

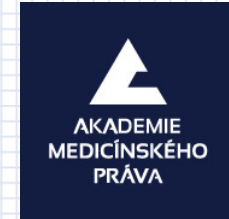


The ICF's usage for assessment of damages immaterial harm in the Czech Republic

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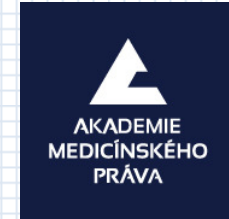
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Methodology of the Supreme Court of the Czech Republic



- compensations of non-material damage (damage to health)

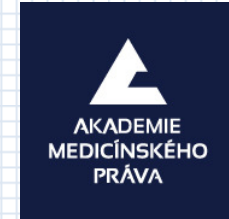
Non-material damage to health



§ 2958 (Civil Code)

The malefactor makes pecuniary reparation for actual bodily harm to injured person, which is *fully countervailing* to suffered **pain** and **other non-material damage**; if the impediment for better future of injured person, caused by the injury, arises, malefactor compensates even **diminishing social position (social impairment)**. When it is impossible to assess the amount of compensation by this way, it's assessed by *principles of decency* and public policy.

Damage to health



Pain

- physical and mental suffering
- unpleasant sensual and sensory experience linked with real or pending damage of tissue
- discomfort, stress, fears connected with the painful state

Social impairment (in case of impediment for better future)

- Effects of health damage which have a lasting nature and which have a provably negative influence on life and social engagement of the injured

Other non-material damage

- unpainful and non-lasting states connected with a damage of health which have a negative effect on a personal sphere

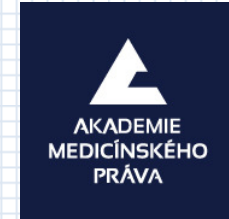
Damage to health



237. and 238. Final Provisions § 3080 of the new Civil Code

- the cancelled Regulation No 440/2001 Coll., compensation for pain and social impairment**

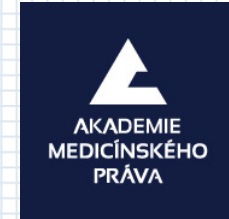
Damage to health



§ 13 (Civil Code)

Everybody, who is demanding legal protection, may rightfully expect, his case will be adjudicated **similarly** as another case, which has been decided already and which is corresponding to his case in constituent elements; if the case was adjudicated differently, everybody, who is demanding legal protection, has the right for **valid clarification** (by the good cause) of this departue.

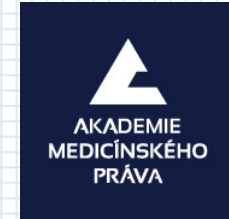
Damage to health



Methodology of the Supreme Court for compensation for non-material damage (damage on health)

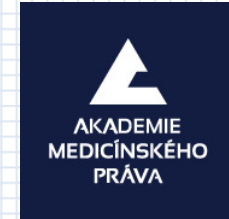
- **non-committal recommendation material**
- **complex approach**
- **expert basis**
- **to use in the court and out-of-court practice**

Authors of the Methodology



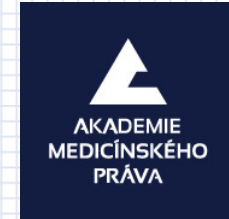
- **1st Faculty of Medicine, Charles University in Prague – expert guarantee**
- **Society of Medical Law**
- **Supreme Court of the Czech Republic**
- **representatives of regional (appellate) Courts**
- **representatives of insurers (compensation payers)**

Methodology of the Supreme Court of the Czech Republic



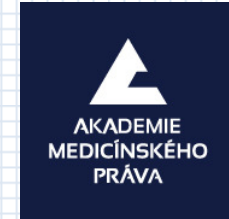
- **Compensation for pain – revision of the Appendix 1. of the Regulation No 440/2001 Coll.**
- **Social impairment – an entirely new approach with application of **ICF****

Compensation for pain



- an overview of pain consists of particular items assigned with point values reflecting mutual proportions between individual items
- a point value – 1% gross nominal monthly wage by annual converted number of employees in national economy for the year preceding the year of occurrence of entitlement / occurrence of pain

Social impairment



ICF – International Classification of Functioning, Disability and Health
- A system developed by the World Health Organization (WHO)

ICF



International Classification WHO

- International Classification of Diseases and Related Health Problems (ICD)
- International Classification of Functioning, Disability and Health (ICF)

International Classification of Functioning, Disability and Health

- ICF as a multipurpose classification
 - endorsed by the resolution of the Fifty-fourth WHO Assembly in 2001
- Application of ICF
 - as a clinical tool
 - as a tool for work evaluation
 - as a tool of social and health policy
 - as a statistical tool
 - as a research tool

International Classification of Functioning, Disability and Health

- Two persons with the same disease (ICD) can have **different level of functioning** (ICF), and two persons with the same level of functioning **do not necessarily have the same health complications!**

ICF



Four components:

1. Body functioning (code b)

2. Body structures (code s)

3. Activities and Participation (code d)

- execution of tasks and involvement in a life situation

4. Environmental factors (code e)



ICF

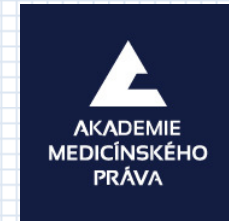


Activities and Participation – nine chapters

1. Learning and applying knowledge
2. General tasks and demands
3. Communication
4. Mobility
5. Self-care
6. Domestic life
7. Interpersonal interactions and relationships
8. Major life areas
9. Community, social and civic life



ICF



Qualifiers (the level of problem)

0 – no problem (absent, negligible)	0-4%
1 – mild problem (slight, low)	5 -24%
2 – moderate problem (visibly higher)	25-49%
3 – severe problem (high, extreme)	50-95%
4 – complete problem (total)	95-100%



Activities and Participation

- **Activity - capacity**
 - ability of an individual to execute a task (action) without special aid and independently on the environment
- **Participation - performance**
 - involvement of individual in a life situation using environment factors

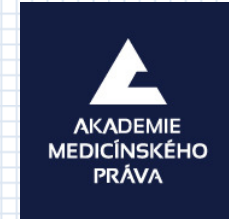
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Activities and Participation – differences in comparison with current application

- to assess Capacity, sometimes also Performance
- it will be necessary to assess all points (chapters)
- a status before damage is important
- some Facilitators are taken into account
- in addition, there should be a space for consideration of the Court (in particular, age, exceptional involvement of the sufferer, circumstances according to § 2957)

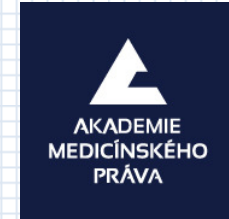
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Alignment of the financial extent of compensation

- a limit amount expressing a hypothetical **100% social impairment** of a sufferer - around **10.000.000,- CZK**
- it reflects the development of price level and economic parameters, it is suggested to express it as a 400-fold gross nominal wage by annual covered number of employees in national economy, as for the year when the sufferer's health status was stabilized, e.g. in 2013 it made up 25.128,- CZK

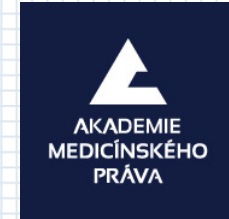
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Alignment of the financial level of compensation

- basic (general) evaluation of compensation for non-material damage at lasting health effects
- proportional expression of loss of average potential for the particular damage type

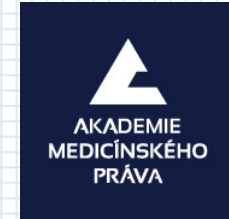
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Modification of general amount:

- **The age when lasting effects occurred**
 - **45 to 55 years – basic, general**
 - **+10% between the ages of 35 – 44 years**
 - **+ 20% between the ages of 25 – 34 years**
 - **+ 30 - 35% between the ages of 0 – 24 years**
 - **- 10% between the ages of 55 – 69 years**
 - **- 20% elder than 70 years**

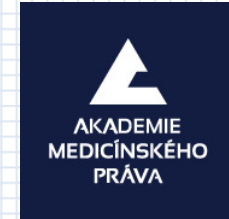
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Modification of general amount:

- **Social engagement before damage of health**
 - **+ 10% - above-average**
 - **+ 20% - exceptionally intensive**
 - **+ 30% - extraordinary**
 - **- 10% - below the average**
 - **- 20% - practically no**

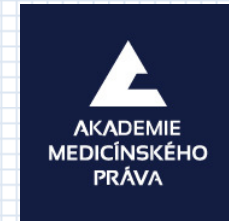
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Modification of general amount:

- The exceptional circumstances listed in § 2957 are not possible to take into account due to their assumed extent a variability which cannot be expressed neither by specific term nor by the corresponding percentage range, thereby it is reserved merely on consideration of the Court with recommendation to keep the compensation after complete resulting increase at the border of two-fold general amount

Methodology of the Supreme Court of the Czech Republic



Expert:

Assessment of the level of problem



Percentage (up to 100%)

Court:

General initial amount (10.051.200,- Kč)



Basic compensation



Resulting compensation



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