to compensate by providing reasonable satisfaction. Satisfaction should be provided in money, unless another manner (i.e., a non-pecuniary one) sufficiently enables an effective redress of harm. The wording of the legislation may seem a bit confusing but the sequence of methods used for redressing the immaterial harm is logically as follows. The injured person is entitled to:

a. an immaterial way of compensation for harm, and only when this would not provide a genuine and sufficiently effective redress of the harm, then;
b. pecuniary satisfaction.

Chapter 2. Kinds of Damages

§1. Individual and Collective Damage

182. If damage is caused by one tortfeasor he is solely obligated to compensate and in terms of procedure he is the only person to be passively legitimized, being also the only tortfeasor against whom an action for damages will be brought. However, there is a special situation where damage is caused by several persons. The manner of providing compensation for damage caused by several tortfeasors where the so-called joint liability arises for them is as follows:[206] the damage caused by several tortfeasors will be compensated for by them jointly and severally. Should any of the tortfeasors were legally obligated pursuant to another statute[207] to compensate only up to a certain amount, he is with the others liable jointly and severally only to that extent. The purpose of this legislation is to ensure maximum legal protection of the injured person. If there is joint and several liability to compensate then it means that tortfeasors are required to pay the injured person the whole debt and the injured person has the right to require its payment from any of the tortfeasors. It is entirely up to the injured person if he chooses anyone from among the tortfeasors or whether he exercises his right against all of them at one time. The obligation to pay damages ceases, therefore, at the moment when it was fulfilled by any of the tortfeasors. It does not matter why or on the basis of what the factual basis of liability for damage has arisen for a particular tortfeasor. This 'non-differentiation' may prove practical, for example, in compensating for damage caused by the operation of vehicles [208] when joint and several liability may arise for the operator of the vehicle, who is usually the owner, and along with him for the driver of the vehicle who actually caused the damage.

---

205 ~~Section (§) 2951, para. 2, Civil Code; *see also* Sections (§) 2956 and 2957.~~

206 ~~Sections (§§) 2915–2919 Civil Code.~~

207 ~~For example Section (§) 257, Act No. 262/2006 Coll., Labour Code, according to which an employee is protected and the amount of compensation for damage caused by negligence shall not exceed in an individual employee an amount equal to four and a half multiple of his average monthly earnings prior to the breach of duty that caused the damage (except for intentionally caused damage and damage caused under the influence of alcohol or narcotics).~~

208 ~~*See* Sections (§§) 2927 ff. Civil Code.~~

If there are reasons worthy of special consideration, the court may decide that each of the tortfeasors will compensate the injured person in relation to how and in what way they participated in causing the damage. [209] In particular cases, the form of fault of individual tortfeasor will be taken into account most frequently. In this way, the court cannot decide if any of the tortfeasors knowingly participated in damage caused by another tortfeasor, or instigated or supported him, or if the whole damage may be attributed to each of the tortfeasors even though they acted independently, or if the tortfeasor is obliged to compensate for the damage caused by an assistant and if an obligation to compensate for the damage has also arisen for the assistant.[210]

The provision of Section (§) 2196 of the Civil Code governs the internal regulation of the relationships of individual tortfeasors. Unlike the relation to the injured person to whom the tortfeasors are liable jointly and severally and their parts are not taken into account, in the mutual relations of the tortfeasors their participation in causing the damage is relevant. Under the above-mentioned provision, a person who is liable to pay compensation jointly and severally with others will settle with them according to their participation in causing the damage. So if one tortfeasor pays all damages to the injured person, then he has the right to demand from others a proportionate part which he has paid in excess of the damage caused by him.

§2. Direct and Indirect

183. The Civil Code does not regulate the notion of direct and indirect damage. However, from the legal theory it can be concluded that these two types of damage exist and that it is possible to distinguish between them in the application practice. The damage suffered directly by the injured person is to be considered direct damage. However, one can imagine a situation where due to an unlawful conduct (or due to a legally relevant harmful event) a damage occurs directly to the injured person and also, derivatively, to a third party. For example, as a result of damage caused by a tortfeasor to the immovable assets (a building) it is the building owner who suffers damage primarily and immediately. However, the owner employs in the building an employee who suffers indirect damage since he loses his job. Such cases are not covered, though, by the Civil Code in terms of compensation of the so-called indirect damage. Entitlement to compensation for indirect damage is expressly regulated only in the following cases:

- Entitlement of third parties to have their mental hardships redressed in case of death of a close person.[211]
- Entitlement of a person whose household or who himself was looked after by the directly injured person.[212]
- Entitlement to funeral expenses for a person who directly made them.[213]

---

209 ~~Section (§) 2915, para 2., Civil Code.~~

210 ~~Section (§) 2915, para 2., Civil Code.~~

211 ~~Section (§) 2959 Civil Code.~~

212 ~~Section (§) 2960 Civil Code.~~

213 ~~Section (§) 2961 Civil Code.~~

- Entitlement of a person for whom the directly injured person performed work in his household or his business.[214]
- Entitlement of the survivors to maintenance in case of the death of the directly injured person.[215]
- Entitlement to compensation for non-proprietary harm for all persons suffering the harm as a personal misfortune that cannot be undone otherwise.[216] According to the decision of Supreme Court, file 30 Cdo 5158/2014 from 27.5.2015 (available at www.aspi.cz.), the death or injury to the health of injured person could also break the right to family life as the part of right to privacy of the his/her other family members.

§3. Pecuniary and Non-pecuniary Losses

184. There are two types of damage suffered by the injured person. It may be:

1. Damage to property.
2. Immaterial damage (harm).

Property damage is suffered by the injured person when the value of his property has decreased compared to the situation before the harmful event (or before the result of the unlawful conduct) or, if due to the damage the value of his property has not increased as it should have. According to this, there are two substantively different entitlements of the injured person:

- Entitlement to compensation for the actual damage.
- Entitlement to compensation for loss of earnings [217] (for more on this *see* Part IV, Chapter 2, §5, and further in Part IV, Chapter 4.).

Property damage is essentially compensated for by restoring to the previous state (restitution in integrum), if this is not possible and if requested by the injured person, by paying money.

185. Non-pecuniary (immaterial) damage[218] is commonly referred to as 'injury' in the legislation. The Civil Code contains fundamental provisions [219] according to which:

- The obligation to compensate for injury always includes the obligation to compensate for injury to the property (damage).
- In the case when the obligation to compensate another person for non-pecuniary damage has not been explicitly agreed, the tortfeasor has an obligation to compensate for it only in cases specifically provided by law. Then the obligation to compensate for non-pecuniary damage by providing satisfaction will be judged by analogy pursuant to provisions on the duty to pay compensation for damage. These cases are specifically regulated in the provisions of Section (§) 2956 and Section (§) 2957 Civil Code, and then in Section (§) 2958 and Section (§) 2959 Civil Code.

It generally applies that the immaterial injury is compensated for:

---

214 ~~Section (§) 2965 Civil Code.~~

215 ~~Section (§) 2966 Civil Code.~~

216 ~~Section (§) 2971 Civil Code.~~

217 ~~Section (§) 2952 Civil Code.~~

218 ~~The decision of Supreme Court 8 Tdo 757/2015, available at www.nsoud.cz.~~

219 ~~*See* Section (§) 2894 para. 1, and Section (§) 2894, para. 2, Civil Code.~~

- by a reasonable satisfaction in the form of immaterial satisfaction, and if this is not sufficient for a genuine and sufficiently effective satisfaction of reparation of the injury, then;
- by money.

Special cases of immaterial injury to health and death directly establish only claims for monetary compensation as it fully meets the function of such refunds.[220]

186. In some cases, the compensation for material damage is connected with the compensation for non-material damage.[221] One of such examples is the case of the so-called spoilt holiday which was dealt with by the Supreme Court of the Czech Republic.[222] It was the case when a travel agency failed, breaching the travel contract, to provide the plaintiff and members of his family with the desired quality of accommodation (rooms with a view of sea). When arriving at the given place the plaintiff found out that contrary to the travel contract they were not accommodated in a room with a view of the sea but in a room oriented towards a busy street. The amount claimed was 4 times an extra payment for a room with a view of the sea (CZK 1,960) and a 'minimum compensation' of 30% from the original price of the trip, a total of CZK 26,788 with a certain specified default interest. The amount at issue included a clearly quantifiable material claim of the plaintiff, equal to the difference between the payment for a room with a view of the sea and a room without a view, and also a claim for the immaterial injury suffered and calculated by the plaintiff as a percentage of the price of the trip which should have served him as a monetary satisfaction for the injury in the form of loss of enjoyment of the holiday. The Supreme Court ruled for the plaintiff. The Supreme Court did not explicitly mention the right, call it as you wish, e.g., the right to compensation for loss of enjoyment of the holiday, or the right to compensation for spoiled vacation, but the existence such right cannot be ruled out. On the contrary, in a European interpretation of the given provision one can come to the conclusion, together with the Supreme Court, that the plaintiff can seek compensation for the immaterial injury caused due to breach of a duty by the travel agency. In this regard, the Supreme Court recently summarized its conclusions included in its judgment of 11 December 2013, file 33, Cdo 3661/2013, where it also referred to the decision of the European Court of Justice in Case C-168/00, Simone Leitner v. TUI Deutschland GmbH & Co. KG, and also pointed out the conclusions of scholarly literature, in Švestka, J., Spáčil, J., Škárová, J, Hulmák, M. et al. The Civil Code II. Sections (§§) 460 to 880. Commentary, 2nd edition. Prague: C. H. Beck, 2009, pp. 2402–2404 and Hulmák, M., 'The loss of enjoyment of the holiday', Právní rozhledy 2/2009, p. 52, and the case law of the Member States of the European Union on this issue. According to the Supreme Court, one cannot ignore the fact that the regulation of the travel contract in the Civil Code is the transposition of the Council Directive no. 90/314 / EEC of 13 June 1990 on services for package travels and tours. With regard to the above-mentioned, the Supreme Court recognized the applicant's entitlement to damages for both material and immaterial injury.

220 ~~Nedbálek, K., Výpočet nemajetkové újmy. Bulletin advokacie, 11/2015, pp. 35ff.~~

221 ~~The Constitutional Court ruling IV. ÚS 3183/15-1, available at http://nalus.usoud.cz.~~

222 ~~The Decision of the Supreme Court of 28 Apr. 2016, file No. 33 Cdo 747/2015, at http://www.epravo.cz/.~~

§4. Pure Economic Loss

187. Czech jurisprudence has long avoided the theoretical concept of pure property damage. It is remarkable especially with regard to the fact that in many other jurisdictions it is one of the most frequently discussed issues.

188. The term 'pure property damage' (pure economic loss, reiner Vermögensschaden) is understood in different countries differently. For example, Christian von Bar presents two possible ways to understand the 'pure property damage':[223]

- either as any damage that occurs independently of an intervention in the life and health of the injured person and regardless of the damage or destruction of his things (the common law approach);
- or as the damage caused to another without interfering with the absolute property right or another legally protected interest of the injured person (Rechtsgutprinzip which prevails in the Germanic legal environment).

A common feature of 'pure property damage' is the fact that the property value of the injured person is reduced without his health being affected, his property being damaged or his other legally protected goods being interfered with.

The simple economic injury must be distinguished from the so-called consequential economic loss (Vermögensschaden) which can be compared to the so-called lost profit regulated by Section (§) 2952 Civil Code. This kind of damage also presupposes losses of property but these occur in connection with infringement of an absolute right.

189. Czech legislation includes three small factual bases of delicts that distinguish the obligation to pay compensation for damage depending on whether it is due to:

a. breach of an absolute right (Section (§) 2910, first sentence, Civil Code);
b. breach of a protective rule (Section (§) 2910, second sentence, Civil Code);
c. a breach of good manners (Section (§) 2909 Civil Code, Civil Code).

It is obvious that the Czech legislator was inspired rather by the Germanic concept of pure property damage and that in the future interpretation and application uncertainties it will be appropriate to resort to the German and Austrian legal practice.

By the fact that in the first sentence [224] of Section (§) 2910 of the Civil Code the legislator established as a condition of the occurrence of the obligation to pay compensation an infringement of the absolute rights of the injured person, he limited the right to compensation only to the damage caused to the absolute rights of the injured person and to the possible subsequent damage to property in the form of lost profits. With regard to the general designation of these rights and protected assets, it will be possible to retain wide discretion powers of Czech courts. Within the concept of 'absolute right' one may clearly include all values protected in Section (§) 2900 Civil Code, i.e., the right to life, health, liberty, and property. Absolute rights are also

223 Von Bar, Ch.: Gemeineuropaisches Deliktrecht, Teil 2, C.H. Beck, München, 1999.

224 *'A tortfeasor who is at fault for breaching a statutory duty, thereby interfering with an absolute right of the victim, shall provide compensation to the victim for the harm caused.'*

those that operate *erga omnes*, in particular, legal interests or possession. However, their precise definition and classification in the correct 'category' of rights is crucial for judging whether due to the infringement of these rights a subsequent financial harm arises or whether it is a simple harm for which compensation is not possible. Due to the lack of the domestic case law Czech courts will have to seek inspiration in the foreign case law, mainly the German and Austrian one, in such matters.

190. Intervention in ownership will have to be interpreted broadly. It may include destruction of a thing as well as damage to property (tangible and intangible), or limitation or discontinuation of the use of a thing.

191. Although debts are considered to be things by the Civil Code, in terms of tort law the relations to them must be judged not as rights operating erga omnes but as rights operating inter partes. Legal effects of the potential tort law relationships must then be considered in the context of contractual liability under Section (§) 2909 Act no. 89/2012 Coll., Civil Code. On the pattern of the Austrian and German legislation, however, it will be necessary to create an exception for situations where, under a contract, the right to possession of a particular legal interest arises for the lender and this possession is externally perceptible (landlord and tenant).

192. The compensation for damage while breaching a rule protecting the so-called other rights, Section (§) 2910, second sentence, the Civil Code,[225] presuppose an intervention in a right other than the absolute one which is regulated in the first sentence of this provision. There are different opinions as to what rights are meant by this provision. Again, it is probably necessary to interpret 'these other rights' within the meaning of the legislations of Austria and Germany so that it concerns the protection of all assets. These may be situations where the absolute right is merely endangered, or where there was pure damage to property.

Compensation in the event of an intentional breach of good manners, Section (§) 2909 Civil Code, has, in a number of legislations, an important role in the occurrence of simple property damage. Many situations related to any breach of good manners will come under the special legislation relating to liability for damage caused by harmful advice or information.[226] Still, the provision entitling somebody to damages when there is an intentional breach of good manners will probably be significant for claims arising from the intentional infringement of the relative rights of third parties.

193. The legal regulation of contractual liability and its extent is also important when dealing with compensation for pure property damage. Contractual liability is governed by Section (§) 2913, Civil Code, and it differs from the legal responsibility by its objective nature and by the fact that it entitles somebody to compensation for pure property damage. While in compensation for pure property damage an intention is essentially required for legal liability (Section (§) 2909, Civil Code), in contractual liability the entitlement to compensation for pure property damage arises regardless of fault.

---

225 ~~'*A tortfeasor also becomes obliged to provide compensation if he interferes with another right of the victim by a culpable breach of a statutory duty enacted to protect such a right.*'~~

226 ~~Section (§) 2950 Civil Code; for more details *see* Part III, Chapter 5.~~

194. What is problematic is the assessment of the legal nature of the so-called pre-contractual liability.[227] The previous opinions largely considered the contractual liability to have legal character. With regard to the current legislation which generally links the non-contractual liability and the liability for compensation for damage to an infringement of absolute rights, and taking into account that the violation of pre-contractual duties mostly causes damage without infringing absolute rights, it would be appropriate to consider the possible application of the principles of contractual liability to pre-contractual relations, too. This approach was taken by the legal orders of Germany and Austria where pre-contractual relationships are seen as a particular kind of relationship which is governed by the principles of contractual liability. Another possible solution for the Czech law would be to include pre-contractual liability in relationships falling under Section (§) 2910, second sentence, Civil Code, when the purpose of this regulation may also be to protect the property rights of the contracting parties (i.e., the pre-contractual ones).

§5. Actual and Future Damage (Lost Profits)

195. The provisions of Section (§) 2952 Civil Code, give rise to two general claims of the injured person in the event of damage, namely:

- the right to compensation for the actual damage;
- the right to compensation for loss of lost profits.

If the actual damage resulted in the occurrence of a debt, the injured person is entitled to his debt being dealt with by the tortfeasor or to being compensated for it.[228]

The actual damage usually means the actual reduction in property of the injured person, or the harm that can be quantified in money.

196. Loss of profit is usually characterized as the difference between what the injured person has actually achieved in terms of property and what he would have achieved if there was no harmful event, or in other words, what increase of his property was prevented by the harmful event. In Czech law, it is undisputed that the lost profit, previously referred to as a type of the so-called other damage, is seen as a harm consisting in the fact that due to the harmful event the property of the injured person has not increased, which would have otherwise occurred if there was no harmful event.

The nature and extent of 'lost profits' is often defined in the court practice. According to the decision of the Supreme Court lost profits from business activities may have various forms and may be quantified in varied manners because it may depend on one off lost income from individual business activities as well as from the relatively regular profits gained from ongoing activities.[229]

Another decision defined the loss of profits as a loss of income from property rental; the amount of compensation in this case depends on the amount which, during the period in question, the injured person would have gained from the rent in the given place, under normal circumstances and according to the valid lease contract, from

227 *See* Sections (§§) 1728–1730 Civil Code.

228 *See* Section (§) 2952 Civil Code.

229 The Decision of the Supreme Court, file No. 25 Cdo 3320/2011, of 26 Feb. 2014), http://www.epravo.cz/top/soudni-rozhodnuti/usly-zisk-94008.html.

which an amount must be deducted which he would have spent on making that profit in the regular situation.[230]

§6. Other Costs (Costs of Assessing Damage and Liability; Costs in Obtaining Judicial or Extra Judicial Payment)

197. When claiming compensation for damage before courts, the injured person (plaintiff) is obliged to pay a court fee. The method of its determination is established in the Act no. 541/1991 Coll., on Court Fees. Under this Act the obligation to pay a court fee arises by bringing the action.[231]

The fee rates in proceedings for damages are fixed amounts, or percentages in the case of fees the bases of which are defined by monetary amounts. The basis of the percentage fee is the price of the subject of the proceedings. The price of an accessory of the subject of the proceedings is the basis of the fee only in cases where the accessory is a separate subject of the proceedings.[232]

If the fee for the proceedings has not been paid on bringing the action, filing an appeal, or lodging a cassation complaint, the court will ask the person to pay it within a period determined by the court; after the expiry of the period the court will stop the proceedings.[233]

198. Persons exempt from paying the court fee include plaintiffs in the case of damages if they seek compensation for the harm they suffered due to an intrusion in their integrity, or in the matters of the admissibility of taking or holding somebody in a health care institution. Furthermore, the court fee is not paid when claiming compensation for damage or another injury caused by an unlawful decision of a public authority, or by a decision on custody, punishment or protective measure, or due to maladministration.[234]

Plaintiffs are not required to pay the court fee[235]:

- in proceedings on compensation for damage or non-proprietary harm, or on surrendering unjust enrichment, if, by a lawful decision in criminal proceeding, they were referred to civil proceedings to enforce their claim or its remainder;
- if they were harmed by a criminal offence and a lawful decision of the court granted them right to be financially compensated for damage to property or non-proprietary harm, or to be given unjust enrichment in proceedings associated with enforcing their claim;
- in proceedings on compensation for damage or non-proprietary harm or surrendering unjust enrichment if their claim was properly asserted in the criminal proceedings which were discontinued due to the decision of President of the Republic.

---

230 The Decision of the Supreme Court 28 Cdo 2460/2010 of 5 Jul. 2012, www.aspi.cz.

231 Section (§) 4/1 Act No. 549/1991 Coll.

232 Section (§) 6/1 Act No. 549/1991 Coll.

233 Section (§) 9/1 Act No. 549/1991 Coll.

234 Section (§) 11 Act No. 549/1991 Coll.

235 Section (§) 11/2 Act No. 549/1991 Coll.

Based on a proposal, a party may be partly exempt by the presiding judge from paying court fees if there is a reason for that due to the circumstances of that party and if it is not an arbitrary or manifestly unsuccessful application or protection of a right. This can be done only in exceptional cases and the court decision must be duly substantiated.[236]

199. The legal costs must also include, in addition to court fees, the costs of representatives of the party, the lost earnings of the party and his legal representatives, the costs of evidence, the costs of the interpreter's performance, the compensation for value added tax, the fee for representation, the fee for the mediator pursuant to the Mediation Act, and the fee for the first meeting with the mediator ordered by the court pursuant to Section (§) 100, paragraph 3, the Act no. 99/1963.

The party that has fully succeeded in the proceedings will be awarded compensation by the court for the costs needed to assert or protect his rights against the losing party. If the party has been successful only partially, the court will proportionally divide the total of the costs, or will decide that none of the parties has the right to compensation for the costs.[237] It is possible, for example, that contributory fault of the injured person (plaintiff) was found by the court and so damages will be awarded to him only partially. Alternatively, there may be situations where the court finds that the claim for damages did not arise at all because, e.g., the defendant successfully applied any of the liberation reasons and therefore the liability relation did not arise. Although the party was only partially successful, the court may grant the full compensation to him if he failed only narrowly or if the decision on the amount of performance depended on an expert opinion or was at the court's discretion. Cases like that are likely to happen in matters of compensation because expert opinions that are supposed to be the basis for deciding on the amount of damages are often the main evidence.

§7. Mitigation of Damages

200. The Civil Code allows courts to reduce the damages appropriately for special reasons. [238] When doing so they should consider:

- how the damage occurred;
- the personal and property conditions of both the tortfeasor and the injured person.

This right to reduce damages (i.e., the discretionary power) can never be exercised by the court if the damage was caused intentionally. For that reason, the injured person could have an interest in ensuring that the tortfeasor is proved to have an intention to act, albeit otherwise an intention is not required for the arising of general legal (or contractual) liability for damage (excluding the case of Section (§) 2909 Civil Code). The burden of proof when proving the qualified form of fault, i.e., the intent, lies with the injured person (plaintiff).

236 ~~Section (§) 138 Act No. 99/1963 Coll., Civil Procedure Code.~~

237 ~~Section (§) 142 Act No. 99/1963 Coll., Civil Procedure Code.~~

238 ~~Section (§) 2953 Civil Code.~~

The discretionary power of the court cannot be exercised, either, where the damage was caused by someone who performed the act in question as a member of a certain profession, i.e., when there was a violation of professional care.[239]

Chapter 3. Assessment and Compensation of Damages

201. Finding out and determining the amount of damages comes into the play only where the damage is not compensated for by bringing the things into the previous state (Section (§) 2951, paragraph 1, Civil Code).[240] As mentioned above, bringing the things into the previous state has priority over financial compensation for damage to property. Therefore, identifying and quantifying the amount of damages has a legal importance in the following cases:

- when bringing the things into the previous state is not possible;
- if it is requested by the injured person;
- in the event of non-proprietary damage if this does not ensure a true and effective immaterial satisfaction.

§1. Objective v. Subjective

202. As mentioned in Part VI., Chapter 2, §5, when there is a damage the injured person is entitled to compensation for the actual damage and lost profits. If there is a damage caused to things (property) of the injured person, the amount of damages is calculated pursuant to Section (§) 2969/1 Civil Code, on the basis of the so-called usual price at the time of the occurrence of the damage. It also must be taken into account what the injured person has to purposefully expense in order to restore or replace the function of the given thing. With regard to the foreign case law and, it may happen that the price of the renewal or replacement of the function may exceed the usual price, but no more than by one third of the usual price. The usual price (value) means the price at which the thing may be sold at the given location, and this price is objective, i.e., the same for everyone. The general price can be determined by an expert opinion which serves as objective evidence for the judge when determining the amount of damages (based on the principle of free evaluation of evidence). This method of determining the amount of compensation is purely objective and is based on the basic economic knowledge of the market mechanism.

203. On the contrary, the subjective factor[241] is reflected in determining damages under Section (§) 2969/2, Civil Code, which entitles the injured person, if the tortfeasor damaged a thing (this extensively includes destruction, too) out of wantonness or malevolence, to compensation which is the so-called price of special liking. This legislation (not effective until 1 January 2014) reintroduces into Czech law an analogy of the institute of Anglo-American law, which is known as ‘punitive damages’ (see section 7, §3). Wantonness and malevolence can be understood as a purely subjective factor in the assessment of damage and can also be understood as a qualified degree of fault (a special degree of intent). Wantonness can be characterized as a manner of consciously

239 ~~Section (§) 2953, para. 2, Civil Code.~~

240 ~~More Nedbálek, K., Návod výpočtu náhrady škody při nedostatku relevantních údajů. Soudce, 7/2016, pp. 46ff.~~

241 ~~Janeček,V., Nerovná subjektivní odpovědnost. Jurisprudence, 5/2016, pp. 15ff.~~

inflicting damage when the tortfeasor causes damage because it brings him some pleasure or another profit. Malevolence rather refers to the fact that the tortfeasor causes damage to a certain person and wants to hurt that person in this manner. The price of special liking to which in such cases the injured person is entitled reflects yet another subjective factor. This time it is the subjectivity[242] on the part of the injured person in the form of his personal relationship to the damaged or destroyed thing. Therefore, it does not reflect the objective, usual price of the thing but the special value that the thing had for a particular person (the injured person).

§2. Concrete versus Abstract

204. Compensation for damage (harm) may be determined under Czech law in a specific or an abstract manner. Basically, it is a specific quantification of the usual price of a thing (Section (§) 2969/1, Civil Code) at the time of the damage, and based on that the amount of compensation is determined. In the case of damage to an animal, the specific damage is reasonably incurred costs associated with taking care of the health of the injured animal (Section (§) 2970, Civil Code). The damage caused to health and by death gives rise to claims which can also be quantified in a particular way (costs associated with medical treatment, funeral expenses, compensation for loss of earnings during the period of incapacity, compensation for loss of pension, and compensation for the maintenance of the survivors (Section (§) 2958–Section (§) 2967, Civil Code [243]).

The abstract way of determining the amount of damages applies in those cases where it is not possible to quantify the actual damage at all, because it has a purely non-proprietary character, or it can only be quantified with a certain probability because its amount depends on the hypothetical future events.

Purely abstractly one may deal with compensation for immaterial injury which was caused to the injured person by the tortfeasor's infringing of his personal rights, which caused the injured person mental suffering (Section (§) 2956, ~~Act No. 89 / 2012Sb.,~~ Civil Code).

Within the legal term „mental suffering", the Czech judicature makes the difference between psychological shock and emotional disorder, the last of them resulting frequently in the mental illness (see Decision of Supreme Court, file 4Tdo 302/2018 from 20.06.2018, available at www.aspi.cz).

205. The abstract method of determining compensation is often necessary in determining the so-called lost profit (Section (§) 2952 Civil Code). It is a hypothetical loss of profit which is determined in cases where specific quantification is difficult. For example, it is not possible to determine exactly how much profit the injured entrepreneur would have had in the future should the damage had not occurred. The basis for determining the hypothetical loss of profit is the profit usually achieved in fair trade. The abstract (i.e., hypothetical) loss of profit is determined only when a particular loss of profit cannot be quantified. The basis for finding an abstract (hypothetical) lost profit is usually an opinion (estimate) prepared by an expert in the field who will assess how much profit the injured

242 ~~Janeček, V., Nerovná subjektivní odpovědnost. Jurisprudence, 5/2016, pp. 15ff.~~

243 ~~For more details *see* Chapter 4.~~

person would have gained at the given location and at the given time should the damage had not occurred.

206. A specific category that cannot be exactly classified in either the concrete or the purely abstract ways of determining the amount of damages is claiming compensation for pain and social impairment. The legislation seems to support the purely abstract way: 'The damage to health will be undone by the tortfeasor with such a financial sum that will fully compensate the injured person for pain and other property damage; if the damage to health prevented the injured person from getting a better social position in the future the tortfeasor will also compensate him for social impairment. If the amount of compensation cannot be determined in this way, it is determined according to the principles of decency'.

The methodology of the Supreme Court issued by the civil and commercial division of this court on 12 March 2014 is a certain 'tool' for determining of the particular amounts of compensation for pain and social impairment. It helps to quantify the standard of 'decency' abstractly established in the law. Although this methodology does not have the form of a binding source of law, for the application practice of the courts it is a very valuable tool.[244]

§3. Methods of Assessing Damages

207. As mentioned above (section 2), in the Czech legal order damage is determined either in a specific manner, i.e., by quantifying the actual damage, and, if possible, also by quantifying the lost profits. An abstract determination of compensation is suitable for quantifying the lost profits if it cannot be determined specifically, and in the case of compensation for infringement of personal rights.[245]

§4. Equitable Limitation of Damages

208. The Civil Code uses the term justice as a legally relevant factor in many places. Justice is among the fundamental principles of the rule of law on which it relies and with which any provision of this Code is to be interpreted [246] and from which all private law stems.[247]

Within tort law, justice appears in provisions in which it aims to influence the amount and method of compensation for damage (harm).[248]

---

244 For more details *see* Chapter 4.

245 *See also* Nedbálek, K., Návod výpočtu náhrady škody při nedostatku relevantních údajů. Soudce, 7/2016, pp. 46ff.

246 *See* Section (§) 2, para. 1, Civil Code: '*Each provision of private law may be interpreted only in accordance with the Charter of Fundamental Rights and Freedoms and the constitutional order in general, the principles underlying this Act, and considering at all times the values that it protects. Should the interpretation of a provision diverge from this imperative solely on the basis of its wording, the imperative prevails.*'

247 *See* Section (§) 3, para. 3, Civil Code: '*Private law also stems from other generally recognised principles of justice and law.*'

248 To the limitation of amount of damage *see* Nedbálek, K., Návod výpočtu náhrady škody při nedostatku relevantních údajů. Soudce, 7/2016, p. 46ff.

In determining the amount of compensation for damage to property the principles of justice are not primarily taken into account. Only in the event of a possible application of moderation power by the court, when due to special reasons (and therefore with regard to the possible injustice regarding the personal and property situation of the tortfeasor) the court may appropriately reduce the amount of damages.[249]

Another principle which has the same ideological foundations as justice is the principle of decency. Fairness and decency seem to be decisive factors in determining the manner and amount of damages and appear explicitly in the following provisions:

Section (§) 2955 Civil Code: *'If the amount of damages cannot be determined precisely, it will be determined by the court according to fair consideration of the individual circumstances of a case'.*

Section (§) 2958 Civil Code: ... if it is not possible to determine the amount of compensation as provided for in the preceding sentences, then it will be determined *'in accordance with the principle of decency'.*[250]

Section (§) 2959 Civil Code: In the case of death or extremely serious bodily harm the mental suffering of persons listed in this provision is compensated for in money so as to fully make up for their suffering, *'if the amount of compensation cannot be determined in this manner, it will be determined in accordance with the principle of decency'.* *Generally, the amount of compensation to survivors in case of death of injured person has to be (after the force of Code civil 2012) significantly higher than before (decision of Regional Court in České Budějovice, file 14 To 136/2015-385 from 1.7.2015, available at www.aspi.cz). There is necessary, in the process of determination of amount of compensation of survivors as the consequence of close person´s death, take into consideration both circumstances relating both the damaging person and survivor (see decision of Supreme Court, file 25 Cdo 894/2018-239 from 19.09.2018, available at www.aspi.cz.).*

Section (§) 2966, paragraph 2, Civil Code: It is the right to pension which belongs to the survivors for their maintenance. The first sentence determines the manner of its particular calculation. The second paragraph, though, complements this manner in the following words: *'For the sake of decency an allowance for maintenance can also be granted to another person, if the killed person provided him with such money even though he was not obliged to do that by law'.*

249 ~~*See* Section (§) 2953 Civil Code (for more details *see* Part IV, Chapter 2, §7).~~

250 ~~For more details see Chapter 4.~~

§5. Methods of Payment

I. Lump Sum

209. Paying compensation with a fixed lump sum is a general and usual way of compensation. It comes into consideration in cases where it is not possible to compensate by bringing things into the previous state, or where it is requested by the injured person. Also, it may be the situation where the injured person asserts his rights to compensation for immaterial harm that were caused by an infringement of his personal rights, and this infringement was of such intensity that an immaterial satisfaction would not be sufficient.

With a lump sum it is also possible to compensate for suffered pain and social impairment. The legal methodology [251] provides that the determination about and payment of an amount as compensation for suffered pain and social impairment should come into consideration only after the injured person's health is stabilized, the same applying to assessing permanent health consequences. This time lag is regulated by the methodology rather vaguely, establishing that the court should start determining the amount of compensation for social impairment only when the health condition of the injured person is relatively stable, and after one year usually, or exceptionally after two years. In the case of pain assessment this should not happen before the pain has been stabilized.

II. Annuities

210. Damages in the form of repeated payments, i.e., in the form of pension, are granted in cases where there has been bodily injury or death of the injured person. By this form of payment the Civil Code follows the purpose of such refunds which are supposed to provide the injured person or the person who suffered indirectly with an adequate periodic sum of money resolving the material situation of such persons and compensating them fully for their worsened economic situation caused by the harmful event.

In the form of repeated, usually monthly payments, compensation for loss of earnings during the period of incapacity [252] is provided as well as compensation for loss of earnings for a pupil or a student since the time he was supposed to finish his compulsory schooling, study or vocational training, the compensation for loss of earnings after termination of incapacity, or in the case of invalidity. Pensions are also paid to the injured person under Section (§) 2964, Civil Code, where there is loss of pension. An indirectly injured person, and thus a person entitled to compensation, is under Section (§) 2965 Civil Code even the one for whom the injured person has directly performed free work in his home or business. In such cases the law again provides pension as the form of compensation, i.e., periodic payments. Pensions are also paid to the survivors as compensation for maintenance.[253]

---

251 ~~*See* the Methodology of the Supreme Court for Compensation for Pain and Social Impairment under § 2958, at www.nsoud.cz.~~

252 ~~Section (§) 2962 Civil Code.~~

253 ~~Section (§) 2966 Civil Code.~~

III. Others

211. As follows from above, the general way of compensation of damage under Czech private law is bringing things into the previous state (restitutio in integrum).[254] The financial compensation is appropriate where bringing into the previous state is not possible. This applies to damage caused to personal rights of the injured person as well as to his life and health. In such cases the only compensation possible is in the form of money. The financial compensation of damage is always provided if requested by the injured person. The injured person can also request both from the tortfeasor in an alternative action. Where it is easier and more realistic for the tortfeasor to compensate for a proprietary damage by bringing things into the previous state he is supposed to do so, if not, he is supposed to compensate the injured person financially. When the injured person considers the form of damages, i.e., whether to want to have the damage to his property compensated by bringing into the previous state or in money, it is necessary to take into account the economic situation of the tortfeasor, too.

A special method of compensation called surrender value is regulated in Section (§) 2968 Civil Code. This form comes into consideration instead of monetary pension. The court will grant surrender value to the injured person if there is an overriding reason for that or if requested by the injured person. A proper reason can be the serious health condition of the injured person, the poor financial situation of the injured person, or the fear of the future insolvency of the tortfeasor.

Chapter 4. Personal Injury and Death

§1. Pecuniary Losses

212. During an unauthorized intervention in health, life or personal rights of persons there may arise harmful consequences in the form of injury of both material (financial) or immaterial (non-financial) character. Life, health, and personal rights of persons are called ‘natural rights’ in Czech private law. From the general provision of Section (§) 2956 Civil Code it follows that in the event of the infringement of natural rights that are protected under the first part of the Civil Code [255] the tortfeasor will compensate the injured person for damage and immaterial harm caused by that. The immaterial harm should also include mental suffering.

The Cost of Treatment

213. The injured person may incur costs, in connection with personal injury, for treatment of that injury.[256] These costs include not only direct costs of emergency treatment or treatment in a medical institution but also costs of rehabilitation, a better diet, and relatives’ visits in the medical institution if the doctor finds them positive for the injured person’ health.[257]

---

254 ~~Section (§) 2951, para. 1, Civil Code.~~

255 ~~The first part of the Civil Code regulates general provisions of the whole Civil Code, including protection of human personality (Sections (§§) 81–117).~~

256 ~~Section (§) 2960 Civil Code.~~

257 ~~In the long-term the jurisprudence follows the idea that the compensation for purposeful costs of medical treatment includes, among others, the costs associated with rehabilitation,~~

Costs Associated with Caring for the Injured Person and His Household

214. As a result of personal injury there may arise an objective need for the injured person to be cared for by another person. The costs of this person (caregiver) can be considered, according to Section (§) 2960 2 Civil Code, as another monetary claim that the injured person may assert in connection with his personal injury.[258] Likewise, that person may have the task of ensuring the functioning of the household of the injured person. It could be one and the same person, but it can also be more persons. It always must be reasonably expended costs, the reasonableness being considered with regard to the nature of the harm to the health of the injured person as well with regard to the taking care of his household (the house size, the number and age of children, the garden, etc.).

Funeral Expenses

215. The tortfeasor is obliged to compensate for the costs associated with the funeral to the surviving person who actually expended them. The law establishes that the costs should be compensated for up to the level to which they were not covered by a public allowance under another legislation.[259]

The reasonableness of the expended costs must be assessed according to customs and circumstances of each case.[260] This means that if it is a funeral of a prominent person or a person with a great family then it is clear that the reasonably expended costs of the funeral will be higher than those of the funeral of a person living in a small family circle.

Damage caused to the finances of the injured person also includes the so-called financial benefits provided for in Sections (§§) 2962–2964 Civil Code. They are as follows:

Compensation for Loss of Earnings During the Period of Incapacity to Work

---

the costs for caregivers, the costs associated with a better diet, the cost for dietary meals or costs of the closest relatives of the injured person associated with visiting him in hospital. The costs must be purposeful and provable (cf. the Decision of the Supreme Court of 30 Nov. 2004, file No. 25 Cdo 1875/2003, in Collection of Civil Decisions, file C NS 2991.

258 The Decision of Constitutional Court, file I. ÚS 870/2014, available at http://nalus.usoud.cz.

259 *See* Act No. 117/1995 Coll., on State Social Support, as amended. Those entitled to funeral allowance include the person who arranged for the funeral of a dependent child, or the person who was the parent of a dependent child, provided the deceased person (with the exception of a stillborn child) had permanent residence in the Czech Republic on the day of his death. The right to funeral allowance expires if not claimed within one year from the date of the funeral. The family income is not examined.

260 Pelikán, M., Limity náhrady újmy podle občanského zákoníku. Rekodifikace a praxe, 11/2014, pp. 6ff.

216. The form of compensation for loss of earnings is a payment which the tortfeasor is obliged to provide to the injured person. The amount is calculated as the difference between the average earnings of the injured person prior to the occurrence of the injury and the compensation paid to the injured person as a result of injury or illness under another legislation.[261]

Since 1 January 2014 there has been a newly established entitlement to compensation for loss of earnings of pupils or students who have suffered, during their studies or preparatory training for their future careers, loss in earnings.[262]

Compensation for earnings should compensated for the loss suffered:

a. due to the extended compulsory schooling, studies or vocational training as a result of a health injury;
b. during the temporary incapacity to work due to a health injury;
c. as a result of permanent disability caused by a health injury which usually prevents gainful employment;
d. as a result of partial inability to engage in gainful employment because of disability caused by health injury, if the injured person does not miss earning opportunities due to his own fault.

Compensation for Loss of Earnings after Termination of Incapacity to Work

217. The form of compensation is again a pension the amount of which depends on the difference between the earnings of the injured person which he obtained before the occurrence of injury and the earnings which he currently obtains, possibly including a disability pension. If there are long-term increased needs of the injured person (e.g., for commuting to work), then this fact is also taken into account when determining the amount of the pension.[263]

In addition to this basic pension it is also possible to take into account any additional or increased efforts that the injured person must expend for obtaining earnings after the harmful event. A hypothetical component of this pension is also taking into account how the earnings of the injured person would have developed should there had been no harmful event, and how the earnings in the field have been developing.[264]

If there are any serious reasons, the court may, regardless of any motion of the parties, impose on the tortfeasor the duty to compensate the injured person for such loss.[265]

Compensation for Loss of Retirement Pension

---

261 ~~*See* section (§) 2962, para. 1, Civil Code.~~

262 ~~*See* section (§) 2962, para. 2, Civil Code.~~

263 ~~*See* section (§) 2963, para. 1, Civil Code.~~

264 ~~*See* section (§) 2963, para. 2, Civil Code.~~

265 ~~The decision of District Court 7C 14/2016, available at www.aspi.cz.~~

218. If the injured person, due to a harmful event, became entitled to a lower retirement pension than he would have obtained if there had been no harmful event, then he is entitled to being compensated by the tortfeasor for loss of retirement pension. The amount of this compensation is to be the difference between the pension to which the injured person would have been entitled and the basis of the pension including the compensation for loss of earnings, after termination of incapacity to work, which the injured party was receiving at the time decisive for calculating the pension.[266]

Compensation of Persons for Whom the Injured Person Performed Work

219. This compensation lies on the border between pecuniary (proprietary) and non-pecuniary (non-proprietary) harm. It belongs to any person for whom the injured person performed work at home or in his business. If this compensation were taken as compensation for a purely pecuniary harm, then it would be quantified as the costs of paying a third party that is to perform the work instead of the injured person. In a broader context, it is also possible to see this harm as the non-pecuniary one which will include the damage suffered due to the loss of the unique qualities of the injured person that may be irreplaceable in their original form.

Compensation for Maintenance of the Survivors

220. In the event of death, the tortfeasor is obliged to compensate the survivors for maintenance that the deceased provided or was obliged to provide to them till the date of death.[267] This compensation has the form of monetary pension. Its amount is the difference between what the injured person could reasonably have provided to the survivors as maintenance and the benefits that these survivors receive within a pension scheme for the same reason.[268] In some cases, the persons entitled to that maintenance are also the survivors to whom the deceased person provided something even without being legally obliged to do that. The law requires the criterion of 'decency' for granting such compensation.[269]

§2. Non-pecuniary Losses

221. Interfering in health and life of a person as well as in his personal rights in the form of honour, dignity, etc., may result in injuries of purely immaterial nature. Compensation for injuries of this nature is covered in the following provisions:

Section (§) 2951/2, Civil Code: *Non-proprietary damage is redressed with adequate satisfaction. Satisfaction must be provided in money if another way does not ensure a genuine and sufficiently effective redress of the damage sustained.*

This is a general provision and concerns the way in which all kinds of non-proprietary damage caused by the tortfeasor to the injured person are to be compensated for.

---

266 ~~*See* section (§) 2964 Civil Code.~~

267 ~~*See* section (§) 2966, para. 1, Civil Code.~~

268 ~~The Constitutial Court ruling I ÚS 501/2013, available at http://nalus.usoud.cz.~~

269 ~~*See* section (§) 2966, para 2., Civil Code.~~

There is a special regulation added to this general provision regarding compensation for harm to natural rights of persons established in Sections (§§) 2956–2957, Civil Code. According to Section (§) 2956 the tortfeasor that has caused harm to a person's natural rights is obliged to compensate him for both harm and proprietary damage caused to him. [270]In terms of non-pecuniary damage this provision generally concerns the entitlement of the injured person to have his *mental suffering redressed* by the tortfeasor.

The form and amount of adequate satisfaction under Section (§) 2957 Civil Code

222. When determining the form (i.e., pecuniary or non-pecuniary satisfaction) and the amount of compensation for immaterial damage (i.e., how much is to be paid in the event of pecuniary satisfaction), it is necessary to take into account the following criteria which are also intended to redress specific circumstances.[271] These are as follows:

- Causing harm intentionally or unintentionally.
- Using trickery when causing harm.
- Using force when causing harm.
- Misuse of the injured person's depending on the tortfeasor (e.g., a superior at work, or a younger person in relation to the older one).
- Multiplication of effects by making something widely known (e.g., defamatory disclosure of a fact in the media).
- Discrimination of the injured person with regard to his sex, health, ethnicity, creed, or any other serious reason.
- Fear of the injured person of losing his life, or serious damage to his health.

Special requirements also concern situations where the injured person suffers harm to his health and the situation has the character of non-pecuniary harm, too. It follows directly from the law, though, that in the event of suffering pain and in the case where the harm to health poses for the injured person an obstacle when striving for a better job in the future, the tortfeasor is obliged to financially compensate the injured person for what he has suffered by the that pain and for what has made it difficult for him to find a better job in his future life.[272]

Compensation for pain

223. The purpose of compensation for pain is, through monetary means, to make up for or alleviate pain incurred in connection with harm to health and with its subsequent treatment. Pain can be assessed at the time of stabilization of pain, which is the moment when we can assume that there will not be further deterioration of health and interventions in the health condition of the injured person. For example, in the case of an ulna fracture the moment of stabilization of pain may be considered the day when the plaster was removed from the arm of the injured person although he still remains

270 ~~The decision of District Court in Jihlava 21C 410/2013-71, available at www.aspi.cz.~~

271 ~~The decision of Supreme Court 4 Tdo 482/2016, available at www.nsoud.cz.~~

272 ~~The Constitutional Court ruling I.ÚS 501/2013, available at http://nalus.usoud.cz.~~

incapable of working and undergoes rehabilitation. The moment of stabilization of pain is important for issuing a medical opinion on the evaluation of pain, and at the same time this moment is the beginning of the limitation period. Until the Civil Code no. 89/2012 Coll. coming into force, i.e., until January 1, 2014, the amount of compensation for pain was assessed according to the Ministry of Justice Decree no. 440/2001 Coll. According to this decree, now repealed, a medical opinion for determining the amount of compensation for pain and social impairment was primarily issued by the attending physician of the injured person; if there were more physicians involved in treating the injured person, the physician issuing the medical opinion also took into account the written information submitted to him by the other physicians. This procedure was based on the fact that the attending physician knew his patient best but he was not always experienced enough in making opinions of this type. The above-mentioned decree was abolished on 12 March 2014 and replaced by the Methodology of the Supreme Court for compensation for pain and social impairment under Section (§) 2958 [273] (hereinafter the 'Methodology'). As stated above, this methodology is not a generally binding source of law but courts take it into account when deciding about the amount of compensation for pain and social impairment. For compensation for pain and social impairment in the branche of Labour Law, the Government Decree no. 276/2015 Coll. was adopted.

The adoption of the 'Methodology' was necessary *inter alia* with regard to the vagueness of the terms under which the injured person should be given compensation. According to Section (§) 2958 of ~~the Act No. 89/2012 Coll.,~~ Civil Code, the injured person should be given such financial compensation that would:

- fully make up for the pain suffered;
- fully make up for other non-proprietary damage.

Without another, more exact, definition of the criteria by which compensation for pain is determined it would probably be very difficult for courts to make decisions. The Methodology took a fundamentally different approach than that chosen by the former decree, recommending that for the purposes of determining the amount of compensation for personal injury opinions made by experts in the field of health care, i.e., from a special profession dealing with compensations for non-material harms to health, should be used as evidence. According to the Methodology these experts must have completed, in addition to medical education and specialized qualification (attestation) in one of the medical disciplines, a superstructure course called Compensation for harm to health involving: (a) the foundations of the International Classification of Functioning, Disability, and Health, (b) the application of this classification for the purposes of compensation for social impairment according to the Methodology, and (c) determining compensation for pain according to the Methodology.

According to the Methodology a new profession must be established for assessing immaterial damage to health, in addition to the already established 'conventional' professions. In fact, such profession has already been created by the publication of

273 ~~At: www.nsoud.cz.~~

the Methodology, but normatively it took place on 1 June 2015 when the Ministry of Justice Decree no. 123/2015 Coll. came in force, laying down a list of expert fields and professions for the performance of expert work in which this new profession was included. However, it is necessary to note that no other expert disciplines and professions were normatively regulated yet, and the list of expert fields and professions had previously existed only in the form of a list published on the website of the Ministry of Justice, although the passing of a decree establishing a list of expert disciplines and professions was enabled by the Act on Experts and Interpreters of the Ministry of Justice since 1 January 2012. The explanatory note to the decree in question admits that it only normatively establishes the status quo, where the only real change is precisely the need to 'establish a new expert profession for the area of determining compensation for immaterial injury to health'.

In line with the decree, the pain suffered is evaluated by points (this is done by an expert – a physician). The point value for the purposes of compensation for pain was set by the Methodology to be 1% of the average monthly gross wages and therefore a single point for pain suffered in 2014 had the value of CZK 251,28, while for the pain suffered in 2015 it was CZK 256,86. However, the assessing of pain can be undertaken only at the time of its stabilization. This time it also linked with the subjectively conditioned start of the limitation period for claiming compensation for personal injury.[274]

Compensation for social impairment

224. In the event of social impairment (permanent health consequences) what is compensated is a demonstrable negative impact of the health injury on the functioning of the injured person in life and in society. The court takes into account the possibility of satisfying his life and social needs, the possibility of exercising his profession or training for his future job, and the possibility of further functioning in the family, political, sport or cultural life. Social impairment is an immaterial harm for which there is a one-off compensation. In exceptional cases worthy of extraordinary consideration, it is possible to ask the court for increasing the compensation. At the same time, however, this has a significant impact on other claims for compensation for damage which the injured person may incur, in particular loss of earnings after termination of incapacity for work (permanent health consequences are one of the conditions for the arising of this entitlement) and efficiently expanded costs of taking care for the injured person after the end of treatment.

For the same reason as in the case of compensation for pain (i.e., the vagueness of the criteria for determining the amount of such compensation included in Section (§) 2958 Civil Code), the Ministry of Health Decree no. 440/2001 Coll. was used for the purposes of calculating such compensation until 1 January 2014, being replaced for

274 *See* Section (§) 619, para. 2, Civil Code: '*A right may be asserted for the first time once the entitled person became aware of the circumstances decisive for the start of the limitation period or when he should and could have learnt thereof.*'

the purposes of the application practice of courts by the above-mentioned 'Methodology' since 12 March 2014.

For the purposes of determining the amount of such compensation the 'Methodology' introduced a system of degrees of difficulties suffered in the future as a result of damage to health. These degrees are based on the International Classification of Functioning, Disability and Health, developed by the World Health Organization (WHO). It distinguishes several degrees of social impairment from mild difficulties in the range of 0%–4% to the total difficulty in the range of 96%/100%. The default amount of compensation for social impairment (i.e., the amount in the case of a 100% social impairment) is 400 times the average gross wage in the previous calendar year.[275]

Chapter 5. Various Kinds of Damages (Property)

225. In Part VI, chapters 1–4, the essential kinds of damages were described. In addition, some further kinds of assessing and paying for damage can be presented.

Within the framework of the legal regulation of liability caused by a member of a corporation or by a member of its body caused to the whole body and simultaneously to a member of this body (the so-called *reflective damage*), the court may, even at its own motion, impose upon the tortfeasor the duty to provide compensation for damage only to the corporation if it is justified, in particular if it is evident that such a measure will compensate the damage of the devalued participation.[276]

226. The Civil Code has special provisions governing damage to property (ownership). According to the principle of balance of interests, where the Code regulates the legal dispute of two or more persons on proprietary rights (ownership) in one party's favour, the court is to compensate, if it is justified, the other party for an injury caused by that.[277]

Also, within the framework of tort law there can be found some specific kinds of damages: the so-called price of a thing has newly been incorporated into the text of the Civil Code which is especially in favour of the injured person (the sentimental value).[278]

---

275 To the assesment of non-pecuniary loss *see* Polišenská, P., Rozhodování v adhezním řízení o nárocích na náhradu nemajetkové újmy Rekodifikace a praxe, 5/2016, pp. 21ff.; Nedbálek, K., Výpočet nemajetkové újmy. Bulletin advokacie, 11/2015, pp. 35ff.

276 Section (§) 213 Civil Code.

277 *See* for example the legal solution in the case of processing things as stated in Section 1074–1076 Civil Code (the full text is accessible on the website: www. justice.cz).

278 *See* Section (§) 2969, para. 2, Civil Code: '*If the tortfeasor has damaged a thing out of caprice or maliciousness, he shall compensate the victim for the sentimental value.*'

Chapter 6. Interference with Collateral Benefits

§1. Insurance

227. The Civil Code included in the fourth part of Chapter II (Sections (§§) 2758–2872) a legal regulation of insurance that had been previously regulated in a separate statute.[279],[280] This meant a unification of the previous two-line character of the legal regime of insurance relationships, since the relationships arisen until 31 December 2001 were still regulated by the provision of the Civil Code No. 40/1964 and the legal relationships arisen since 1 January 2005 were regulated by a special statute. The insurance arises on the [281]grounds of an insurance contract with which the insurer undertakes to the policy holder to provide him/her or a third person with a payment if an insurance event occurs (i.e., an accidental event covered by the insurance) and the policy holder undertakes to pay the insurer an insurance premium. The insurance contract has to be concluded always in writing unless the insurance has been agreed upon for a period shorter than one year, or if the policy holder accepted the offer by paying the insurance premium in time. The insurance contract is considered to be a kind of contract for financial service which is regulated by special provisions on consumer protection[282] and if a means of distance communication has exclusively been used for concluding the contract. Achieving the purpose of insurance is ensured by the definition of insurance interest as a justified need of protection against an insurance event[283], which is supposed to prevent speculative types insurance (e.g., wager policy). The policy holder has an insurance interest in his/her own life and health, or life and health of a third person as well as in his/her own property (in this case, a future insurance interest may be insured, too); if the interested person did not have an insurance interest and the insurer knew or must have known about that when concluding the contract then the contract is invalid; when the insurance interest is terminated then the insurance is terminated, too. The subject matter of the insurance may also be a foreign insurance danger. The insurance arises on the first day after making the insurance contract unless it is agreed that it will arise by the conclusion of the contract or later. It may also exceptionally be agreed that the insurance covers the period before the conclusion of the insurance contract. The subject matter of the insurance relationship may be determined by reference to the insurance terms which usually detail the origin, duration and termination of the insurance, the insurance event, the exclusion from insurance and the manner of determining the extent of the insurance performance and its maturity; the insurer is obliged to inform the policy holder about them before concluding the contract.

228. The insurance contract may also be made for the benefit of a third person. The third person has a right to the insurance performance if the insured person, or his/her legal

279 For more details *see*: Fiala, Josef; Hurdík, Jan. 'Czech Republic' 'Czech Republic'. In International Encyclopaedia of Laws: Contracts, edited by Jacques Herbots. Alphen aan den Rijn, NL: Kluwer Law International, 2014, ISBN 978-90-654-4941-2, pp. 122–126.

280 Act No. 37/2004 Coll., on Insurance Contract.

281 Section (§) 1841 Civil Code.

282 Sections (§§) 1810 ff. Civil Code.

283 Section (§) 2761 Civil Code.

representative, has given the third person consent to accept the insurance performance after being made acquainted with the content of the contract.

In certain specified cases the law may impose on a certain person the duty to make an insurance contract: the *mandatory insurance* (e.g., the compulsory motor vehicle liability insurance, various types of professional insurance – for advocates, notaries, etc.). The keeper of motor vehicle is obliged to conclude with insurance company providing this kind of insurance the contract covering sufficiently the damages, which can be caused to another person by the traffic accident, where the insured person is liable to cover the damage. In case of such an accident, the victim has primarily the claim against the insurer (insurance company), by which the liable person (the keeper of vehicle) is insured. Subsequently, in case the victim´s damage has been paid by the insurer, the victim´s claim against the participant of traffic accident liable for damage, is *eo ipso* assigned to the insurer. In enumerated cases, as for example, when the accident was caused either by the drunk or intoxicated driver, the insurer has the right to claim the damage covered by him against the responsible traffic participant . (*see* the decision of Supreme Court, file NS 25 Cdo 2049/2018-143 from 13.12. 2018, available at www.aspi.cz.).

229. There are two basic types of insurance regulated by Czech law:
(1) damage insurance; (2) sum insurance.
(1) The purpose of damage insurance is compensation of a damage arisen as a consequence of an insurable event. (2) The purpose of sum insurance is to gain a sum, that is, an agreed sum of money as a consequence of an insurable event the amount of which does depend on the arising of or the extent of the damage. According to the subject of insurance, there are traditional types as follows:
(a) insurance of persons; (b) insurance of assets.
(a) As for insurance of persons, it is possible to insure a natural person for the case of death, for reaching a certain age or for reaching the day set in the insurance contract as the end of insurance, and for the case of injury, illness or another state of affairs linked with health or a change of the personal position of the insured. Within insurance of persons, the following types are distinguished (all of them may be agreed as damage insurance or sum insurance):
(i) life insurance (especially for the case of death, for reaching a certain age, for reaching the day determined in the contract as the end of the insurance done or for another state of affairs linked with a change of personal position);
(ii) injury insurance (for the case of injury, that is, an unexpected and immediate impact of outer forces or one's own personal force regardless of the will of the insured which causes impairment of health or death); (iii) insurance for the case of illness or another state of affairs linked with health condition.
(b) Insurance of assets includes insurance of a thing, a set of things or other assets. It holds that insurance of a thing or a set of things may only be made as damage insurance; insurance of other assets may be made as either

damage insurance or sum insurance. Within insurance of assets, following types are distinguished (they may only be made as damage insurance): (i) insurance of legal protection; (ii) insurance of liability; (iii) insurance of credit and guarantee; (iv) insurance of financial losses.

230. Differences among them are derived from peculiarities of the subject of insurance – insurance of legal protection consists in the undertaking of the insurer to reimburse on the basis of an insurance contract the costs incurred by the insured when enforcing his/her rights to the extent defined in the insurance contract and to provide services directly linked with this private insurance; insurance of liability for damage or another injury is made for the case of the insured being liable for causing damage to another person, the insured having the right to have the damage for which he/she is liable to be paid for by the insurer up to the limit of the agreed premium or at the amount of the damage arisen; insurance of credit includes protection against property consequences that may arise for the insured due to his/her debtor's failing to pay off the provided money; insurance of guarantee is made for the case of performance from a guarantee obligation, forfeiture of bail or security or performance from them (or performance from another similar reason); insurance of financial losses is made for costs incurred due to a harmful event or lost profit or any financial loss. The right to performance from insurance is statute-barred after three years at the latest, and in the case of life insurance it is ten years (the general option of an agreement to shorten or lengthen the period of limitation is excluded). The right to insurance payment from liability is statute-barred at the latest when the right to compensation of damage or injury which it covers is statute-barred. The limitation period of the right to insurance performance begins to run after one year following the arising of the insurable event. This also holds when direct entitlement to insurance performance has arisen for the aggrieved party against the insurer, or when the insured asks the insurer to pay him/her the amount he/she has given to the aggrieved party as a compensation for the damage for which he/she is liable towards the aggrieved party when fulfilling the duty to compensate damage or another injury. Termination of insurance occurs at the moment of the termination of the insurance relationship which takes place especially:

a. by expiry of the period of cover (unless the mechanism of extension of the period of cover has not been applied);
b. as a consequence of the lapse of the period established by the insurer for giving a demand note to pay the premium or its part;
c. by an agreement between the insurer and the policyholder;
d. by notice of termination from the part of the insurer or the policyholder;
e. by withdrawal of the insurer or withdrawal of the policyholder from the contract concluded by the form of distant deal;
f. by refusal of performance by the insurer;
g. by termination of insurance risk;
h. by termination of existence of the ensured thing (or another property value);
i. by the death of the insured natural person or (j) by dissolution of the insured legal entity without a legal successor.[284]

284 *See also*: Fiala, Josef; Hurdík, Jan. 'Czech Republic' ~~Czech Republic~~. In International Encyclopaedia of Laws: Contracts, edited by Jacques Herbots. Alphen aan den Rijn, NL: Kluwer Law International, 2014, ISBN 978-90-654-4941-2, pp. 122–126.

§2. Social Security

231. As in other well-fare states, there is in the Czech Republic a developed system of health care.[285] The pillar of social health care is the constitutional right to gratuitous health care based on the general health insurance. The 'gratuitous' (while being insured) medical care is provided by medical practitioners who have concluded a health insurance contract with the same insurance company as the patient. By this way, many cases of bodily and mental injuries where the medical care is necessary are covered by the social health insurance.

The Czech citizens can also use the Czech mandatory health insurance in case of needing necessary health care abroad, namely, in the states of the European Union. In such a case, if the insured person wants full, not only necessary, care, the conclusion of an additional insurance contract with a commercial insurance company is required.

In cases where the injury was caused by another person's fault or by the fault of the injured person, the insurance company is entitled to claim its expenses against such a person.

Chapter 7. Other Remedies

§1. Restitution (for Unjust Enrichment)

232. The Czech civil law is based on the principle of the balance of rights and duties.[286] Therefore, when a legal instrument to restore the broken balance of property rights and duties seems to be insufficient, there is the instrument of unjust enrichment designed to restore this balance.[287] Obligations arising from unjust enrichment form a special group of obligations that are not covered by contracts.[288]

The new Czech Civil Code (2012), unlike the regulation of the liability for injury, accepted the substantial outline of former concept of restitution for unjust enrichment.[289] It permits to use the judiciary, belonging to the former legal regulation.[290]

---

285 More about the Czech system of health care and public health insurance cover the acts: Act 592/1992 Coll. and Act 48/1997 Coll. (Public health insurance act).

286 For more details *see also* Fiala, Josef; Hurdík, Jan. 'Czech Republic' 'Czech Republic'. In International Encyclopaedia of Laws: Contracts, edited by Jacques Herbots. Alphen aan den Rijn, NL: Kluwer Law International, 2014, ISBN 978-90-654-4941-2, pp. 155–164.

287 ~~When the claim based on unjustified enrichment comes into conflict with the claim based on another juridical grounds, the other claim has to be used. *See also* Decision of Supreme Court from 3 Apr. 2001, 29 Cdo 1180/2000. In: Soudní judikatura No. 137, 2004, available also at www. nsoud.cz.~~

288 ~~*See* Sections (§§) 2991–3005 Civil Code.~~

289 ~~*See* Act No. 40/1964 Coll. (former Code civil), Sections 451–458.~~

290 *See* Přehled judikatury ve věcech bezdůvodného obohacení (Review of the judiciary concerning the injust enrichment). Lavický, P. (ed.). ASPI, a.s., Praha 2006, 416p.

For obligations to arise from unjust enrichment there is a primary prerequisite that a proprietary benefit – enrichment – was obtained by a party that was not entitled to it. Enrichment may be of various kind (e.g., performance in rem, monetary performance, the benefit of using another person's thing, or performance provided in favour of the enriched person); however, enrichment must always have a proprietary value with the possibility to be objectively expressed in money. As for the property of the enriched person enrichment will be manifested either in an increase of his property (direct enrichment) or in the fact that his property has not decreased, although in fact it justifiably should have (the so-called indirect enrichment).[291] One person must get enriched at the expense of another, which means that enrichment of one party is simultaneously a detriment of the other party.

233. The grounds of unjustified enrichment and the corresponding detriment may involve an act of the person enriched (sometimes an illegal act), an act of the aggrieved party, or joint actions of both parties. It may also be an act of a third party or an event. An event may cause unjust enrichment indirectly, too, if the performance of a contractual contract becomes impossible as a result of that event and the other party has already fulfilled his obligation. Here, obtaining unjust enrichment is not a direct consequence of the event but the result of the termination of a legal reason (the extinction of an obligation due to impossibility to perform).

Enrichment must be unjustified. The cases where a certain property benefit can be deemed an unjust enrichment are expressly stipulated by the Civil Code.[292] It is a demonstrative list not excluding other reasons. In addition to these special cases, the Civil Code contains a general provision under which 'any person who got enriched without a justified reason at the expense of another must give up the enrichment'.

234. The Civil Code lists the most frequent situations involving unjust enrichment. Such cases when a benefit is obtained are as follows[293]:

1. by performance with no legal grounds;
2. by performance upon a terminated legal ground;
3. by unlawfully using someone else's valuable;
4. when another person performs what was to be performed by the enriched person.[294]
5. Unjust enrichment obtained by performance with no legal grounds. The factual basis of this type of unjust enrichment is characterized by the following two features:
   a. there was some performance – that is, property value was transferred from the property sphere of one party to the property sphere of another party;
      Performance means a property benefit, presuming that somebody got something by that; that is, it must be of such nature that the party for whom the performance was meant for obtained a property benefit. The performance may comprise the act of giving something to somebody (a thing, money), passing on a debt and a right established or exercised in favour of somebody (e.g., work). It may also be performance involving an omission or sufferance, but only if the enriched party obtained a property benefit (e.g., a dwelling house owner allows another person to use it).
   b. the performance had no legal grounds.
      Lack of legal grounds for performance may be due to the fact that, from the very beginning, there have been no legal grounds to perform, but the performing party presumed it (performance of no-debt).

---

291 *See* Decision of former Supreme Court of Slovak Republic from 21. 12. Dec. 1978, file Cpj 37/78; available at www. nsoud.cz.

292 Section (§) 2991, para. 2, Civil Code.

293 *See also* the Report of Collegium for civil law of the Supreme Court of Czech Republic from 28. 03. Mar. 1975, file Cpj 34/74 (in Collection of decisions R 26/1975).

294 Sections (§) 2992–2994 Civil Code.

Further, such cases are included when an existing debt is performed, but in favour of someone different from the creditor, or by someone different from the debtor, or the performance is of higher value than was due from the obligation. Lack of legal grounds may arise later on, too, but this case is regulated separately. The procedure in the case of lack of legal grounds is also used if the obligation has been cancelled.

6. Unjust enrichment arising from a terminated legal ground. In this case the prerequisites for the right from unjust enrichment to arise include
   a. performance provided;
      This prerequisite comprises similar conclusions as in the case of prerequisites of unjust enrichment obtained through performance with no legal grounds.
   b. the legal ground for performance provided terminated.
      The reason for the right to arise is the fact that the legal ground for the provided performance terminated. These are situations where, at the time of performance, there existed valid legal grounds but these legal grounds became ineffective as a result of a subsequent legal event and were thus terminated. It will be so, for example, when a valid withdrawal from a contract occurred for reasons stipulated under law, or under the contract, or when the withdrawal occurred by operation of law when the termination of obligation occurred as a result of the debtor's default in fixed contracts due to impossibility to perform, upon the parties' agreement, or by satisfying a resolute condition. It also may be the case when performance is provided on the basis of an effective judgment that was subsequently revoked, for example, as a result of a new court trial. However, where a legal ground existed but was terminated prior to the performance (e.g., a debt was fulfilled that had become extinct by preclusion; the performance was provided only after the other party effectively had withdrawn from the contract), then it will be a performance lacking legal grounds, not a performance later terminated upon a legal ground.

   The benefit of unjust enrichment obtained from performance upon legal grounds that later terminated will be involved only when the legal ground for performance had been valid. This distinction is important, among others, for deciding about the expiration of the right to have the unjustified enrichment surrendered.

   Unjust enrichment obtained from unfair sources. An unfair source for obtaining a property benefit can be deemed a manner of obtaining a property value that is inconsistent with good morals and, as such, prohibited by law. These are mainly the cases when property benefit is obtained through criminal acts, but also the cases when certain conduct cannot be criminally sanctioned for some reason (lack of criminal liability as a result of minority or incapacity of the offender).

   In an overall assessment of the sources of unfairness, the presumption of fair property benefit is applied. Therefore, the party claiming the surrender of a property benefit on this ground must prove the source of the unfairness.

7. Unlawful use of another person's valuable. This is a newly introduced form of unjust enrichment which requires the following:
   a. using another person's valuable;
   b. using must be unlawful
   (e.g., using another person's vehicle or database without his consent).
8. Unjust enrichment obtained by another person's performance that was to be performed by the enriched person.[295]

235. For the obligation to arise the following prerequisites must be satisfied:

a. an existing legal obligation to perform by the party instead of what was performed;
b. performing the legal obligation by the party who was not supposed to perform.

---

295 To the difference between performance with no legal grounds and the situation, when another person performs what was to be performed by the enriched person, *see* Decision of the Supreme Court from 30. 06.Jun. 2003, file 29 Odo 289/2001. Published in Collection of decisions R 23/2004 and *also* in Soudní judikatura (Court Judiciary) No. 132, 2003.

1. Unjust enrichment in this case (contrary to the previous case) does not lie in increasing the property of the unjustly enriched person but in the fact that his assets were stripped of liabilities as a result of his own obligation being performed by another person. Therefore, the legal duty of the owing party to perform is an indispensable prerequisite for the right under the Civil Code. This obligation may be implied in law, in a contract or in another legal situation.
2. Another prerequisite is that the party providing performance has no legal obligation to do so. Therefore, the case when a surety provides performance to the creditor under the Civil Code is not included here because the surety's duty arises from the surety obligation.
   The same principle is the basis of other regulations of the Civil Code, for example, the landlord's right to demand from the tenant compensation of the costs incurred due to small repairs and flat maintenance, which was supposed to be done by the tenant himself and was carried out by the landlord at his own expense. In this case, as well as in others where some rights are specifically stipulated, a special regulation is applied.

236. The person who fulfilled a statute-barred, unactionable or invalid debt due to lack of form does not have right to have the performance returned; similarly, the person who has enriched another person knowing that he is not obliged to do so has no right to having the performance returned. However, if someone provided a performance intentionally so that the other party should commit an unlawful or impossible thing he has no right to claim to have it returned. But if a person provided a performance for someone intending to commit an unlawful act and did so in order to prevent it then he may claim to have it returned.

237. The main legal consequence of unjust enrichment is the arising of an obligation to compensate for this enrichment. The law specifically stipulates a settlement of an invalid or cancelled contract between the parties by expressing a synallagmatic nature of this obligation relationship arisen from unjust enrichment.

The duty to give up unjust enrichment is owed principally by the party who obtained it. This duty is based on the principle of full natural restitution. The Civil Code stipulates that everything that was obtained through unjust enrichment must be given up. Only if it is not possible, especially because the enrichment involved some acts, a monetary compensation at the usual amount must be provided. For the extent of the duty to give up unjust enrichment the moment when it was obtained is decisive.

The bona fide receiver of unjust enrichment is to give up all he has acquired but at most only to the limit to which the enrichment exists when the law is applied. If the party that had obtained unjust enrichment did not act bona fide he is also obliged to give up the benefit obtained from it.[296]

The duty to give up unjust enrichment is therefore aimed at reparation, that is, a remedy for economically and legally unfounded property transfers, and at restoration of the broken principle of equivalent performance. Thus, the institute of unjust enrichment by its specific nature contributes to the protection of ownership right and other proprietary rights of natural or legal persons.

§2. Injunctive Relief

238. The courts may in certain specified cases reduce the amount of compensation for damage.[297] The courts take into account the following:

For reasons deserving special consideration, a court is to reduce proportionately the compensation of damage. In doing so, the court is to take into account in particular

296 *See* Decision of the Supreme Court of former Czechoslovak socialist Republic from 29. Nov 11. 1973, file 2 Cz 18/73, (in: Collection of decisions R 13/1975).

297 Sections (§) 2953 Civil Code.

(a) how the damage occurred, (b) the personal and property situation of the individual who caused and is liable for the damage, as well as (c) the circumstances of the victim.[298]

This reduction is not allowed, if: (a) the damage was caused intentionally; (b) the damage was caused by a person who offered to provide professional performance as a member of a particular vocation or occupation, or by a breach of professional care.

§3. Punitive Damages

239. The Czech tort law does not know the term punitive damage. Also the general construction of legal rules of liability for injury does not permit to demand the punitive damage in the juridical practice.[299] This situation is due to the traditional principle of balance of rights and duties which still have an impact on the legal thought, and legal constructions and their development.[300] Nevertheless, the influence of the Anglo-American theory and practice is step by step felt in the Czech Republic, too. Consequently, a few years ago discussions started among Czech lawyers whether or not to admit punitive damages to the Czech tort law. So far there have been no visible results thereof.[301]

Selected Bibliography

Books

Bar, v. Ch., Clive, E. (eds.). Principles, Definitions and Model Rules of European Private Lawš. Draft Common Frame of Reference (DCFR). Full Edition. Sellier.european law publishers GmbH, Munich, 2009, ISBN 978-3-86653-098-0.

Eliáš, K. a kol. Nový občanský zákoník s aktualizovanou důvodovou zprávou. Ostrava: Sagit, 2012, 1119 s., ISBN 978-80-7208-922-2 (Eliáš, K. et al., The New Civil Code with an Updated Explanatory Report. Ostrava: Sagit, 2012, 1119 p., ISBN 978-80-7208-922-2).

Fiala, Josef; Hurdík, Jan. 'Czech Republic' Czech Republic. In International Encyclopaedia of Laws: Contracts, edited by Jacques Herbots. Alphen aan den Rijn, NL: Kluwer Law International, 2014, ISBN 978-90-654-4941-2.

298 *See* the Decision of the Constitutional Court, file I. ÚS 2844/14. Available at http://nalus.cz.

299 *See* Sections (§§) 2909–2919 Civil Code.

300 *See* the Decision of Constitutional Court, file I. ÚS 668/15-1. Available at http://nalus.cz.

301 Some cases of particularly high amount of compensation are juridically still consider the compensation, not the punitive damage. *See* for example Section (§) 2957 Civil Code, taking into account extra serious circumstances of the case. *See also* Decision of Constitutional Court, file I. ÚS 501/13. Available at http://nalus.cz.

Hulmák a kol., Občanský zákoník VI. Závazkové právo. Zvláštní část (§§ 2055–3014). Komentář. 1. vydání. Praha: Nakladatelství C.H.Beck, 2014, ISBN 978-80-7400-287-8.

Hurdík, J. Culpa in contrahendo im tschechischen Zivilrecht de lege lata/de lege ferenda. In Welser (Hrsg). Haftung aus verschulden beim Vertragabschlussin Zentral– und Osteuropa. Erste Auflage. Wien: MANZsche Verlags- und Universitätsbuchhandlung GmbH, 2012. s. 71–82, 12 s. ISBN 978-3-214-06694-9.

Hurdík, J. Die Haftung für Information und Rat nach dem neuen tschechischen Zivilgesetzbuch. In em. o.Univ.- Prof. DDr. h. c. Dr. Rudolf Welser. Rat und Auskunft als Grundlage der Haftung bei der Veräu3erung von Wertpapieren nach dem Recht der CEE-Staaten mít Beitragen zur Haftung von Ratingagenturen. Erste Auflage. Wien: MANZ´sche Verlags- und Universitätsbuchhandlung, 2016. s. 57–64, 8 s. Veröffentlichungen der Forschungstelle für europäische Rechtsentwicklung und Privatrechtsreform an der Uni-Wien; Band XI Teil 1. ISBN 978-3-214-05649-0.

Hurdík, J. & J. Fiala. 'Czech Private Law at the Beginning of the Third Millenium' 'Czech Private Law at the Beginning of the Third Millenium'. Legal Studies and Practice Journal IV (2006): p.351–355. Research Revue, Faculty of Law, Masaryk University in Brno, ISSN-1210-9126.

Hurdík, J., R. Polčák & T. Smejkalová. Czech Law in European Regulatory Context. Wien-München: Verlag Medien und Recht 2009, ISBN 978-3-939438-09-0.

Koziol, H., Schulze, R. (eds.). Tort Law of the European Community. Springer-Verlag Wien, 2008, 693p., ISBN 978-3-211-77585.

Janeček, V., Kritika právní odpovědnosti. (Critical Review of Juridical Responsibility). Praha: Wolters Kluwer ČR, 2017, 300 p.

Lavický, P. (ed.). Přehled judikatury ve věcech bezdůvodného obohacení (Review of the judiciary concerning the injust enrichment). ASPI, a.s., Praha 2006, 416p., ISBN 80-7357-208-7.

Matula, Z., Culpa in contrahendo. Praha: Wolter Kluwer Česká republika, 2012, ISBN 978-80-7357-719-3.

Poplawski, M., Šrámková, D. (eds.). Legal sanctions: Theoretical and practical aspects in Poland and Czech Republic, Brno: MU 2008, 436p., ISBN 978-80-210-4768-6.

Selucká, M., Fiala, J., Handlar, J., Hurdík, J., Koukal, P. Introduction to the Czech Civil Law I., Parties, Ownership, Sale, Lease, Liability for Damages. Brno: Masarykova univerzita, 2009. 96 s. Edice učebnic PrF MU č. 428, ISBN 978-80-210-4925-3.

Spindler, G. – Rieckers, O., Tort Law in Germany. Kluwer Law International BV, The Netherlands, 2015, ISBN 978-90-411-6678-4.

Švestka, J., Dvořák, J., Fiala, J. a kol. Občanský zákoník (Civil Code). Komentář (Commentary). Svazek (Volume) VI. Praha: Wolters Kluwer a.s., 2014, 1516p., ISBN 987-80-7478-630-3 (print), ISBN 978-80-7478-631-0 (e-pub).

_

Articles

_

Nedbálek, K., Návod výpočtu náhrady škody při nedostatku relevantních údajů. Soudce, 7/2016, p. 46ff.

Polišenská, P., Rozhodování v adhezním řízení o nárocích na náhradu nemajetkové újmy Rekodifikace a praxe, 5/2016, p. 21ff.

Dvořáková K.,Odčinění újmy za narušení dovolené. Rekodifikace a praxe, 3/2016, p. 2ff.

Nedbálek, K., Výpočet nemajetkové újmy. Bulletin advokacie, 11/2015, p. 35ff.

Pelikán, M., Uplatňování nemajetkové újmy a některých dalších nároků v souvislosti s reklamačním řízením vad bytu. Rekodifikace a praxe, 6/2015, p. 4ff.

Pelikán, M., Limity náhrady újmy podle občanského zákoníku. Rekodifikace a praxe, 11/2014, p. 6ff.

Janeček,V., Nerovná subjektivní odpovědnost. Jurisprudence, 5/2016, p. 15ff.

Tomsa,M., Odpovědnost za škodu způsobenou při podnikatelské činnosti. Obchodní právo, 5/2015, p. 1ff.

Pavlů, R., Baier, J., Odpovědnost za škodu způsobenou informací nebo radou dle § 2950 NOZ Rekodifikace a praxe, 5/2014, p. 6ff.

Sztefek, M., Předvídatelnost škody v novém občanském zákoníku. Jurisprudence, 5/2014, p. 25ff.

Králík, M., Civilněprávní odpovědnost sportovců za sportovní úrazy (aktuální vývojová východiska a nový český občanský zákoník). Bulletin advokacie, 7/2015, p. 37ff.

Kocina, J., Přípustné riziko ve sportu. Bulletin advokacie, 1/2016, p. 28ff.

Tomsa, M., Nepřikázané jednatelství v obchodních věcech podnikatele. Obchodní právo, 2/2016, p. 2ff.

Švarc, Z., Odpovědnost podnikatele za škodu z provozní činnosti. Obchodní právo, 7/2014, p. 256ff.

Index

The numbers here refer to paragraph numbers.