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COMPENSATION FOR PERSONAL INJURIES IN POLAND

Poland – the general data

The number of inhabitants: ≈ **38.500.000**

Capital town: **Warsaw**

Currency: **Polish zloty (*złoty polski*, PLN)**

Date of entrance in the EU: **1 May 2004**

Members of European Parliament: **51**

The Commissioner:

Elżbieta Bieńkowska, DG Internal Market, Industry, Entrepreneurship and SMEs

I. Sources of law

Polish legal system, as for the other EU Member States, is based upon combination of the rules created domestically and at the EU level. As a consequence, the general outline of this system is co-created by the norms and standards introduced in the EU primary law and in the Constitution of the Republic of Poland (enacted in 1997). Although none of these acts addressed the issues of personal injuries directly, they provide axiological and structural fundaments for creation of all rules applicable to the sphere of legal remedies in private law, including compensation of the aforesaid injuries.

The more specific rules in this respect are contained in the **Civil Code of 1964** (hereinafter: "CC"). Although enacted in 1964 (under the communist regime, with its particular ideological background) the Code in its general conceptual structure has been a modern and universal act – being able therefore to stay in force (with necessary amendments) after the turn into democratic

state and capitalist economy after 1989. The code is closely rooted in the extensive codification works carried out in Poland in the mid-war period. After regaining independence in 1918 Poland found itself with five legal systems of private regulation in force on its land (the German, the Russian, the Austrian, the amended French and the Hungarian). As a result, the inevitable unification required thorough comparative studies, resulting in creation of a unique set of rules, combining elements adopted from several legal traditions. The most important set of them has been embodied in the **Code of Obligations of 1932**, which in its predominant part has been transposed later into the current CC. In articles 161 – 167 the Code of Obligations set forth a group of specific provisions on the responsibility for corporal injuries, health upset and taking somebody's life (along with deprivation of freedom and insult). The regulation in question, linked with the general provisions on the civil responsibility, was the direct predecessor of the current regulation of the CC (described beneath).

The system of civil responsibility in Poland is based upon – widely recognized in the European legal culture – division between contractual (*ex contractu*) and tort (*ex delicto*) liability. Both categories are regulated in the CC's provisions, with several sector-specific deviations in the specific legislation. The tort liability has been based upon the general idea of romanistic legal tradition – **the general formula of responsibility**, without an exhaustive (closed) catalogue of specific delicts.

Under the **article 415 CC**, "A person who has inflicted damage to another person by his own fault shall be obliged to redress it."[1] The provision in question – followed by a number of more specific rules (on the premises, extent, etc. of the tort responsibility) embraces all kinds of unlawful deeds entailing a loss (considered as all types of actual or future economic detriments), including also the personal injuries.

This general formula of responsibility is specified and modified in the more detailed provisions, indicating certain types of torts. Amongst them **article 444 CC**[2] sets forth responsibility

[1] All of the translation of the provisions of the Civil Code according to the "LEX" database of Wolters Kluwer Polska publishing house.

[2] Article 444: § 1. In the case of a bodily harm or a health disorder the redress of the damage shall include all expenditures resulting from it. At the request of the injured party, the person obliged to redress the damage shall lay out in advance an amount required to cover the treatment costs and where the injured party has become a disabled person, an amount required to cover the costs of training for another profession as well.

§ 2. Where the injured party has lost ability to carry out gainful work entirely or in part or where his needs have increased or his prospects for the future success have been reduced, he may demand a relevant pension from the party obliged to redress injury.

§ 3. If at the moment of issuing the ruling the extent of injury is impossible to be assessed precisely, a temporary pension may be granted to the injured party.

for **"bodily harm or a health disorder the redress"** and the **article 446 CC**, establishing responsibility for **injuries resulting in demise of a victim**.

II. The constructional framework

In principle, the model of civil responsibility in Poland assumes the **compensatory role** of all types of damages, along with more specific tasks – such as prevention from committing certain deeds in the future, proper share of risk arising from certain types of activity, etc. Amongst them it is possible to distinguish also the punitive function of compensation. Moreover, in some very limited) instances the legislation directly introduces particular types of responsibility, located between entirely punitive fines and purely compensatory damages[3]. For this reason, as the recent judiciary of the Supreme Court clearly indicates, the concept and functional framework of the tort responsibility under the Polish law precludes the idea of "punitive damages" (excluding, in particular, enforceability of foreign decisions adjudicating compensation based upon this scheme)[4].

Under the Article 361 § 2 CC, compensation of damages should amount to "losses which the injured party has suffered as well as profits which it could have obtained, if no damage were inflicted". As a result, the tort liability in the Polish system has been based upon the **full compensation principle**. From the practical point of view determination of these substrates remains, of course, a question of findings and assessment of a courts (in some cases being based to some extent upon the discretionary decision as to the extent of compensation). The aforementioned assumption expressed in Article 361 § 2 CC steers, however, the judicial activity into seeking the possibly entire amount of actual and future loss (which affect also directly the sphere of personal injuries). At the same time, however, the legislation introduces an important constraint in this respect – requiring that the loss compensated arises from the "ordinary effects of an action or omission which the damage resulted from" (article 361 § 1 CC).

The compensation of personal injuries under the Polish law has been integrated with the entire system of the tort liability. For this reason: (a) personal injuries are considered to constitute **a form of tort** (along with the other tort specifically addressed by the legislation); (b) the **general rules on the tort liability** (including the aforementioned functional background and the full

[3] E.g. the possibility to oblige a market participant that committed unfair competition deed, to pay a certain sum for the social organisation acting in suppeort of the Polish culture culture or national heritage – article 18, section 1, point 6 of the Act on combating Unfair Competition of 1993.

[4] Decision of the Supreme Court of 11 October 2013, I CSK 697/12.

compensation principle) are **directly applicable to personal injuries**; (c) the personal injuries compensation **can be claimed under exactly the same premises** (including particularly the way of bringing a claim into litigation), as the other types of damages and – more generally – other claims falling into the ambit of private law.

III. Forensic reports and expert witnesses

The personal injuries liability in in the Polish legal system is treated as every type of tort liability and thereby can be claimed within the typical way of pleading civil cases. Collecting of evidence in this respect is governed by the general rules of civil procedure, **placing the burden of proof upon the party that makes a certain factual claim**. All types of evidence have to be obtained and delivered, in principle, by the parties themselves. At the same time it is obviously possible to make use of the pieces of information already produced for the other purposes – particularly of different types of forensic reports made e.g. for the sake of the police investigation in the accident scene, the proceedings between a criminal court or an administration body, etc. Exceptionally – under the particular entitlement indicated in article 232 of the Code of Civil Procedure – the court may **collect evidence *ex officio***, when it is justifiable in the circumstances of the case. The aforementioned applies in principle both to the judicial, as well as (rather rare in practice – see beneath) extrajudicial proceedings. In the latter respect it is, however, possible for the parties to introduce more specific, tailor-made rules in terms of collecting evidence.

While examining tort cases, courts rather frequently resort to **various analyses prepared by expert witnesses**. In the circumstances involving some sorts of professional expertise, the judge is considered to be obliged to resort to this type of evidence (adjudicating upon the individual knowledge may likely lead to repealing the judgment by a court of higher instance). This applies both to experts appointed by the parties, as well as introduced by the court (exercising the aforementioned *ex officio* power). The experts have to be selected out of the register kept by the president of the proper district court (*sąd okręgowy*).

The way of dealing with evidentiary issues in personal injuries matters is, in principle, **unified for all types of the claims**. In practice however, the cases involving technically more complicated issues (e.g. building spot exercises) the use of expert witnesses is on average much more excessive.

IV. Personal harm to be recognized

The general formulas of the aforementioned CC's principles, open a broad filed for judicial choice in limiting the scope of responsibility and determining the types of injuries to be compensated. The excessive case law in this respect – with the crucial role of judgments of the Civil Chamber of the Supreme Court – recognizes several types and sub-types of personal injuries. Amid the most important of them count: (a) the **corporal injuries**, including the temporal or permanent invalidity; (b) **direct economic consequences of the injury** (costs of medical treatment, periodical or permanent care in the case of invalidity or convalescence, etc.); (c) the **further economic consequences** of the wrongful deed (limitation or deprivation of a possibility to earn money or deterioration of prospects for the future); (d) **psychic harm** arising from the injury (including the suffering caused to the family members of a victim).

The array of claims obtainable in the case of corporal injury (excluding the cases of demise of a victim) has been defined in article 444[5] of the CC, with further extensions in articles 445[6] and 447 CC[7]. As the basic set of remedies – applicable to **economic loss** – the first of these provisions indicates **reimbursement of all the costs resulting from the injury**, along with **payment of a certain sum in advance** (§ 1) and the possibility of awarding **annuity**, if the injury affected the longer prospects of a victim (§ 2). The annuity may have a temporary (tentative) character, if at the moment of adjudicating the scope of loss cannot be precisely ascertained (§ 3). Under the article 447, the court is entitled to transform annuity into one-off payment, particularly in the case of disability of a

[5] Article 444: § 1. In the case of a bodily harm or a health disorder the redress of the damage shall include all expenditures resulting from it. At the request of the injured party, the person obliged to redress the damage shall lay out in advance an amount required to cover the treatment costs and where the injured party has become a disabled person, an amount required to cover the costs of training for another profession as well.
§ 2. Where the injured party has lost ability to carry out gainful work entirely or in part or where his needs have increased or his prospects for the future success have been reduced, he may demand a relevant pension from the party obliged to redress injury.
§ 3. If at the moment of issuing the ruling the extent of injury is impossible to be assessed precisely, a temporary pension may be granted to the injured party.
[6] Article 445: § 1. In the case provided for in the preceding article, a court of law may grant to the injured party a relevant amount on account of pecuniary compensation for the wrong suffered.
§ 2. The above provision shall also apply in the case of false imprisonment or in the case of inducing somebody by deceit, violence or abuse of a dependency relation to submit to an indecent act.
§ 3. A claim for compensation shall devolve on heirs only where it has been acknowledged in writing or where statements of claim were instituted during the life of the injured party.
[7] Article 447: For important reasons, at the request of the injured party, a court of law may grant him one-time damages instead of the pension or its part. It shall in particular be pertinent to the case where the injured party has become a disabled person and granting him one-time damages will make it easier for him to perform the new profession.

victim (when the lump sum could facilitate finding a new occupation). Moreover, in the case of **non-economic loss** (harm), article 445 entitles the court to grant a certain sum as compensation (§ 1).

In all of the aforementioned cases the amount of compensation obtainable for the parties is ascertained separately for each of the cases, within a very broad margin of discretion left to the courts in the CC's provisions mentioned above. There are **no pre-set tables or any other kinds of a wage scale available for the parties**. Nevertheless, the more excessive empirical studies reveal some tendencies in determining the amount of damages dependable on the character and circumstances of the injury/harm.

V. Tort liability in the case of decease

The death, being a result of an accident, may also lead to adjudication of damages for non-economic loss for the relatives of the deceased under the abovementioned article 446 CC. The provision sets fort the general premises for liability and specifies the possible substrates of the claim. Particularly important from this perspective occurred § 4 of this rule (added by and amendment of 2008), vesting a court with a possibility **to award the closest family of the deceased the pecuniary redress of non-economic harm**. The provision gave rise to numerous litigations, leading consequently to a change in the market of insurance contracts. Which is also noteworthy, the broad scope of this type of compensation has been further reinforced by the Supreme Court – claiming that the compensation in question applies also to the events of death that took place before coming into force of the § 4[8]. Interestingly, upon this mechanism of it may be also discussed, whether the family members could obtain compensation of the non-economic harm in the case of injury not leading to demise (see above, point IV). At the current stage of development of this mechanism the final answer remains, however, still unclear.

The array of family members entitled to obtain this sort of compensation **is not identical with the scope of heirs of the descended**. Article 446 § 4 creates a separate basis in this respect, regardless of any other legal links between the departed and the family members (and the possibility of inheriting other types of compensation that could arise from an accident for the deceased him/herself). The concept of the "close family" is understood in the case law with reference to the actual emotional rapport between the deceased and a particular person. Noteworthy, the scope of this concept does not embrace only formal family links (a spouse,

[8] The resolution of the Supreme Court of 13 July 2011, III CZP 32/11.

relatives, etc.), but also other interpersonal relations of a close nature (like between common-law spouses). The degree of compensation **may be dependable upon the degree of kindship** – but only in factual terms (the close relationship may be considered as making a person more vulnerable to mental harm).

The rule in question applies both to the death occurring immediately or as a further consequence of an injury (more distant in time) – which has been clearly expressed in the opening part of article 446 § 1 CC.

The array of forms of compensation, available in the case of decease, has been prescribed in separate sections of article 446 for economic or non-economic type of loss. In the first case, the court is entitled to grant the reimbursement of **costs of treatment and funeral** (§ 1); the **annuity** (if the deceased was burdened with alimony obligation towards a particular person – § 2); and the **compensation**, if the demise deteriorated the living standard of the closes family members (§ 3). For the non-economic harm of the closest family, the article 446 § 4 prescribes the possibility of awarding **"an appropriate sum"**.

VI. Alternative dispute resolution

The ADR schemes – although recognized and applicable in various forms by the Polish legislation – seem to be **rather scarce in the field of personal injuries** (as well as for most of the other civil claims). In practice, if the compensatory claim is not satisfied voluntarily by the person responsible (or purportedly responsible), it is being brought directly to the civil litigation. There are, however, a few examples of extra-judicial settlement of compensatory disputes, through (usually involving the State as the person liable for paying compensation).