

ABSTRACT

In the present thesis, I focus on the comprehensive legal framework for the legal instrument of compensation for non-pecuniary harm that was sustained by secondary victim(s), i.e., a person or persons not affected directly who are close relatives to primary victims, differing from primary victims whose interest is secured by article 2958 of the Civil Code (designated as smart money and compensation for aggravation of social position). It is these secondary (indirect) victims who sustain non-material harm through mental suffering that is a natural reaction to the death or grave injury of the primary victim who is their close relative. They are also provided for by law by means of the special provision of article 2959 of the Civil Code, which allows them to seek adequate pecuniary settlement from the offender, aimed at mitigating the pain upon either the loss of a close relative or their permanent and irreversible grave impairment that requires permanent care.

First of all, I produced a thorough analysis of the specific legal instrument in its current legal arrangement; then, I compared this arrangement to that of the 1964 edition of the Civil Code. In particular, I defined legal reasons for the inception of this pecuniary compensation, particular the criteria for objective assessments, principles and functionality, which are very important in terms of determining the scope of compensation, the scope of people with justified claims, and last but not least, the limitation and transferability of this type of damages for non-pecuniary harm to heirs.

On the one hand, the revamped Civil Code provides for a relatively wide range of potential damages that can be claimed by secondary victims, who are defined in rather broad terms as persons who perceive the primary victim's harm as their own. It did away with the general prescription of amounts, payable only to the next of kin of the deceased, as these amounts were quite unjust in their indiscriminate treatment of particular cases, and it also provided for a great overall simplification of the procedure to claim pecuniary compensation. On the other hand, the new Civil Code also brought in a certain legal uncertainty and a number of legally vague notions that are difficult to construe. To give some instances: can the long-standing best friend be construed to qualify as such a close relation; can mutilation or disfigurement of the primary victim be construed to be grave bodily harm; should the compensation amount be defined as fair for the victim, the offender, or society as a whole? Not to be ignored, the definition of full compensation for mental suffering gives the impression of a limitless and endless nature to claimants, giving them a promise that is impossible to keep right from the beginning.

This unaffordable enunciation of article 2959 of the Civil Code raises conflicts between the supreme authorities on law, the Supreme Court of Law and the Constitutional Court of Law. A solution to it could involve the deletion of these vague parasitic notions and a concise rewriting to achieve an indispensable, clear and specific content matching the Polish arrangement of the matter, which I also analysed in detail and compared to the current Czech regulation. The Polish arrangement of the legal instrument of damages for non-pecuniary harm sustained through mental suffering is similar to the Czech one in terms of prerequisites, scope of entitled claimants, particular criteria, functionality and principles on the one hand, and in terms of the amounts awarded on the other. However, the wording of the crucial provision that secondary victims justify their claims with is free of redundant and vague definitions, and much more apposite.