

Critical comparison of compensation schemes for non-pecuniary harm and incurred duplication

Abstract

The Diploma thesis deals with critical comparison of compensation schemes for non-pecuniary harm and incurred duplication. The aim is to describe how non-pecuniary harm is compensated in case of health-related harm, with particular regard to comparison of schemes according to Civil Code and Labour Code. This description and critical comparison of both schemes leads to reflection, that this incurred duplication is not in accordance with the constitutional values, and that, in the future, changes will be needed, so that this accordance would be achieved.

The thesis is divided into six chapters. The first chapter defines basic terms, with whom it is worked in the text – harm. What is that, when is it compensated, how is it laid down in Civil Code and Labour Code. The second chapter deals with the history and development of compensation for non-pecuniary harm in case of health-related harm. Next chapter describes key document for calculation of the amount of compensation – Supreme Court’s methodology and the Government Regulation used for accidents at work. In this chapter there are mentioned two other legislations, Civil service employment Act and Professional soldiers’ Act. Chapter *„incurred duplication and its criticism“* is the crucial part of the Thesis, because it lists some institutes, that are so different, that there is a need to describe them, and explain clearly, what their differences are, as well as why are these differences unsustainable, unjustifiable and unfair. This chapter is followed by the fifth chapter, in which it is discussed that legislation like this includes unconstitutional elements, which ought to be eliminated, if the current legislation is to be consistent, just and predictable. Last chapter contains consideration *„de lege ferenda“*, which as I believe could be capable of healing this unjustifiable state, either short-term or a long-term.

The elaboration of the topic was based on the literature dealing with theory of compensation for pecuniary and non-pecuniary harm, as well as commentary literature on the Civil Code and Labour Code was used. Professional essays and articles on the subject of compensation of non-pecuniary harm in case of health-related harm were used in the fourth chapter, of which, after Civil code came into force, inexhaustible amount was published. The reasoning was primarily based on the decisions of Supreme court and, of course, the Constitutional Court, who, as a protector of constitutionality, commented several times on this topic.

Key words: non-pecuniary harm, duplication, unconstitutionality