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Karel Nedbálek,
JUDr., Ing., PhD., MBA, general director, Slušovice, Slušovice 520, post code 763 15 Slušovice, Czech republic +420604 293 355, slusovice@motelgolf.cz
ORCID: 0000-0002-1010-2460

Недбалек Карел,
кандидат наук, MBA, генеральний директор, Слюшовіце, Слюшовіце 520, поштовий індекс 763 15 Слюшовіце, Чехія +420604 293 355, slusovice@motelgolf.cz
ORCID: 0000-0002-1010-2460
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INJURY – ASPECTS OF THE SCENARIO OF THE PROCEDURE IN THE CZECH REPUBLIC

Abstract. The aspects of the scenario are based on practical causes In the Czech Republic, but some were even established in the Slovak Republic, but they certainly have a practical application in other countries as well. In comparison with the loss of profit, direct damage and the time of the whole cases, the non-equity satisfaction expressed in money should be author's a qualified estimate of around 0,25 %, from damages for each year that the tortfeasor caused the harm.

The article is an introduction to study of the procedure for determining lost profits and hypothetical lost profit, a non-material injury, in the case of the tortfeasor caused the harm for longer period of time. The article deals this matter from the perspective of Czech and partly Slovak law. The practical methods of calculation will be shown in the next article, which will most probably follow right after this one for readers and all interested in this issue in Ukraine. This article is also the result and summary of the author's previous academic work on the subject.

In the search of interference points of the injury to the other terms like damage, hypothetical abstract lost profit or a non-material injury, we cannot help to make a certain analogy that brings us to the virtual world. Thomas Kuhn called this paradigm, in the context of analysing and explaining the changes in the various scientific disciplines, changes in the basic cognitive assumptions with which a scientist, researcher, observer or experimenter works. In the general concept, any damage which does not imply a direct loss of property for the injured party may be regarded as non-material damage in the legal point of view. This is typically a harm to the health, honour or the privacy of the person. When expressed in money this damage is quantified and determined. Non-material injury would require far greater analysis in view of the above-mentioned aspects.

Keywords: Lost profit, hypothetical lost profits, abstract lost profit, Non-material injury.

ЗБИТОК – АСПЕКТИ СЦЕНАРІЮ ПРОЦЕДУРИ В ЧЕСЬКІЙ РЕСПУБЛІЦІ

Анотація. Аспекти сценарію базуються на практичних справах в Чеській Республіці, а деякі з них навіть мали місце в Словацькій Республіці, але вони, безумовно, мають практичне застосування і в інших країнах. Порівнюючи втрачену вигоду та прямий збиток і час розгляду всіх справ, компенсація, виражена у грошовій формі, має кваліфікуватися, за оцінкою автора, в розмірі близько 0,25 % від збитку за кожен рік, коли була заподіяна шкода.

Стаття є вступом до вивчення порядку визначення втраченої вигоди і гіпотетичної втраченої вигоди, нематеріальної шкоди, заподіяної у разі заподіяння шкоди заподіювачем шкоди протягом тривалішого періоду часу. Це питання розглядається з точки зору чеського і частково словацького права. (Практичні методи розрахунку будуть розкриті та описані в наступному виданні.)

У пошуках точок дотику шкоди відносно інших термінів, таких як збиток, гіпотетична абстрактна втрачена вигода чи нематеріальна шкода, ми не можемо провести певну аналогію, яка підводить нас до віртуального світу. Томас Кун назвав цю парадигму в контексті аналізу і пояснення змін в різних наукових дисциплінах змінами в основних когнітивних припущеннях, з якими працює вчений, дослідник, спостерігач чи експериментатор. Згідно з загальною концепцією, будь-який збиток, який не передбачає прямої втрати майна потерпілою стороною, може розглядатися як нематеріальний збиток з юридичної точки зору. Це, зазвичай, шкода здоров'ю, честі або приватному життю людини. У грошовому вираженні цей збиток оцінюється і визначається кількісно. Нематеріальний збиток потребує більш глибокого аналізу з урахуванням зазначених аспектів.

Ключові слова: втрачена вигода, гіпотетична втрачена вигода, абстрактна втрачена вигода, нематеріальний збиток.

Target setting. Paradigms are conceptual schemes under whose viewing angle we see, interpret or understand a certain part of the world, a particular domain of things. It is therefore not only that the paradigms transform the objectives and the results of the observations and experiments, but also serve as a schematic of the creation of our ideas about the structure of the domain, as models of scientific explanation of a phenomena or events in this domain, respectively models of prediction Future phenomena or events [1, 41].

This modelling is used in determining the loss of profits or loss of a hypothetical and abstract profit. When we want to dismantle theoretical aspects, viewpoint, opinion or a claim of incurring liability for damage and thus damage, we have to examine it mainly from the perspective of:

- History
- Law

- Philosophy
- Political studies
- Sociology
- Psychology
- Economics

There may be other aspects [2, 24]. The damage also includes non-material damage. Non-material injury would require far greater analysis in view of the above-mentioned aspects. In comparison with lost profits, direct damages and the duration of the whole cases, satisfaction expressed in cash should be a certain percentage of the damage caused by the tortfeasor every year. It is a certain satisfaction and an increase in the prestige of the manager in the company that has managed to withstand the existential pressures, and on the basis of relentless diligence to achieve satisfaction. I think, however, that the social climate is not yet sufficiently prepared for such satisfaction. Even seem immoral to ask for it, even if the law admits it and allows it.

When it comes to a situation where the tortfeasor acts and the property is reduced, or the property is not enlarged which is the material part. An entrepreneur will spend some costs on the business opportunity, which, after a business opportunity will cease as a result of the infringement of the tortfeasor, can also demand these costs as a vain cost, but this must be included in the actual damage, as a reduction in assets. However, these costs spend by the entrepreneur indicate basic pillars for determining lost profits and hypothetical lost profits. Whether to demand lost profits or hypothetical loss of profit is an assessment of how many fragments into the puzzle segments of sub-calculations are missing. The new Civil Code Act № 89/2012 Coll., the Civil Code (hereinafter just called NCC) replaced the former Civil and Commercial Code in Czech Republic and according to the provisions in § 2951 of the NCC: "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". According to § 2952 NCC: "*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*" [3]. These provisions are not in contradiction with the former regulation in Czech Republic. To the lost profits, it is only laconically said that the amount paid to the injured is also covered, the value expressed in money.

Act № 90/2012 Coll., on trading companies and cooperatives (hereinafter just called ZOK), According to § 3, it stipulates that: "*Where this Act imposes an obligation to compensate damage, the party causing the damage shall also be liable to compensate any non-pecuniary injury*". I am also trying to introduce a new concept of **non-material damage**; this concept is not yet generally known in academic circles in Czech Republic. The new defined term "non-pecuniary damage" concentrates my reflections on the relation between abstract concept "non-pecuniary injury" and the equivalent of this injury in money, or in concrete currency.

When compared to lost profits, direct damage and the duration of the whole case, the non-monetary **satisfaction** which specifies the compensation for the damage includes an apology, the

atonement for some harm or harm in the money, should be in a certain percentage ratio. The basis for determining this percentage ratio, should be the average of the previous quantified damages. In both the Czech Supreme Court and the Czech Constitutional Court's findings [5] it is noted that the injured claimant will achieve a satisfaction by imposing an obligation on the tortfeasor to compensate him for any material injury or to provide him with moral satisfaction, or if the breach of law reaches such a degree, satisfaction is, in other words, expressed in terms of money, a certain percentage ratio, of damages for each year of the effect of the action of the tortfeasor. Satisfaction is a certain increase in the prestige of the manager in the company that has managed to withstand existential pressures and achieve satisfaction on the basis of relentless diligence. The non-material damage appears to us as a substrate of something intangible, as if from a virtual world, but to start determining this harm, we must somehow determine the harm and, with the help of the size of this harm, to determine possibilities of the given subject to compensation for non-material injury. Even from these initial suggested assumptions, it appears that the non-material damage is quite difficult to establish, because in every case it could be different, and there are other circumstances in its creation. There are very little academic theses on this topic and there are no detailed guides showing the way in which the court should proceed in the calculation of the monetary equivalent of this damage. In Czech Republic there is only a methodology for determining compensation for the injury or damage to the health, meaning way to determine compensation for the physical pain and compensation for social impairment social application. There also methodology of the Supreme Court how the courts are to provide, satisfaction in delays proceedings. Authors former academic papers in the complex show the process, that should be followed in order to maintain the greatest degree of objectivity.

Compensation for non-material injury: A solution should be chosen to allow such compensation for the injury to be adequate and effective satisfaction. If such a solution is not possible, compensation should be provided in the money. Or as stated in § 2951 NCC: "*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*".

The right to the territory of Mesopotamia was a long time exclusively customary law. On the basis of this customary law early written documents of an economic and administrative nature were created. Perhaps the earliest written documents were devoted to the responsibility of some social classes from times of the Third Dynasty of Ur (years 2118 — 1955 BC). In particular it was Ur-Nammu, the founder of this dynasty, of which time the oldest judicial code, which lays down standards of family and inheritance law, has been preserved. The legislature was particularly interested in the questions of the ground rent, the protection of the fruit trees, the responsibility of the shepherds for the cattle entrusted, and also set penalties for concealing escaped slaves

[6, 61]. Exemplary damages originate already in the ancient legal systems and documents. Best known is The Code of Hammurabi, a well-preserved Babylonian code of law of ancient Mesopotamia. E.g. In Ex. Law 8 Chamurapi Code states: "*If any one steal cattle or sheep, or an ass, or a pig or a goat, if it belong to a god or to the court, the thief shall pay thirtyfold therefor; if they belonged to a freed man of the king he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death*". In the Bible 2. Book of Moses called Exodus Chapter 21: Verse 37: "*If a man steals an ox or a sheep, and kills it or sells it, he shall repay five oxen for an ox, and four sheep for a sheep" ..."He shall surely pay. If he has nothing, then he shall be sold for his theft*" [7, 91].

Likewise, very similar solution to deal with this has one of the oldest resources available to humanity, The Manusmti, an ancient hindu legal text. These ancient texts did not distinguish between criminal and civil legal penalties, i.e. multiple compensation paid to the victim represented both the punishment and compensation for the damage suffered and thus the expression of non-material injury. In the event of inability to pay, an alternative penalty was enforced, e.g. execution [8, 3].

In roman law liability for damage was caused by violation of the law. It can therefore be said that it was the result of an illegal act (in Latin "obligationes ex delicto"). In these times, this act was defined as an act discordant to the objective law. The basic conditions for the emergence of liability can therefore be regarded as an infringement, an occurrence of damage and a causation (causal relationship between this act and the occurrence of the damage). The Roman law also made distinction between 2 types of damage: positive damage, which expressed the extent of the loss of assets of the injured entity, and lost profits, which represented the potential expansion of the assets that would be incurred, for the event of damage. These definitions coincide even with the current concept of damage.

In par. 189. of **Institutiones From Gaius, by Law 12 boards** punished the obvious theft by the capital punishment. For a free man was whipped and after that was given to slavery to whoever he robbed. The slave was also whipped and executed. Later, however, the steepness of the punishment was rejected, and both against the person of the slave and against the person of a free man, he introduced Praetor edict the Action for **Four times** [9, 189]. When the offender was unable to pay, the plaintiff uttered this formula: "*Because you are obliged to pay me 10 thousand sestertii from judgement, therefore since you have not paid, for 10 thousand sestertii of judgment I put a hand on you and yet he seized some part of the debtor's body and so a free man became a slave*" [9, 205].

From the historical sources available to us it seems clear that the satisfaction was a part of the loss of profit and presentation of non-material damage that reflect the position of the lender.

A corrective and educational element is present in the punishment, which is expressed in the fact, that monetary valuation of remedy was as a multiple of the monetary valuation of damage.

Analysis of basic research and publication. Thomas Hobbes expressed himself to unlawful deeds, violence on private individuals, where it is a felony, for example, to accept money for the misjudgement or issue of false testimony. This is a heavier crime than else to cheat on the same or a greater amount [10, 213]. The economic factor was always a certain indicator and a measure of justice or injustice, these were measures with a cash equivalent and showed a liability relationship to them.

In this context, interesting are also the views of the leading economists of P. A. Samuelson and W. D. Nordhaus who formulate the following thesis: "*Pension inequality may be politically or ethically unacceptable. A nation does not have to accept the outcome of competitive markets as predestined and immutable; people can explore the distribution of pensions and decide that it is unfair*" [11, 45]. These views show how people can represent economic fairness, so policymakers must be responsible for avoiding large inequalities. It follows from the foregoing that the quantification of non-material injury is necessary and thus the determination of non-material damage.

The object of this article is a synthesis of the extensive, more than 20 publications and studies to the subject of non-material injury, lost profits and hypothetical abstract profit if the tortfeasor causes harm to a victim and this victim then is entitled to remedy.

The statement of basic materials. The term "power" means the ability or freedom to control man, environment and conditions. The power of man lies in his current means and instruments to achieve something in the future, that is to gain greater power. Success evokes power because it creates a reputation of wisdom or happiness, which leads people to either fear or rely on it [10, 62].

The term "responsibility" means the consequences of the use of power, whether by us or someone else. With both concepts, for them to be fully used, control is connected, which sometimes has a very dominant relationship to power, or in the concentration of power is a necessary and essential part, because power is the ability to control events. Having power in a certain area means being able to control, regulate, thus control this area. In the American literature, we can also meet the concept of the power of control. Power is a prerequisite, the result of social control as stated in the dinner [12, 196]. **No one should have more power than the responsibility.** And no one should never have more responsibility than power. Anyone who governs others must be clearly aware that they are responsible for their actions. Power should only be exercised by those who are able to bear responsibility. The responsibility therefore means:

• To undo the damage caused by your own deeds

• Or put your head on block for your mistakes

• Or in general, to bear the consequences of **Aristotle** created the first moral code – The Ethics – "As a practical part of philosophy". This code should give an answer to the question "How should I lead my life?" After the Aristotle, he focused on the ethics of countless thinkers, from stoics through Thomas Aquinas to Kant. Anyone who uses power without the knowledge of accountability, is acting badly. The

principle of power and responsibility is a definition of ethics. The court, which is subject to everyone responsible, should have a place within each person in her conscience. The religions of the world have dealt with the question of conscience and have written important ethical rules of conduct, such as the "Ten Commandments of God". It is a matter for each individual to heed these basic rules. Many of them have a long tradition in different religions. It holds a millennium of experience [13, 124].

The new nature of our actions, resulting from the unfathomable concentration of power on a global scale for some individuals and corporations, calls for a new ethic of far-reaching responsibilities that would be possible to commensurate with the reach of that power. It also shows a new kind of humility, not of pettiness, but because of the excessive size of our power. This humility stems from a certain blindness to anticipate, evaluate and assess own power [14, 48]. Responsibility is most evident and is at the time when compensation for injury is created. On some examples we can show that the total damage is considerable, and the tortfeasor is not able to undo it.

According to provision § 2969 NCC: "*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*".

Damage is defined in such a way that it is a property damage, that is to say, a damage occurring in the injured party's assets. "*The duty to provide compensation to another for harm shall always involve the duty to provide compensation for harm to assets and liabilities*", according to provision § 2894 NCC. So, the property damage can only exist if it can be objectively expressed by money. If there is no such defined property damage as defined above, no liability for damage in civil law will arise. A certain disproportion occurs when we want to express satisfaction for non-material harm. Until recently, the courts did not want to acknowledge the existence of non-material harm, but recently a positive trend has been evident. Satisfaction, even in money, is starting to apply more and the courts are beginning to see it. In Czech Republic and Slovak Republic in contrast to English/American law, there was no known concept of "Nominal damages" when, in certain cases, in recognition that a legal wrong has occurred the plaintiff, a certain symbolic sum (i.e. $1 or $2), even if no actual financial loss occurred to him. The adjustment of the scope and method of damages is preceded by a special modification of liability for damage and is constantly evolving.

In the material damage [2, 31]:

- *Direct damage* (reduction of assets),
- *Lost profit* (absence of increase of the assets in the real loss of provable lost profits),
- *Hypothetical lost profit* (absence of increase of the assets in the inability to substantiate and prove specific lost profits),
- *Abstract lost profit* (absence of increase of the assets in the inability to substantiate a specific loss of profit or hypothetical loss of profit),
- *Non-material injury* (infringements of personality rights, delays in

proceedings, etc.) non-material injury should be remedied by satisfaction.

The law allows the injured party to seek satisfaction in general, as well as non-material harm. In determining the lost profit, the question is whether to protect the tortfeasor or the injured, or whether to limit the contractual freedom of the parties by strict provisions of the law, or to arrange the harmful consequences completely freely. The problem of loss of profit in this direction is less controversial than the problem preconceived the contractual limitation of compensation [15, 4].

The economic, ethical, and legally-political necessity to make restitution of the injured not only for real damage, but also for lost profit, hypothetical lost profit and non-material damage can scarcely be doubted that it is not in line with justice and law. However, considerable ambiguities can undoubtedly arise in the so-called abstract lost profit, lost opportunities, unrealised business plans. We can define the harm as a loss that is suffered by someone on an asset protected by law, a loss that the right is deemed worthy of rectification. There is certainly a damage to thieves, which a third person destroys the laboriously stolen thing, thereby preventing him from using it, but in such a case it is not a matter of law, the law does not recognise this type of harm. Harm is both detrimental to the person and to the property.

The damage is viewed as a damage to property that can be expressed in money. In contrast to the damage, **non-material injury is not objectively financially quantifiable**, it cannot be measured or weighed. Disruption of a personal rights (health, dignity, emotional relationship to thing, etc.) does not always lead to a reduction in property [16].

Another problem that follows is subjective statute of limitations. The limitation period starts and right becomes time-barred 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, this include knowledge of the damage and the person liable to provide the compensation of damage. This implies that the injured party became aware that he or she had suffered material injury of a certain type and extent, which it is possible to express so objectively in the money that the right can be applied to the court. The injured party becomes aware of the damage as soon as it ascertains the factual circumstances from which the damage may be inferred and the extent to which it can be deduced, in order to determine approximately the amount of damage in money, as stated in verdict of the Supreme court of Czech Republic [17].

On the basis of this court decision, it would be difficult to determine the start of the subjective beginning and thus the end of the statute of limitation, since non-material damage is difficult to determinable money. This means that, even in the case of non-material damage, correlation with the material damage expressed in money and the mechanism of determination of non-material injury must be established.

In Czech criminal procedure: "*when determining an amount of damage, the value for which the object of the attack is usually being sold in the time and place of the criminal act shall be considered. If the amount of damage cannot be deter-*

mined in this way, reasonably expended costs for obtaining the same or similar thing or restitution into the previous state shall be considered. Accordingly, shall be proceeded in determination of an amount of damage on another asset value" according to the provision § 137 of the Czech Criminal Code [18].

Statute of limitation for the right to the satisfaction of non-material (or personal) injury is according to the law objective three-year. However, this may not be applied in all circumstances, in case of hardness of the defendant may not have the right to invoke that the right has become time-barred. The Constitutional Court has repeatedly reached this conclusion in its findings [19]. To the conclusion that the courts are obliged to examine particularly carefully and with sensitivity whether the application of the objection of limitation to the defendant is not contrary to good morals. That is the case, according to the Constitutional Court, in particular, if the affected person has not caused a futile passage of the limitation period, application of the statute of limitation would entail a disproportionately severe penalty and the outcome of the dispute could thus not be considered fair. According to the Constitutional Court, are courts particularly in cases where the affected person has suffered very serious and permanent damage to health, obliged to assess a contradiction between good morals and the objection of limitation less restrictively than they do in the context of other factual circumstances [20]. An objective limitation period, this means a section of time when the right to damages, or other damages, is barred is no later than ten years from the date of the damage or injury arose. If the damage or injury was caused intentionally, the right to reimbursement shall be extinguished no later than fifteen years from the date on which the damage or injury arose **(§ 636 NCC)**.

The limits of the amount of damage, the benefit, the cost of eliminating environmental damage and the value of the case and other property values are [18]:

1. *Damage not insignificant* shall be understood as damage amounting to at least 5 000 CZK,
2. *damage not small* shall be understood as damage amounting to at least 25 000 CZK,
3. *larger damage* shall be understood as damage amounting to at least 50 000 CZK,
4. *substantial damage* shall be understood as damage amounting to at least 500 000 CZK
5. *extensive damage* shall be understood as amounting to at least 5 000 000 CZK.

Lost profit is usually characterised as the difference between what the injured party actually achieved and what it would achieve if it were not harmed, in other words, in which an increase in property was prevented by this harm. In Czech law, therefore, it is not disputed that the loss of profits is perceived as a detriment, consisting in the fact that the injured party did not occur because of the harmful event to the proliferation of property values, which would otherwise be reasonable expectation. Thus, the loss of profits can be based in the Czech law also on frustrated opportunities. The specific profit is simplified if the entrepreneur has lost a specific business opportunity, e.g. by that his other business partner withdrew from

the contract for the entrepreneur's delay caused by the tortfeasor. Lost profit can be deduced from the terms and conditions of the cancelled contract. The actual loss of profit lies according to the case law [21], [22], in the absence of an increase in the property of the injured party which has only been conclusively and only result of the harmful event. These are cases where it is possible to separate precisely the impact of the harmful event from other circumstances affecting the potential increase in profits. The specific amount of loss of profit that would have been undoubtedly achieved by the injured party in a particular case, given all the circumstances.

Hypothetical loss of profit was within the meaning of provision § 381 of already cancelled Act № 513/1991 Coll., the Commercial Code [23], used in cases where specific enumerations are difficult or impossible, e.g. for profit from future, still unsealed trades. According to the legal norm the hypothetical profit is usually achieved in fair trade, under conditions similar to the conditions of the breached contract in the business of the injured person. To prove this kind of lost hypothetical profit is extremely difficult. The very nature of the legal conditions predetermines the application of this method in routine, standard and repeated trades with standardized profit rate. In my point of view, the law only provides a support method of enumerations of the lost profit and not the choice between actual lost profit and hypothetical or abstract lost profit. A hypothetical loss of profit can be quantified only if a specific (actual) loss of profit cannot be quantified. Even in the light of the legal conditions, it will prove practically simpler to prove the real loss of profit than profit hypothetical. The requirements for a clear demonstration of the causality and credibility of a hypothetical lost profit must be examined in particular by an objective expert opinion or indisputable expert estimate or study. A hypothetical loss of profit can only be applied to entrepreneurs because there is a reference framework, usually acquired profit in each given business, while maintaining fair business relations and under conditions similar to those of a breached contract. It is therefore a sort of "average" profitability of a particular type (category) of the business in which the injured entrepreneur worked or only intended to operate, and this real intention of action was prevented by the harmful event.

In theory, the abstract loss of profit can therefore be determined, but the terms of the law described above make it practically very difficult, as they are essentially preventing a credible calculation of abstract lost profits that the injured party must substantiate. The problem will be, in particular, evidence of the causality of the behaviour of the tortfeasor and the loss of profits of the injured party, quantified as an abstract lost profit, therefore it is better to establish a hypothetical loss of profit based on a specific assumption. The admissibility of a claim for a hypothetical lost profit should arise specifically when there is not possible to prove no actual lost profit. This set of criteria is fully applied if the entrepreneur is injured when entering the business and therefore has not yet achieved any (proven) profit. The mere loss of an entrepreneurial opportunity itself

is neither a real damage nor a loss of profit. However, if the injured party's is prepared for a certain entrepreneurial possibility, it may demand lost profit, which is demonstrably only and solely a result of illegal act of the tortfeasor caused the harm. In this case, the so-called "lost business opportunity" and lost profit blend. In the case of a particular loss of profit, it is for the successful application of its compensation, in addition to proving all other assumptions of the emergence of liability for damage, i.e. illegal act, causation between illegal act and loss of profit, the absence of the circumstances of the excluded responsibility and predictability on the part of the tortfeasor, it must be quantified. Only if this is not possible, a substitute method of quantification can be used as the so-called hypothetical lost profit. In principle, Czech law does include so-called damages from "loss of business opportunity" if this loss form has actual damages or lost profits. The main problem, however, is the burden of proof of the injured party, which must prove the laid down very demanding legal conditions in the case of the so-called hypothetical lost profits [15, 2].

As a general rule, it should be assumed that the claim for compensation for lost profits and hypothetical lost profits do not always depend on the finding of the average earnings of the injured or acquired profit before the damage [24]. The method of ascertaining the amount of loss of profit depends, in each case, on the factual claims of the injured party to whom the claim for compensation is based, namely the allegations of specific circumstances, from which it derives that, in the affected period, it would achieve in his business profit he lost. Relevant to the demarcation of a claim may, for example, be claims on specific contractual relations, which had been negotiated for the decisive period, may be included in this area also amounts related to salvage assets, whereas previously these funds were not spent, etc. Clearly, this includes investments that have already been paid into new assets in the construction phase of this property. This property does not yield any profit yet. In this case, the assessment of the amount of income compensation that the entrepreneur would have achieved by his entrepreneurial activity, for the activities of wrongdoer's liability for the damage suffered. Such a claim is essentially a similar claim, which is created by a person who is unable to perform his or her job as a result of the damage to health. According to the general arrangement of liability for damage in the Civil Code, the loss of earnings is paid, if there is damage to health. In order to determine the amount of compensation for hypothetical lost profit in the context of a claim for damages, it is therefore decisive to determine what was the action of the injured party before the damage occurred, mainly in cases where the profit damaged, did not reach the planned level before damage, or was zero or negative.

The calculation of the hypothetical profit is determined in a specific way. It is fundamentally based on the situation that was before the damage, i.e. Damage had begun in the matter before the injured party. The factors influencing the decision are the purchase of investment assets, company, plant, operating unit and plans, how to deal with these

assets in the future, in order to achieve the appropriate returns.

Theoretically, it is possible to identify and calculate **abstract loss of profit**, but the legal conditions described above make it practically very difficult, as they essentially prevent a credible calculation of abstract lost profits that the injured party must substantiate. The problem, though, is not evidence of a causality between the act of the tortfeasor and the injury suffered by the injured party, but the determination and quantification of abstract profit. A deeper analysis of this loss of profit concludes that we have two types of abstract gain. First, the so-called grey, it describes, as if profit was not even made, there are just contours of some kind of injury, sometimes it evokes the grey economy, which is also difficult to detect and measurable. This section sometimes includes this subsequence. Therefore, we call it the full name **Grey abstract lost profits**. The second type describes it as if it were shadow. Something that barely exists in reality. This real form is only sometimes seen in connection with the determination of the value of human life and the appreciation of goodwill. In determining the injury, neither of these elements may be present on the grounds that there is no loss of human life or the lack of added value of goodwill. We'll call this profit **Shadow abstract lost profit**. In principle, Czech law, as was already mentioned, does include so-called damages from "loss of business opportunity" if this loss form has actual damages or lost profits. The main problem, however, is the burden of proof of the injured party, which must prove the laid down very demanding legal conditions in the case of the so-called hypothetical lost profits [15, 3].

Abstract loss of profit appears to be **abstract concept** based on a general theoretical point of view and may be more distant from hypothetical lost profits, which is more based on a specific assumption that is closer to practical use. In the authors original works I tended to the theoretical abstract lost profit, which is a comprehensive basis for the determination of also non-material harm [25, 3].

Compensation for material injury in practice will evolve to the **institute of lost real chances**, or opportunity, in relation to the expected or hypothetical profit that would have occurred. For example, in French "*Perte de chance*" (chance lost) as in case Farange S. A. against France [26], or in English "*Lost of opportunity*" as in case *Young against the United Kingdom* [27]. In the field of Czech law, compensation for the so-called "lost opportunity" or loss of a real chance to apply through compensation for damages in the form of lost profits, through the general institute of compensation [28, 294].

The condition of responsibility is the determination of the causality and the relationship between the injury or harm and the cause is derived from it. The acting entity must be responsible for its action, is considered responsible for its consequences and, where appropriate, to vouch for this consequences or lack thereof. This primarily has legal and not inherently moral significance. Damage caused must be corrected [14, 142].

Liability for damage is the legal institute in which the law reacts to the conduct of the entities resulting in the

establishment of property or non-material damage. The purpose of this institute is to remedy and eliminate the consequences arising from and caused by the damage [29, 55].

The conditions of liability are deemed to be:

a) Illegal act,

1. Unlawful decision,
2. Incorrect official procedure,
3. Violation of good manners (§ 2909 NCC),
4. Violation or circumvention of generally binding regulations or laws (§ 2910 NCC),
5. Violation of internal standards, if there were binding for the tortfeasor,
6. Breach of obligations from safety regulations, statutes of corporations and orders,
7. Breach of contractual obligations (§ 2913 NCC).

b) Injury or damage

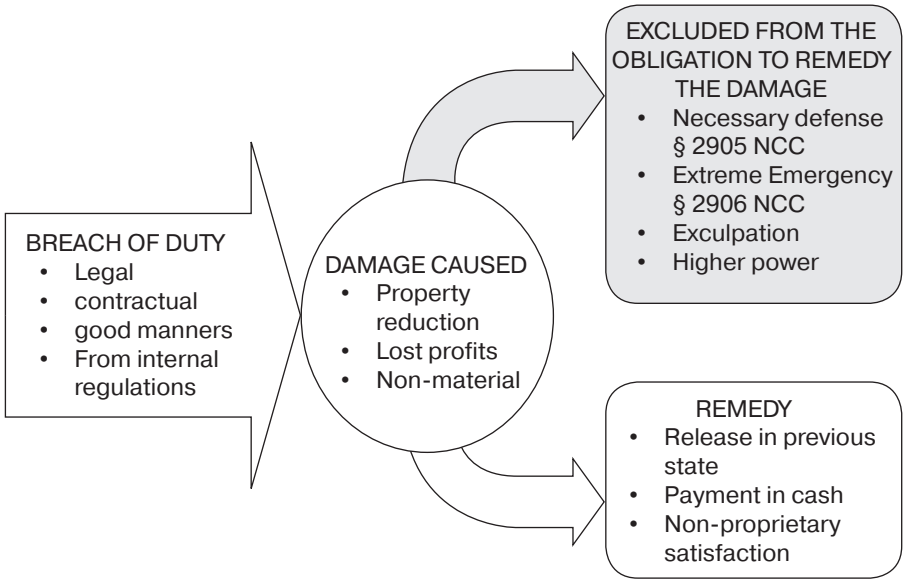
1. Damage to things (assets), the so-called material damage
   - Damage (reduction of assets)
   - Lost profits, hypothetical lost profits (absence of increase of the assets)
2. damage to health (life)
3. Non-proprietary satisfaction (Violation of personality rights)

c) Causality (causal link) between ad a) and ad b)

d) Culpability (if not stated otherwise), either in the form of intent or negligence

e) The acting entity must be responsible for its action

The fulfilment of these assumptions entails the emergence of a liability relationship as a special type of legal relationship. The first three assumptions are of an objective nature, a fourth (although not obligatory) of subjective nature. In civil law, responsibility for damage based on the principle of fault is played an important role (**subjective liability**). When adjusting general liability for damage Czech Republic and



Flow chart of compensation

Slovak Republic is still relevant pursuant to § 420, act. № 40/1964 Coll., former Czech Civil Code. [20]. Due to the fact that tortfeasor caused the harm over the course of tens of years, in the calculation we still have to have this law. № 40/1964 Coll., the Civil Code, even if it was annulled, we must have still taken it to accounting. Basic provisions of the Compensation for pecuniary and non-pecuniary harm are dealt with in § 2894 and the following § NCC.

The burden of prove is based not on the principle of proven, but on the principle of the presumed culpability, where the tortfeasor is allowed the possibility of a vindication. So, there is so called vindication system. This means that the injured party proves the illegality of the act of the tortfeasor, the damage suffered and the causal relationship between them. By contrast, to succeed a defendant must prove that he has no intention or negligence. He or she must vindicate him or herself. However, it should be added that is presumed is only in form of negligent conduct, and this negligent ignorant. The damage must always be proved by the injured party. The presumed fault, however, does not mean that liability for damage ceases to be a liability for fault. This concept of presumed culpability only improves the position of the injured party in court proceedings, in order to ensure its increased protection of possibly injured party.

In some cases, civil law combines the emergence of liability for damage with the conditions of an objective nature, namely only with a certain law qualified event, i.e. without requiring culpability whatsoever and without regard to the fault or even without the illegal act of the responsible person. We are therefore talking about the increased or strict responsibility. This is mainly because the public interest is particularly protected in order to effectively ensure the protection of the injured. This interest has its roots already in history. First, in the case of damage caused by means of transport and other technical equipment, the damage caused by defects or dangerous properties of products, today caused by the animal, the thing, or the collapse of the structure. I have to mention, too, recently discussed damage caused by information or by the information or advice pursuant to § 2950 NCC: "*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*".

In these and other similar cases, the responsible person shall be obliged to compensate for the damage suffered even if it has not been caused by the infringement of responsible person. Thus, the damage arose as a result of a legally qualified event which induced its origin in the activity of that person. The body shall also be liable for damage caused by accident. If it is a coincidence of avoidable, which was possible in a given degree of knowledge and while maintaining the necessary care to anticipate and face it. If it is an unavoidable coincidence, it is necessary to distinguish:

• *Internal coincidence* (origin directly in the activity of the entity);

• *External coincidence* (does not originate in the activity of the entity).

It is not possible to liberate from the inner, from the outer irresistible of chance (so-called force majeure) when the liberation is permissible. And there is no obligation to compensate for the damage. The responsible subject is obliged to compensate for the damage regardless of its fault in cases provided specifically pursuant § 2895 NCC. It is a matter of alternating responsibility for damage based on **objective principle** and liability for the result, liability for coincidence, liability for harmful risk, liability for danger, liability without fault. These are mostly activities that are allowed for their usefulness, even if they are dangerous in their own way.

However, there are also cases of strict absolute objective liability, where the law gives the possibility to liberate itself only for some special reason. No general reasons are sufficient.

In general, the subjective principle of liability for damage in parallel with the objective principle of liability for damage forms the basis of the legal regulation of liability for damage in the framework of the Czech and Slovak Civil Code.

Conclusion. In seeking the relationship between justice and responsibility, we must claim that today's society seeks to measure and non-material harm as an honour, health, life, by financial expression. For this satisfaction, except for apologies, also requires monetary amounts from non-material damage, the injured person perceives it as a fair settlement of the damage arising from liability. As a fair one understands, too, that the pest is to be adequately punished by the economic burden. But we must assess the damage from all the required criteria:

1. The size of the damage and whether the assets have been reduced.

2. Lost profit size and hypothetical and abstract lost profits how much did the property not increase.

3. Non-material injury.

In the first case however, we need to decrease this value by the amount that the sufferer may not have had to pay, although in the future this can happen, but I think that this includes loss of value real estate, which value because of the tortfeasor, because there was a demonstrable reduction in assets. There must be a direct link with the action of the pest and the occurrence of the damage. The damage includes the reduction of the assets or the direct payments that were involved.

In the second case it is very difficult to prove an increase in profit that we do not know how it could evolve. When we gain profit by calculating different methods, and some prominently deviate from other values we do not include them (these abnormal results) for the calculation of the average value and thus give the values greater credibility.

In the third case to me the amount of non-material damage seems small if it is taken in consideration goodwill of the company, as well the fact that the company could not participate public commissions. In comparison with the loss of hypothetical profit, damage and time of tortfeasor, the non-equity satisfaction expressed in money be close to the average of previous damage, as the basis of calculation in this section.

This way, the duration of action of the tortfeasor caused the harm is taken into consideration, for example, 0,25 % for each calendar year of the offence from the above-mentioned amount.

This article is the result and summary of previous academic work of the author on the subject. Purpose of the article is to raise another discussion with the article.

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