

Abstract

Damages for personal injury

The diploma thesis focuses on the analysis and evaluation of the recodified legal regulation on damages for non-pecuniary loss arising from personal injury in the light of its comparison with the relevant English common law.

On the background of the historical evolution of the method for assessing the amount of damages for non-pecuniary loss arising from personal injury, as well as through the comparison of *Metodika Nejvyššího soudu k náhradě nemajetkové újmy při ublížení na zdraví (bolest a ztížení společenského uplatnění podle § 2958 občanského zákoníku)* with Guidelines for the Assessment of General Damages in Personal Injury Cases, the diploma thesis arrives at a conclusion in favour of the development and application of the former, which it deems to have been a suitably chosen pre-emptive measure that would allow Czech legal practice to approach damages for non-pecuniary loss arising from personal injury in a consistent and proportionate fashion right from the moment of the coming into effect of Act No. 89/2012 Coll., the Civil Code, without having to overcome a period of relative legal uncertainty, during which standardised amounts of damages would have been developed through judicial practice, as was the case in the English common law.

As regards the characterisation of the essential elements of the civil law duty to compensate damage and their comparison with the essential elements of liability in the tort of negligence, which is the primary vehicle for personal injury claims in the English common law, the diploma thesis focuses rather more closely on causation, especially within the context of medical malpractice claims.

In this respect, the diploma thesis mainly examines the different standard of proof that is required by the Czech judicial practice and by the English common law, which needs to be met in order to prove the existence of a relevant causal link in a particular case, with respect to which it does not fail to mention a rather recent breakthrough within the Czech judicial practice made in the decision of the Supreme Court of the Czech Republic from 31 July 2014 (sp. zn. 25 Cdo 1628/13), which consists in lowering the required standard of proof in medical malpractice claims to the level of 70 % – 80 %.