

Methodology on Compensation of Non-proprietary Personal Injury (Pain and Aggravated Social Position in accordance with Section 2958 of Civil Code)

I. Alteration of the legislation

Act No. 89/2012 Coll., Civil Code (hereinafter referred to as the “CC”) determines that in the event of detriment to natural rights of a human in accordance with provision of Section 2956, the wrongdoer shall compensate for the damage and the non-proprietary damage resulting from it; as a part of the non-proprietary damage the wrongdoer will redress the inflicted mental anguish. The legal frame is given by a single provision (Section 2958 CC) dealing with compensation for health effects of non-proprietary nature. In accordance with the provision saying that “in the event of bodily harm, the wrongdoer shall redress the anguish inflicted upon the injured by monetary compensation, fully counterbalancing the pain suffered and other non-proprietary damage; should an obstacle to the injured person’s better future occur as a result of the bodily harm, the wrongdoer shall compensate for aggravation of the injured person’s social position. If amount of the damages may not be determined in this way, it will be determined on the principles of equity.” At the same time (clauses 237 and 238 of the final provisions of Section 3080 CC), the Decree No. 440/2001 Coll., on compensation for pain and aggravation of social position (hereinafter referred to as the “Decree”) was cancelled. It was justified by the fact that after 1 January 2014 judicial practice should be absolved of any influence of the executive power that has, through rules contained in the Decree, limited the courts from possibility to adjudicate fair and sufficient damages, namely due to serious health effects of permanent nature.

II. Impact of the alterations in practice

The purposes for cancellation of the existing system for assessment of pain and aggravation of social position apparently aim just at the area of lawsuits, but they completely disregard the fact that the objected reimbursement decree has enabled out-of-court settlement of most of the cases, because the point rating system used in the doctors’ reports provided quite reliable basis for calculation of the compensation that was able to stand the test in potential lawsuit. However, if it is not possible to rely on the Decree, most of the cases will probably be placed before the court. But it won’t have (at least at the beginning, which will probably last a few years) a legal frame for its decision-making, because requirements for full damages or principles of equity represent quite indefinite and internally unstructured category. Probably, only subsequent rigorous analysis of judicial decisions may enable to sum up or list some rules of what is considered as fair damages in the judicial practice.

Very scientific concept of determining the basic amount of the damages in accordance with detailed systematization of health troubles aetiology contained in the Decree is replaced with wording of the law based on quite vague terms (full redress, principles of equity) that don’t formulate even the basic criteria for assessment of content of individual terms and amount of damages, and certainly don’t provide a professional medical basis for deciding by the court. At the same time, it is a highly professional area, because personal injuries may not be described in any other way but by using medical diagnostics, and assessment of impact of most permanent health effects on the injured person’s life won’t do without objectification based on medical methods.

That is why it may be reasonably assumed that under such circumstances completely chaotic situation may arise in legislation due to unpredictable deciding practice so that the courts won't be able to meet the legal principle of legitimate expectations and legal certainty (in accordance with Section 13 CC, each person seeking legal protection may reasonably expect that his/her legal case will be decided similarly as other legal case that has already been decided and that has the same material elements; if the legal case was decided in a different way, each person seeking legal protection is entitled to receive convincing explanation of reasons for the deviation).

III. Necessity of the methodological instruction (Methodology)

The above-mentioned reasons testify to the fact that both the court and out-of-court practice won't work without subsequent, more detailed additional work over the wording of the law. The injured person won't have the faintest idea what is the amount of full compensation for a certain injury connected with permanent aggravation of social position, or what an amount corresponds to the principles of equity. Even his/her counsel won't know, and will have to search for similar cases in the past or just to estimate the amount that his/her client is entitled to. The persons obligated to pay the damages and the insurers will face uncertainty regarding the fact what amount corresponds to statutory claim for damages for personal injury as well. In lawsuits, the judges will be in a similar position, unless they will set the principles of equity by themselves for the purposes of their decision-making, at least to be consistent in their decision-making and to follow certain proportions between individual permanent effects and their seriousness, to be able to meet the requirements of Section 13 CC in his/her decision-making. It may be expected that many "internal systems of values" will be created, getting on the number of judges dealing with such the cases, and then subsequent unification endeavours in judicatory terms will be delayed and considerably more difficult. That is why we come to an unequivocal conclusion that the threatening chaotic situation will give rise to serious difficulties that should be avoided. At the same time, it may not be overlooked that it is a very sensitive area impinging on the fundamental values - life and health. It is not possible to qualify or quantify unfavourable effects to health condition responsibly without professional medical knowledge.

IV. Nature of the Methodology

In the given state of legislation there is no doubt that this Methodology may not represent a binding document as it is not a legal regulation as the law does not allow for such the document, and no one having legislative powers is going to issue a regulation of the type. In this event there is no other possibility but to complete the legal wording by adding reference materials, bases, principles and methods of which will be agreed by the lawyers, and which will be based on comprehensive medical concept of personal injury systematization conveying well proportions of individual injuries for the purpose of compensation for pain and for aggravation of social position. This way it will represent meeting of principles of equity in accordance with Section 2958 CC, their practical implementation based on sufficiently wide examination of facts, and supplemented with professional medical assessment so that the reasonable proportions may be set between individual injuries in the way that meets requirements of Section 13 CC. By the way, even the explanatory report related to Section 2958 CC calls on the judicial practice to agree the principles that will be followed "if some representatives of the judicial powers need tables, formulas or keys specially designed for the purposes".

V. Pain

Although the Decree No. 440/2001 Coll. was repealed as a whole, the system of compensation for pain established by it may henceforth be used. Here, aetiology approach should be used based on classification of painful states, depending on affection of individual organs or parts of a body, and expressing level of pain as bodily and mental suffering connected with effects on health. Besides the painful state itself, the compensation for pain should indemnify for a certain level of discomfort, stress or troubles connected with the personal injury suffered (cf. fear of life or serious health damage in accordance with Section 2957 sentence three CC) to the extent to which nature of the impact on the injured person's personality sphere is affected with pain usually accompanying states described under the individual items (so-called pain in the widest sense). Possible other troubles level of which is excessive in the sense that they exceed usual burden felt by the injured person subjected to limitations resulting from the treatment (above the framework of complications appreciable by increase in percentage) represent additional non-proprietary damage in accordance with Section 2958 CC; it is probably impossible to draw up a guideline for assessment of the amount of compensation in advance due to wide variety of situations that may occur. Limbs sutured for many weeks in unnatural positions to form tissue flaps for reconstructive plastic surgery procedures, discomfort due to prolonged hospital stay exceeding the usual limit for similar cases, failure of various organs as a result of a trauma that doesn't hurt but endangers the injured person's life, etc. may serve as an example of such injuries.

So it is obvious that, considering the requirements of Section 13 CC, the existing experience, based on application of Decree No. 440/2001 Coll., may be used both for setting the proportions and for ensuring professional approach to deciding about the matters. That is why Annex 1 to the Decree was subjected to review carried out by professional medical associations, and based on their recommendations a new point rating was summarized, setting modified proportions among individual painful states. In view of the fact that really fundamental and deep reworking of the pain assessment system requires a longer period of time, and such the works are still conducted, the submitted pain summary represents a basis for the purposes of initiation of the new wording application, whereas modifications or changes are possible by the Methodology updates so that the gradually completed system would to the fullest possible extent describe nature of individual painful states and troubles connected with them.

VI. Pain assessment

The part B of the Methodology contains a pain summary. It consists of individual items connected with point values that express mutual proportions between the items. To calculate amount of the compensation, the resulting sum of points should be multiplied by one point value. Due to below described reasons for aggravation of social position, it is recommended to derive the point value from one per cent of gross monthly nominal wages to re-calculated numbers of employees in national economy in the calendar year preceding the year in which the claim/pain arose (see article X – average wages was CZK 25,128 in 2013 – so value of one point is CZK 251.28 if the pain arose in 2014; average wages was CZK 25,686 in 2014 – so value of one point is CZK 256.86 if the pain arose in 2015). Not the one point value, but the resulting sum is rounded off to whole Czech crowns. Occurrence of pain is connected with the painful state acute phase, and amount of the claim may be calculated only after the pain stabilization. Pain may arise either together with the loss event or upon treatment or removal of consequences of the personal injury.

The doctors should base the assessment on the patients' health records, and they should assess individually each painful state connected with the loss event, whereas only the first surgery in the event of fractures and closed bone injuries or other organism systems is assessed as a gaping wound (a part of pain suffered upon the loss event). Possible other surgeries or similar invasive procedures are assessed individually in accordance with the items corresponding to the method used in the intervention. Open fractures are not classified as a separate type of fracture, and their nature should be taken into account by adding surface affection point rating to the fracture rating in accordance with the corresponding items. If an express item for a type of affection is missing in the pain assessment summary, they should use the other item nature and seriousness of which is as close as possible to the appropriate affection.

To obtain the resulting value, the items of individual painful states, and the individual items within them, are added up. Functional or anatomic loss of a limb or an organ does not represent a limit that may not be exceeded in multiple traumatic injuries if the pain is more intense and healing is more difficult than amputation of a limb or an organ, where it is not excluded *contradictio in adiecto*; in such the case the amount of damages should not be inappropriate. The assessing doctor may modify (increase) amount of damages depending on complexity of the health condition requiring more demanding method of treatment related to the items concerned by the complication if the basic assessment does not describe seriousness of the injury sufficiently. The following complication degrees are classified (if there is a cause-and-effect relationship between them and the loss event) and the percentage increase in damages assigned to them:

Mild complication – up to 5 %

- it requires short-term treatment, it won't extend the treatment period necessary due to the basic diagnosis. It won't demonstrably affect the overall state (e.g. surface disintegration or the wound infection, mental alteration).

Moderate complication - up to 10 %

- it requires long-term treatment or another surgery, it may extend the treatment period necessary due to the basic diagnosis (e.g. phlebothrombosis, osteosynthesis failure, deep infection in the wound, compartment syndrome).

Serious complication - up to 15 %

- the state of health is sharply worsened in the acute stage, it requires intense treatment either local or general, a few reoperations (e.g. disintegration of anastomosis, pneumonia, abdominal compartment syndrome).

Severe complication - up to 20 %

- overall, it endangers the life, it seriously endangers health (e.g. organ failure, cardiopulmonary resuscitation).

In provision of Section 2957 CC other extraordinary circumstances are defined that may justify reasons for reasonable increase in the damages by method that may not be more specifically determined under the Methodology. The only requirement is that the total assessed amount should be adequate also in context with other claims.

VII. Aggravation of social position

Quite new system has been created in relation to aggravation of social position. Besides the necessary professional medical classification of injuries it should contain a better defined extent of the affection (limitation) assigned to the personal injury in relation to an average (usual) injured person, namely from the perspective of all possible sides of human

life, i.e. from all areas in which the injured individual has a limited or even no chance to find his/her place, and this way fulfil the condition of “better future” envisaged by the law, considering individual features of each individual case. The new concept based on determining the extent of limitation (disqualification) expressed in percentage eliminates interpretation troubles suffered by the Decree namely in the area of accumulation of some items contained in the Annex to the Decree, and also in relation to issues of extraordinary increase in damages as a result of a judicial decision in accordance with Section 7 para. 3 of Decree that despite criticism related to insufficient amount of damages provided the court a considerable space to decide, although it depreciated accuracy upon implementation of the basic point rating. Aetiology of the existing classification hasn't sufficiently taken into account determining of consequences for the injured person's life, while the criteria for extraordinary increase in damages by the court were not medical, and in practice they were usually limited to a very generally assessed part of social activities performance of which is limited or impossible for the injured person as a result of the personal injury.

In accordance with the practice that has been in use so far, permanent health effects should be assessed only after the state of health settles down; it is not possible to determine the period exactly, but it is usually one year, but in some exceptional cases the period may be longer, up to two years.

VIII. ICF

The described requirements are met to the fullest extent in International Classification of Functioning, Disability and Health (hereinafter referred to as the “ICF”) drawn up by the World Health Organization (WHO), available for instance on http://www.mpsv.cz/files/clanky/9867/klasifikace_funkcnich_schopnosti_disability_zdravi.pdf. It provides a system of permanent personal injuries acknowledged and used worldwide, resulting from disability classification based on body functions and structure, describing more efficiently impacts of the injuries on the injured person's ability to perform common daily activities. For the purposes of assessment of amount of the compensation for aggravation of social position, the Part 3 (component) called Activities and Participation may be used, modified in some domains (items) so that it may be used for expression of an impediment (loss) of better future level in accordance with Section 2958 CC.

ICF uses namely the following terms:

- Activity – execution of a task (act) or action by an individual;
- Barrier – an impediment preventing performance of activities or making them more difficult (it is not taken into account for the purposes of ASP assessment);
- Disability – impairment of functioning on the body, individual or society levels that occurs when the state of health encounters barriers in the environment;
- Domains – items contained in the list of individual activities and involvement into life situations;
- Facilitator – an aid enabling or facilitating performance of activities – for the purposes of ASP assessment only commonly accessible (paid from the public health insurance system) or provably available aids are taken into consideration belonging under Chapter 1 – Products and Technologies (Part 4 of ICF – Environmental Factors);
- Capacity – ability to perform an activity without any aids (Facilitators);
- Component – a basic part of the ICF (1 Body Functions, 2 Body Structures, 3 Activities and Participation, 4 Environmental Factors) that is further divided into Chapters and Domains;
- Qualifier – a degree expressing extent of troubles upon performance of acts described under Domains (may be determined by percentage value);

Participation – involvement in life situations;

Performance – ability to perform an activity with use of aids (Facilitators).

An undisputed advantage of the ICF is the sophisticated structure and insistence on determination of the aggravation degree of the injured person's functioning taking into account his/her personal situation so that the aggravation compared with the preceding state may be taken into consideration. The system does away with undesired doubling the same disablement under different items, and at the same time by assigning a certain degree of seriousness (supported also by the percentage scale) to individual functioning issues, and in this way it is able to express extent of disablement very well. As it is described in detail and very sophisticated if used to the full extent, it enables to create a very clear picture of not only functional body injuries, but also their practical impacts on all spheres of the injured person's life, while the impacts are coded in nine chapters.

Permanent bodily injury severity degree is not expressed, as it has been so far, by summarizing point values of individual diagnoses, multiplied by financial value of one point, but as percentage of loss of life chances (so-called better future) on the scale of 0 – 100 % for individual items (domains) in nine areas of social involvement, which enables to get the resulting percentage of the injured person's limitations in all areas of social life with suitable use of mathematical methods (weighted average of individual chapters). If simplified, full disqualification of the disabled person from all of the spheres (i.e. full loss of cognitive functions and motility, connected with full loss of self-care ability and possibility of participation in social activities) would be rated as hundred percent, and the milder forms are graded downwards.

The ICF systematization and way of use are set in favour of the fullest re-integration of the injured person into life. That is why maximum use of aids (Facilitators) is stressed as well as elimination of impediments (Barriers), and rehabilitation tends to the state when the achieved performance (Participation) would get as near to self-sufficiency as possible. In comparison with it, compensation for non-material damage consisting in disqualification from various life spheres due to permanent health effects should distinguish even the finest differences between individual types of disablement, although from the ICF point of view they may equal to full or nearly full self-sufficiency upon the performed activities. Namely, compensation for aggravation of social position should also cover the injured person's frustration, stress and discomfort resulting from limitation or loss of his/her organism functionality, and to provide satisfaction for troubles connected with all human activities, even if it is not loss or limitation of self-sufficiency.

The Czech Republic is bound by Convention on the Rights of Persons with Disabilities adopted on 3 December 2006 in New York, published under no. 10/2010 in Collection of International Treaties. In accordance with Art. 26 clause 1 of the Convention, the countries – parties to the Convention – shall adopt effective and suitable measures, among others through mutual support of persons in an equivalent situation, to enable the persons with disabilities to reach and maintain as high level of self-sufficiency as possible, to apply physical, mental, social and professional capabilities to the full extent, and to reach full integration and incorporation in all aspect of the life of the society. For the purpose, the countries - parties to the Convention organize, support and extend complex habilitation and rehabilitation services and programmes mostly in the area of medical care, employment, education and social services so that the services and programmes: a) would start as soon as possible, and would be based on multidisciplinary assessment of individual needs and

preferences; b) would support integration and incorporation into the society and all areas of its life, would be voluntary and accessible for the persons with disabilities, and located as near their place of residence as possible, including the rural areas. Considering the international Convention, and upon application of ICF for calculation of the compensation amount, it is necessary to motivate the injured person to re-integrate into the society, and the wrongdoer to enable it by provision of structured compensation.

IX. Application of ICF

That is why, when assessing the compensation amount for aggravation of social position, the courts are recommended to base their decisions on sufficiently ascertained facts related to impacts of the permanent personal injury on the injured person's capabilities and abilities, and to use expert opinions for the assessment in accordance with the ICF component Activities and Participation, adapted for the purposes of the Methodology for determining compensation for aggravation of social position in accordance with Section 2958 CC (part C of Methodology). The injured person's state of health should be described using the terms contained in the ICF components Body Functions and Body Structures and in accordance with International Classification of Diseases to be able to assess whether the degree of aggravation of body functions and structures connected with the activities corresponds to the stated degree of decrease in the activities. The injured person's state is assessed in two categories within the component Activities and Participation – so-called Capacity and Performance. In the first place, overall loss of the injured person's potential without the compensation aids (Facilitators) should be ascertained to the full extent of all of the Capacity domains (items). They shouldn't assess the current Capacity, but its reduction, compared with the state before the trauma (so-called anamnesis). Considering the fact that the compensation for aggravation of social position should be indemnification for real exclusion from social life, and at the same time it should encourage the injured person to re-integrate into the community, it should be taken into account that Performance may be assessed with the limitation lower degree or percentage if the injured person uses Facilitator mentioned under chapter 1 of the component Environmental Factors (Products and Technologies – aids, tools, equipment or technical system used by the person with disabilities or specially manufactured or commonly accessible for preventing, compensating, monitoring, relieving or neutralizing impairments – ISO 9999 – Technical Aids for Persons with Disabilities). The Performance Qualifier should be used in cases where with help of the given aids if they are commonly accessible (usually paid from the public health insurance funds) or were provably provided to the injured person by the wrongdoer or the liability insurer, it differs from the degree or percentage of Capacity limitation by use of an average value of both the Qualifiers. The item e 110 serves as an exception, because it doesn't assess use of medicaments and aids, and Capacity is assessed with the medication taken.

For the limitation degree Qualifiers are used in the scale from 0 to 4:

0 – none (absent, negligible) – 0 – 4 %

- the person doesn't have or feel any problem;

1 – mild (slight, low) – 5 – 24 %

- the impairment is present for less than 25 % of time, and the person is able to tolerate it (it is well-tolerable) and it has occurred only rarely during the last 30 days;

2 – moderate (medium, fair) – 25 – 49 %

- the impairment is present for less than 50 % of time with intensity that interferes in everyday life (it is obvious), and it has occurred sometimes during the last 30 days;

3 – severe (high, extreme) – 50 – 95 %

- the impairment is present for more than 50 % of time with intensity that partially disorganises the person's everyday life (considerable), and it has occurred often during the last 30 days;
- 4 – complete (total) – 96 – 100 %.
- the impairment is present for more than 95 % of time with intensity that completely disorganises the person's everyday life (the troubles are intolerable or functioning is impossible), and it has occurred every day during the last 30 days.

When assessing at the Qualifier level, the calculation will be based on average percentage range, with exception of the degrees 0 (here, 0 % is assigned) and 4 (100 %). If a more accurate assessment is possible, the limitation degree is determined directly using the percentage.

Capacity and Performance are assessed using percentage or degree of troubles. Either an accurate percentage is recorded or average percentage if only the degree is determined: 0 – 0, 1 – 14.5, 2 – 37, 3 – 72.5, 4 – 100 (see Table of Qualifiers for Activities and Participation). If both of them are assessed, the resulting percentage is calculated as their average for the given domain.

Calculation of total disability degree follows the weighted average rule in relation to individual domains firstly within the chapter, and then the separate chapters within the whole; weight is the same in all of them. That is why the ascertained percentage in each domain is adjusted using its relative weight within the chapter, i.e. it is multiplied by proportion against the total number of domains in the chapter (D1 – 0.0625, D2 – 0.25, D3 – 0.1111, D4 – 0.0833, D5 – 0.1429, D6 – 0.1667, D7 – 0.1250, D8 – 0.1250 and D9 – 0.25). Percentage ascertained and adjusted in this way will be added up in individual chapters, and total adjusted percentage is reached in each chapter. As the weight of individual chapters is equal (0.1111), the sum of the corresponding adjusted percentage represents the resulting percentage of functionality limitation (0 – 100%).

Essential for really thorough and proportionally corresponding assessment of permanent health effect impacts on the injured person's life is qualification of all of the domains within the component Activities and Participation. Using a suitable calculation tool (e.g. Excel tables or computer applications) individual partial results may be re-calculated by the weighted average method to the resulting total limitation expressed by percentage lower than 100 (theoretical 100% complete exclusion of a living person from all spheres of human life).

X. Determining amount of compensation

This method of determining amount of compensation requires defining a sum representing imaginary value of a wasted life (that may not be finished yet) upon absolute elimination from all spheres of social life (100 %). After assessment of the existing decision-making related to issues of extraordinary increase in compensation for aggravated social position in accordance with Decree No. 440/2001 Coll. in cases of the most severe permanent health effects, after comparison with the laws or practice in some European countries, and considering the fact that Section 2960 CC markedly extends the injured person's claims for compensation of material loss connected with provision or creating preconditions for the person's re-integration into social life, and Sections 2962 – 2963 CC strengthen extent of compensation for loss of earnings, we come to the conclusion that the initial general amount should be about CZK 10,000,000.

In order not to have to revise the amount repeatedly, and to reflect development in price levels and economic indicators, it is proposed to express it as 400 multiple of gross average monthly nominal wages to re-calculated numbers of employees in the national economy in the calendar year preceding the year in which the injured person's health condition became stable, i.e. when it was possible to calculate the compensation. The statistic data may be obtained on the Český statistický úřad (Czech Statistical Office) website, using the following path Úvod > Vydáváme > Rychlé informace > Průměrné mzdy; the data for the whole year are contained in the text related to 4th quarter of the appropriate year. In 2013 the average wage was CZK 25,128 (<http://www.czso.cz/csu/csu.nsf/informace/cpmz031114.docx>), and the initial general amount of compensation for aggravation of social position of an injured person whose health condition became stable in 2014 is CZK 10,051,200. In 2014 the average wage was CZK 25,686 (<https://www.czso.cz/csu/czso/cri/prumerne-mzdy-4-ctvrtleti-2014-truea9fbwn>), and the initial general amount of compensation for aggravation of social position of an injured person whose health condition became stable in 2015 is CZK 10,274,400.

The percentage (corresponding to the ascertained limitation degree of the injured person) of the initial general amount represents basic assessment of non-material damage in the event of permanent health effect (namely compensation for moral injury resulting from intervention into physical integrity, frustration due to permanent injury or loss of organs, stress and effort necessary for doing away with the troubles, loss of life chances and possibilities, including abstract loss of chances in the area of employment, and engagement in other life activities), and it represents proportional loss of average potential for a certain type of disability; however, it is not compensation of damage (proprietary damage) compensated namely as loss of earnings or costs of care of the injured person him/herself, his/her health and household.

It is assumed that upon application of individual approach and taking into consideration peculiarities of each individual case, the amount of the basic assessment ascertained in this way may be modified due to extraordinary circumstances on the injured person's part – a) age, b) loss of really extraordinary better future (carrier), and on the wrongdoer's part - c) reasons in accordance with Section 2957 CC. If the expression of extent of aggravation of social position using percentage (degree), converted into a basic amount, is able to describe the objective level of potential limitation in sufficient detail, the existing method of multiples used in the event of application of Section 7 para. 3 of Decree No. 440/2001 Coll. may be abandoned, and the basic amount may be modified only in tens of per cent, up to twice the amount as maximum, and this way the specific and extraordinary individual circumstances of the injured person would be considered. This way, the total amount of compensation for non-proprietary damage, consisting in aggravation of social position, will be determined.

Age in which the permanent health effect occurs is another important circumstance which is usually not taken into account in the assessment in accordance with the domains Activities and Participations. Considering the fact that people are usually in their prime and at the top of their career at the age of 45 - 55, the basic amount determined by the above-mentioned method should be increased approximately by 10 % if the injured person suffered the injury at the age of 35 – 44, by 20 % if at the age of 25 – 34, any by 30 – 35 % if at the age of 0 – 24. On the other hand, the amount may be decreased approximately by 10 % at the age of 55 – 69, and by 20 % if the injured person is at the age of 70 or older.

Exceptional social engagement before the damage to person's health should be taken into consideration by increase of the basic amount by an amount up to 10 %; should the social engagement be exceptionally intense, by the amount up to 20 %, and by the amount up to 30 % if it was really extraordinary. The basic amount should be decreased by an amount up to 10 % if the social engagement was below average, and by the amount up to 20 % if it was practically none.

The exceptional circumstances listed under Section 2957 CC may not be expressed using particular terms or percentage scales assigned to them due to their assumed extent and variability, and that is why it is at the court's sole discretion, while it is recommended the resulting increased compensation should not exceed double basic amount.

The recommended limitation of the basic amount by modification up to double amount as maximum is well-founded, and it doesn't aim at reduction in possibility to deliberate individually over each case. It just aims at elimination of subjectivism and arbitrariness, contributes to unification of the judicial practice, and fulfils the requirement for provision of comparable damages in similar cases (Section 13 CC). In essence the non-material damages are unrectifiable, and that is why purpose of provision of monetary compensation is not to put the injured person into condition existing before the injury (as it is in the event of compensation for proprietary damage), but to provide funds for which the injured person would be able to buy substitute emoluments that should alleviate his/her sufferings. The non-material damages are understood similarly detrimentally by any human being, and it is not possible to allege that they should be indemnified much more only because the injured person was younger or more active before the injury. A serious damage to health deprives a younger person of pleasures of life that an older person has experienced yet, and the younger person will have to cope with the handicap for a longer period; on the other hand, a younger person is stronger, is more flexible, he or she is usually able to cope with the handicap better in physical and mental terms than an older person. An energetic person who has been engaged in many activities, but can't go in for them any more as a result of the injury seems to suffer more than a person who has had a boring and lazy life; however, it may not be concluded that trauma, stress and frustration of the first person are many times higher than those of the other person, or the reverse may be true due to characters of both of them, in spite of the fact that if the other person is healthy, it is on his/her decision whether he/she changes the way of life completely, but after the damage to health he/she has no alternatives, and namely the awareness of the fact that he/she lost the opportunities of a healthy person forever is the substance of the non-material damage he/she suffered. After all, a virtuoso violinist who has lost a finger of his left hand is seriously damaged in implementation of his/her profession, although (if we don't take into account loss of earnings that may not be rectified by compensation for aggravation of social position and reflects social evaluation of his/her work) it is quite questionable to conclude that the non-proprietary damage he/she suffered is much higher than that of an amateur violinist who played music as a hobby.

XI. Conclusion

The Supreme Court Methodology was drawn up by representatives of the judiciary in cooperation with Společnost medicínského práva (Association of Medical Law), with representatives of insurers and other specialists from the areas of law and medicine, under professional leadership of 1st Faculty of Medicine, Charles University in Prague. The major part of professional work was performed by so-called "leading working team" consisting of the following members: JUDr. Marta Škárová, JUDr. Petr Vojtek, JUDr. Robert Waltr, all of

them the Supreme Court of the Czech Republic, JUDr. Hana Tichá, Regional Court in Prague, MUDr. Mgr. Jolana Těšínová, JUDr. MUDr. Roman Žďárek, Ph.D., MBA, both of them - Společnost medicínského práva, 1st Faculty of Medicine, Charles University, Mgr. Daniel Míka, Česká kancelář pojistitelů (Czech Insurers Bureau), Mgr. Lucie Jandová, Česká asociace pojišťoven (Czech Insurance Association), JUDr. Václav Voženílek, Allianz, a. s., Doc. MUDr. Evžen Hrnčíř, CSc., MBA, Fakultní nemocnice (Teaching Hospital) Královské Vinohrady, Klinika pracovního a cestovního lékařství (Occupational and Travel Medicine Department), and JUDr. Martin Mikyska, an attorney in Malá Skála and a sworn expert. MUDr. Josef Pěchouček, orthopaedist in v Pardubice, assisted in preparation of materials for pain assessment. Stimuli and recommendations related to pain assessment were supplied by Česká chirurgická společnost (Czech Surgical Society), Česká společnost kardiovaskulární chirurgie (Czech Society for Cardiovascular Surgery), Česká neurologická společnost (Czech Neurological Society), Česká neurochirurgická společnost (Czech Neurosurgical Society), Česká společnost otorinolaryngologie a chirurgie hlavy a krku (Czech Society of Otorhinolaryngology and Head and Neck Surgery), Ortopedicko-protetická společnost (Society for Prosthetics and Orthotics), Česká pneumologická a ftizeologická společnost (Czech Pneumological and Phthiseological Society), Česká urologická společnost (Czech Urological Society) and Česká společnost pro úrazovou chirurgii (Czech Society for Trauma Surgery).

The general principles and concrete wording of the Methodology were created especially during the following specialists' meetings: 30. 11. 2012 – working session of judges of regional courts and the Supreme Court (the Supreme Court in Brno), 22. 01. 2013 – round table of lawyers and doctors (Academic Club, 1st Faculty of Medicine of Charles University, Faust's House, Prague), 19. 04. 2013 – meeting of the leading working team (Faust's House), 31. 05. 2013 – meeting of the leading working team (Faust's House), 27. 06. 2013 – round table of specialists (Dean's Office, 1st Faculty of Medicine of Charles University, Prague), 26. 08. 2013 – meeting of the leading working team (Dean's Office, 1st Faculty of Medicine of Charles University, Prague), 27. 09. 2013 – meeting of the leading working team (Faust's House), 16. 10. 2013 – session of the Supreme Court specialised panels (the Supreme Court in Brno), 01. 11. 2013 – meeting of the leading working team (Faust's House), 05. 11. 2013 – working session of judges of regional courts and the Supreme Court (Supreme Court in Brno), 22. 11. 2013 – meeting of the leading working team (Faust's House), 28. – 29. 11. 2013 – Congress of Medical Law (Prague), 04. 12. 2013 – seminar to compensation for damage and non-proprietary damage (the Supreme Court in Brno), 16. 12. 2013 – meeting of the leading working team (Faust's House), 10. 02. 2014 – meeting of the leading working team (Faust's House), 12. 03. 2014 – meeting of Civil and Commerce Division of the Supreme Court (the Supreme Court in Brno), 31. 03. 2014 – meeting of the leading working team (Czech Insurers Bureau), 70. 04. 2014 – meeting of the leading working team (Czech Insurers Bureau).

The issues were continuously discussed with judges of district and regional courts during lectures held by JUDr. Marta Škárová and JUDr. Petr Vojtek as a part of the project "Recodification" organised by the Judicial Academy in Kroměříž on 15. 11. 2012, in České Budějovice on 22. – 23. 05. 2013, in Brno on 04. – 05. 09. 2013, in Prague on 24. – 25. 10. 2013, in Ostrava on 06. – 07. 11. 2013, in Hradec Králové 19. – 20. 11. 2013, in Prague on 21. – 22. 01. 2014 and in Ústí nad Labem on 04. – 05. 03. 2014.

From March to June 2014 a team consisting of rehabilitation specialists and judges under professional leadership of the 1st Faculty of Medicine, Charles University in Prague, in

cooperation with Společnost medicínského práva o. s., modified the three-stage classification of the ICF component Activities and Participation for the purposes of assessment of amount of compensation for aggravation of social position. The regulated Czech version forms an integral part of the Methodology, Part C. Activities and Participation.

On 12. 03. 2014 the Civil and Commerce Division of the Supreme Court approved the recommendation that upon application of Section 2958 CC the Methodology of the Supreme Court should be used. On 14. 04. 2014 the Methodology was published on the Supreme Court website http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/Metodika.

It is recommended that expert opinions drawn up by experts specialised in the area of medicine, branch of indemnification for non-material damages to health, served as evidence in trials. The experts shall meet the following qualification requirements:

- completed university education in master programme in general medicine,
- specialised capability in accordance with Act No. 95/2004 Coll., on conditions for getting and acknowledgement of professional capability to work as a physician, dentist and pharmacist, as amended (as minimum in one of the areas in accordance with Decree No. 185/2009 Coll., on fields of study of physicians, dentists and pharmacists and subjects of certified courses, as amended)
- further study course Indemnification for Damage to Health in accordance with Act No. 89/2012 Coll., Civil Code, containing a) ICF basic principles, b) ICF application for the purposes of indemnification for aggravation of social position in accordance with Methodology of the Supreme Court for indemnification for damage to health (Section 2958 CC), c) assessment of reparation money (indemnification for pain) in accordance with the Methodology.

A new expert branch of determining non-material damage to health was established within the health service by the Decree of the Ministry of Justice No. 123/2015 Coll., effective since 01. 06. 2015.