

Damage in civil law with respect to the punitive aspects of compensation

Abstract:

Rigorous thesis deals with damage and its replacement with a focus on the punitive aspects of damages. The work is divided into two parts and contains a total of six chapters, which are further specified in the relevant subchapters. The first part of the thesis is devoted to the damage and its replacement in general. The first chapter defines key words such as harm, material damage and non-material damage as understood by current and past Czech civil law, expert literature, or judicial decisions. The second chapter deals with functions of damages. Chapter three presents the main pillars of compensation in the effective civil code. With regard to conceptual and terminological changes brought by recodification it seeks with help of expert literature and past judicial decisions general assumptions of creation the obligation to pay damages. It further specifies the conditions of the recodifications brought by the novelty, which is the possibility of waiving the right to compensation before the occurrence of damage. It also presents the current concept of preventive clauses and confronts it with earlier legal regulation. A separate subchapter is dedicated to circumstances excluding the illegality. In more detail, it deals separately with creation of the obligation to pay material damages, the manner and amount of compensation, but also with bar of the statute of limitations. The same attention is paid to creation of the obligation to compensate non-material damage and the ways of its compensation. At the same time, it highlights some of the uncertainties of the current legislation and the generally perceived complicity with the quantification of financial satisfaction. Particular attention is also devoted to the method of quantifying non-pecuniary health damages, which also refers to the fragmentation of current legislation in various civil law sectors. Not only for the purpose of the international comparison of the damages in general, but also for the understanding of a general basis for further investigation of the punitive damages, the fourth chapter deals with the institute of damages in selected countries of the Anglo-Saxon legal system. Chapter five summarizes the approach of the European Union to damages, while the greatest attention is paid to Principles of European Tort Law. The second part of the thesis focuses on the punitive aspect of damages and the globally renowned Anglo-Saxon concept of punitive damages. In the individual subchapters of the sixth chapter there are highlighted the main problems that have so far deterred the countries of the continental legal system from accepting punitive damages. However, these problems are at the same time confronted with the positives that this institute can also bring. The separate

subchapter is devoted to the historical approach to the punitive aspects of compensation for damage on our territory. In the next subsection, the provisions of the effective Civil Code, in which the sanction aspect of compensation can be seen or possibly considered, are further analyzed. The institute of punitive damages is then introduced in the countries in which evolved, namely in England and the United States. The punitive aspect of damages is further investigated in other countries of the continental legal system, namely in Germany and France. Interesting points are presented in the last subchapter, which is dedicated to how are punitive damages legally grounded in the Canadian province of Québec, where, unlike the rest of Canada, as in Europe, the law is codified.

Key words:

Damage, material damage, immaterial damage, damages, punitive damages, punitive function of damages