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## Article

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## DAMAGES FOR PERSONAL INJURIES – IN LABOUR AND SERVICE LAW

Leopold Skoruša<sup>1</sup>, Ondřej Horák<sup>2</sup>, Radim Vičar<sup>3</sup>, Tomáš Zbořil<sup>4</sup>

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### Abstract

The contribution will be devoted to the comparison of damages for non-proprietary loss in public and private sphere. The regulation of service relationship will be analysed in public area, in private area the legal regulation of health injuries in labour law. The aim of the contribution will be a critical analysis of the current state of legal regulation and the proposal *de lege ferenda* (approximation with labour law). The addressed question is of a fundamental importance for the area of public finances, the functioning of the public area and the enforcement of the rule of law. The historical-comparative method will be used. Particular attention will be paid to the transfer of damages for personal injury to the heir – while in service relationship, such claims terminate (not transferred to the heir), which was taken from the 1960s legislation. They do not terminate after the death in current private law, if recognized or at least claimed in court. Originally, the regulation of damages in public and private law was comparable; however, after the modernization of the private law (2012/14), the protection of persons in service and their relatives becomes weaker, even though it has traditionally been contrary to it in most institutes. Different legal regulations in labour and service law are baseless in the case of damages. The authors propose to modernize the relevant laws, to bring them closer to the Labour Code, both in the possibility of a reasonable increase in damages and in the transfer of damages for pain and diminished social function to the heir.

### Keywords

Damage Compensation, Employee, Injury, Legal Regulation, Soldier

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## I. Introduction

Czech law went in connection with the adoption of the Civil Code (Act No. 89/2012 Coll., hereinafter called “OZ”) through a number of changes that affect the functioning not only of the private but also of the public sphere. The service laws, respectively the Professional

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Soldiers Act (No. 221/1999 Coll.) and the Service Relationship of Members of the Security Forces Act (No. 361/2003 Coll.), belong among public law regulations, but they also have a strong link to the private law regulations, besides the Civil Code, especially to the Labour Code (No. 262/2006 Coll., hereinafter called “ZP”). This interconnection is based on the principle of unity and irreconcilability of the legal order, and on the understanding the relationship between private and public law as a “general” and “special” relationship, as it is more recently emphasized in the literature and in the jurisprudence of the supreme courts.<sup>5</sup>

The concept of liability has been changed in private law (“liability to damages” is used instead of a “sanction for the breach of duty”; contractual and non-contractual damages are separated) and the legal term “damage” relates only to the damage to property and damages for non-proprietary loss are more emphasized.<sup>6</sup>

Originally, the regulation of reimbursement for bodily harm was similar in private and public law, but after modernizing the private law, the protection of persons in a service relationship (resp. professional soldiers and members of the security forces) and those closely related to them.

This issue is rarely discussed in professional circles, but in literature it also remains rather on the edge of the authors’ interest. As the authors of this article, inter alia, study various topics of labour and service law in their professional practice, they have focused their attention on the research of liability for injury in labour and service relations and related issues.

The following text provides a comparative analysis of the current labour and service regulations and suggests some changes, especially in the field of service law. Due to the limited scope of the text, the authors do not deal with the institute of compensation for (after) the death of a soldier, a member of the security forces or an employee.

## II. Liability for personal injuries from the point of view of the Professional Soldiers Act

The Professional Soldiers Act No. 221/1999 Coll., (hereinafter called “VojZ”) represents the legal framework for the application of damages for bodily harm of members of the armed forces.

Liability for damage includes both the liability of the subject that caused the damage unlawfully and based on fault (liability based on fault) and the subject that caused the damage by permissible but dangerous conduct. Here we talk about liability for *threats* or liability for *risk*. This liability is based on the no-fault principle (liability without fault). The liability of the state for damage is always *objective, i.e. fault is not required*.<sup>7</sup>

<sup>5</sup> Cf. Pichrt; Kopecký; Morávek (2016); Skoruša; Horák; Vičar; Zbořil (2017).

<sup>6</sup> Cf. Eliáš et al. (2012), 1021–1054; Melzer; Tégl et al. (2018).

<sup>7</sup> Skoruša; Daněk (2017).

The assumptions of the general liability of the state for damage caused to a soldier are:

- \* breach of legal duties,
- \* damage caused to a soldier in the course of, or in connection with a service performance
- \* and the causal link between the breach of legal duties and the occurrence of damage.

To claim compensation, all these assumptions must be performed at the same time; if any of these are missing, the claim shall not arise. The state is obliged to compensate the soldier not only for the damage caused by the breach of his duty but also for the damage caused to him by another entity (another soldier or another person).

### **Compensation for the loss of salary for a period of inability to perform their duties**

In order to preserve the principle of compensation for actual damage sustained as a result of an accident at work or an occupational disease and resulting reduction of the service average salary earned prior to the damage, the soldier will be compensated for loss of earnings up to the level of the average service salary before the occurrence of the loss in the amount of the difference between the average service salary and the service salary for inability to perform a duty or full sickness benefits.

A soldier will also be compensated for further inability to perform a duty due to a service accident or occupational disease. The amount of the compensation will be based on the average service salary of the soldier before the occurrence of the additional damage, it means before the further recognition of the inability to perform the required duties.

### **Compensation for loss of service salary after the termination of the inability to perform the required duties**

The compensation is a separate partial claim arising in different time frames and cannot be divided into several parts unless new facts arise. However, the soldier may claim the portion of his claim, and then its remainder. The claims for compensation are not subject to the statute limitations. However, the claims for the individual performance resulting from them are subject to the statute of limitations.

To determine the average service salary of a soldier, the relevant legislation of the ZP on average earnings shall be applied, the calculation does not consider the extra charge for service abroad and the salary for the unfulfilled regular vacation (see § 68r VojZ). The amount is limited to the maximum amount that can be paid to a soldier. This amount is equal to a maximum of twenty times the minimum wage (267,000 CZK in 2019).

The compensation is also awarded to a soldier who does not serve because he has been recognized as incapacitated for service but for reasons other than personal injury or occupational disease. Sick leave is calculated from the salary after the accident at work or after the detection of the occupational disease, in accordance with sickness insurance law. The principle of the claim for compensation for loss of service salary is terminated at the age of 65, it is interrupted if a soldier has become disabled in the first or second degree as a result of an accident at work or an occupational disease under particularly dangerous conditions in the performance of service abroad. In that case, compensation for the loss of salary is awarded without regard to the age limit.

### **Compensation for pain and suffering, compensation for diminished social function and compensation for the meaningful cost of treatment**

The compensation for pain and suffering and the compensation for diminished social function are lump – sum grants, the amount of which is regulated by decree No. 346/2015 Coll., on the procedure for determining the amount of compensation for pain and suffering and for diminished social function of soldiers. The regulation prescribes the amount of *compensation for pain and suffering and for diminished social function*, the method of determining the amount of compensation in individual cases and the procedures for issuing the medical report and its requirements in relation to the activity under consideration. The legal regulation thus directly guarantees the minimum standard of this compensation from which it will be possible to deviate in favour of the injured party. *The reparation money* is provided for suffering due to personal injuries, treatment, eliminating the consequences, rehabilitation and for total physical and mental suffering.

The limitation of self-realization and social function connected with the performance of the job (in the sense of the profession) is compensated in connection with the influence of personal injuries on the performance of the service and in the framework of compensation for diminished social function without any direct connection with the amount of income, because the compensation is taken into account without considering the reduction of earnings.

*The claim for reparation money and diminished social function terminates upon the death of a soldier.* It also terminates if the state has recognized the soldier's claim before his death and has commenced negotiations for the payment of such compensation (§ 159 para. 6 of VojZ).

The compensation for meaningful cost of treatment may consist, for example, in the reimbursement of the costs of the purchase of medical equipment not paid (or partially reimbursed) by the Military Health Insurance Company, in the reimbursement of the cost of dietary meals, in the reimbursement of the costs associated with rehabilitation treatment or visits of a soldier affected by a service accident hospitalized in a health care facility or also in the reimbursement of costs incurred in connection with outpatient care provided by specialist doctors.

### **One-off extraordinary compensation**

*One-off extraordinary compensation* is awarded in the amount of the minimum wage multiples depending on the hazard and risk of the activity in which the accident occurred and the degree of disability. The amount of damages depends directly on the risk and hazard of the service performance. The legal regulation of this compensation takes into account the act itself that preceded the accident as a result of which the invalidity occurred, rather than the consequences of the accident.

Linking the amounts of one-off extraordinary compensation to the minimum wage ensures the necessary valorisation of this claim in the context of changes in wage developments and rising costs of living needs. In order to avoid double coverage in a similar case, a one-off extraordinary compensation is provided only once, at a rate which is more advantageous for the soldier.

### III. Liability for personal injuries from the point of view of the Service Relationship of Members of the Security Forces Act

Act No. 361/2003 Coll., on the Service Relationship of Members of the Security Forces (hereinafter called “ZSP”) is the legal framework for the application of compensation for personal injuries to members of the security forces. The Act represents a relatively comprehensive regulation of service relations for the *members of the security forces, these are the members of the Police of the Czech Republic, the Fire Brigade of the Czech Republic, the Customs Administration of the Czech Republic, the Prison Service of the Czech Republic, the General Inspection of Security Forces, the Security Information Service and the Office for Foreign relationships and information*, including the issues of liability for personal injuries. In particular, part 7 of the ZSP (“Damages”) governs the rules for the prevention of damages, the liability of a member of the security forces for damage and the liability of the security board for damage, even if it does not correspond terminologically with private law.

#### Damages

The legal regulation of liability for damage in the ZSP is regulated similarly to the ZP<sup>8</sup>. The security forces are held liable<sup>9</sup>, under general liability, for damage caused to a member of the security forces by a breach of legal duty in the performance of the service, in direct connection with it or in the course of the performance, as well as for other damage to health resulting from a service accident or occupational disease<sup>10</sup>. The security forces are also held liable for damage (resp. non-proprietary damage) caused to a member at the accident or by occupational disease under so called special liability. From the point of view of legal construction, this is the *liability without fault* (for the detrimental effect, there is no need of fault), with the possibility of *liberation* (limitation or waiving of liability, § 111 ZSP).

#### Types of damages

The following remarks may be made to provide compensation for injury or occupational disease. A member who has suffered a *service injury*<sup>11</sup> or has had an occupational disease detected is entitled to compensation for loss of service income for a period of incapacity (§ 102 ZSP) and *compensation for loss of service income* after the termination of service

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<sup>8</sup> Řehořová (2016).

<sup>9</sup> “Pursuant to Section 98 (1) and (2) of Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces, the security forces shall be liable for damage suffered by a member in the performance of the service, in direct connection with it or for the performance of the service and which arose from a breach of a legal obligation which is not contrary to the rule of law, but it is contrary to good morals. . . .” According to the judgment of the Regional Court in Ostrava dated 19 June 2018, Ref. 22 Ad 10 / 2017–28.

<sup>10</sup> Government Order No. 290/1995 Coll., establishing a list of occupational diseases, as amended.

<sup>11</sup> “The injury suffered by the plaintiff during activities related to physical rehabilitation activities carried out within the framework of a curative stay provided by the order of the director of human resources management is a service accident and the plaintiff thus has pursuant to Section 101 of Act No. 361/2003 Coll. the right to compensation for the pain and aggravation of social exercise and the reimbursement of the cost of treatment.” According to the judgment of the Regional Court in Ostrava, branch office in Olomouc dated 27 January 2016, ref. 65 Ad 6/2014–48.

incapacity (§ 103 ZSP). These are repeated claims, which are intended to “call” the amount of service income before the damage is incurred.

In addition, the injured party is entitled<sup>12</sup> to *damages for pain and suffering and diminished social function*, but this compensation is provided in a one-off manner. The own procedure for determining the amount of such refunds is regulated by the subordinate legislation, currently by decree No. 277/2015 Coll., on the procedure for determining the amount of compensation for pain (according to § 2, pain is meant to be any physical and mental suffering caused by personal injury to a member) and for the diminished social function (according to § 3, diminished social function is meant to be the consequences of injury to health that are of a lasting nature and which have a demonstrably unfavourable effect on the life of the injured person). In particular, it concerns its application in family, political, cultural and sporting life, including the exercise of the profession or professional training of the members of the security forces. Damages for pain and suffering and damages for diminished social function are determined according to the rates of the points mentioned in the annexes to this decree, based on the point assessment in the medical report. The value of 1 point is expressed in a fixed amount of 250 CZK.

Another one-off claim is a one-off compensation awarded to a member dismissed from the staff member’s due to long-term loss of medical capability. The basic amount is 230,000 CZK, while the provisions of § 105, para. 2 of the ZSP contains the so-called valorisation clause.

The reimbursement of the meaningful costs associated with the treatment is enshrined in the provisions of § 101, § 106 and § 107 of the ZSP. There are no more limitations defined by ZSP, according to labour law jurisprudence, these are mainly the additional costs to the medicines not paid by health insurance company, medical equipment, rehabilitation, etc.<sup>13</sup>

Damages, resp. non-proprietary damage to the health of a member of the forces shall be decided by the relevant service official according to the ZSP.

#### **IV. Liability for personal injuries from the point of view of the Labour Code**

The basic labour law regulation, which regulates inter alia the course of employment, is Act No. 262/2006 Coll., of the Labour Code. Unlike the above-mentioned issues, this is a private law relationship. The employer is obliged to create favourable working conditions (§ 248 of the ZP) and to prevent non-material damage, which is typically personal injury.

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<sup>12</sup> “In Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces, there is no provision that would prevent the service body from initiating proceedings for damages for professional injury (occupational disease) ex officio. If a service official starts such proceedings ex officio, he is bound by defining the subject-matter of the proceedings at the time of the commencement of the proceedings.” According to the judgment of the Regional Court in Ostrava of 30 May 2018, Ref. 22 Ad 17 / 2017–33.

<sup>13</sup> Judgment of the Court of Justice No. 21 Cdo 424/2003. “This reimbursement may also consist in reimbursement of the costs of purchase of medicines and medical equipment not paid (or partly reimbursed) by the relevant health insurance company, reimbursement of dietary meals, reimbursement of costs associated with rehabilitation treatment or visits of an employee affected by an occupational accident hospitalized in medical facilities or reimbursement of costs incurred in connection with outpatient care . . .”

It is clear that all workplaces cannot be safe, but the employers are required to minimize the risks.

The corresponding duty of the employees is to ensure that there is no damage to property, non-proprietary damage or unjust enrichment (§ 249 of the ZP). Private law traditionally regulates the issue of prevention, as it is in the Civil Code, where the general preventive clause is regulated in § 2900. It again implies the rule of everyone's duty to act so as to avoid unjustified damage.

### **Work injuries and occupational diseases**

Work injuries and occupational diseases are considered to be bodily injuries for which the employers are held liable. The existing ZP has taken the definition of an injury from the judgments – as the damage to health or the death of an employee that occurred in spite of his or her will due to short-term, sudden and violent external influence during fulfilling the work tasks arising in the course of employment or in the direct connection with it (§ 271k of the ZP). If the injury did not occur during the fulfilment of the work tasks arising in the course of employment or in direct connection with the performance of the employee's duties arising in the course of employment, the injury will also be considered as a work injury. An example may be an assault on an out of duty municipal police officer by someone against whom the police officer had interfered with in the past. Occupational diseases are listed in a special legal regulation, the government order No. 290/1995 Coll. Work injuries and their compensations are governed by § 269–275 of the ZP. Apparently, there are only 7 sections, in fact, there are 29 of them, because § 271 and § 271u<sup>14</sup> [7] are inserted between § 271 and § 272. As it is in the case of members of the service, the employer's liability without fault is also exercised here. The employer must compensate not only damage to health but also damage to property. *The grounds for liberation* are laid down in section 270 of the ZP, an employer may be relieved of the liability to damages, if an employee has broken legal or internal regulations or instructions of the employer or caused the accident under the influence of alcohol. Partially, liability can be waived, as a rule, if the above-mentioned reasons were not the only cause of the damage, and also if the employee acted inexorably. The employers cannot be relieved of liability within the meaning of section 271 of the ZP, if the damage occurs during the fulfilment of the preventive interception obligation and in the case, they have not instigated the situation themselves.

The common provisions define concepts of *fulfilment of the work tasks arising in the course of employment* and the direct relation to the work performance. In addition to the fulfilment of the employee's duties, the fulfilment of the duties is also an activity that the employee does for the employer on his/her own initiative, unless he/she needs special authorization and does not act against the employer's ban. These situations may sometimes give rise to disputes whether the employer will be liable for the damage or not. The activities directly related to work performance are considered to be necessary for the fulfilment of the duties arising in the course of employment, including those necessary and usual before and after

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<sup>14</sup> Pichrt et al. (2017).



the commencement of work, and generally activities performed in the premises of the employer. The way to work and back, or eating out of the employer's premises, do not belong among these activities.

### **Types of compensation**

The reimbursement of the loss of earnings is a typical, very frequent compensation in the event of temporary incapacity from work of an employee. However, some work injuries may not necessitate incapacity from work. *The reimbursement of the loss of earnings* (salary or wages depending on the employee category) amounts to the balance of the average earnings before the accident and the amount of money paid to the employee throughout the duration of their incapacity from work.

If an employee is no longer able to earn such earnings as before the accident, he is compensated for the loss of earnings after the termination of incapacity for work. It may happen that the employee becomes disabled in grades 1 or 2 or is no longer able to do the same job for the whole working time or does not keep up with the pace of work. In this case, he is earning less money and thus suffers damage. The compensation is provided in the amount of the difference between the average earnings before the accident and the earnings after the termination of incapacity for work. If an employee is granted a disability pension, it is taken as part of income.

*Reparation money* is a one-off payment that is provided to employees as a compensation for physical and mental deprivation as a result of a work injury. Similar rules regarding compensation for *diminished social function* have already been mentioned above. The compensation is provided based on the medical report which sets the point value of the injury according to government order No. 276/2015 Coll. The value of one point is a refund of 250 CZK.

To improve health after an accident at work, an employee may incur costs such as dietary supplements, rehabilitation, or journey to a doctor. The damage to clothing or other personal belongings is considered to be material damage. In both cases, the compensation for meaningful expense will be awarded.

## **V. Liability for personal injuries from the point of view of the Act on Civil Service**

The civil service, as another service relationship, is governed by Act No. 234/2014 Coll., on Civil Service, as amended. The Civil Service Act does not regulate the issue of the damage liability of a service authority, security of a civil servant in the event of an injury at work or occupational disease. The Section 124 of the Civil Service Act refers to the Labour Code (*"The liability of a service authority for any damage suffered by a civil servant when performing their duties shall be governed by the relevant provisions of the Labour Code."*)<sup>15</sup>.

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<sup>15</sup> Act No. 234/2014 Coll., on Civil Service, as amended. Available at: <https://www.mvcr.cz/sluzba/clanek/zakon-o-statni-sluzbe-v-aj.aspx>.

The reference to the relevant provision of the Labour Code is absolutely appropriate and undoubtedly ensures the civil servant the same legal rights as any employee working under an employment relationship or an employee on the basis of other individual labour relations in the event of an injury at work or an occupational disease. The liability of the service authority in the event of an injury at work or an occupational disease is thus perceived as responsibility for the result. As well as definition of liberation reasons and the entire system of individual types of compensation, the conditions for entitlement to them and the extent of their provision, including compensation for survivors apply in the same way as under the Labour Code.<sup>16</sup>

The service authority shall be liable for any damage suffered by a civil servant when performing duties or in direct connection with breach of legal obligations or acts against good morals. The service authority, in which the civil servant was in the service at the time of the injury, is liable for the damage caused by the accident. The service authority is liable for the damage caused to the civil servant by occupational disease, in particular where the civil servant was in service before finding occupational disease under conditions the occupational disease occurs. The service authority is obliged to compensate for damage, even if it has complied with all legal and other obligations to ensure safety and health at work. This is the responsibility for the result (objective liability). However, the Labour Code regulates cases when a service authority is fully or partially relieved of its liability (Section 270 et seq.).

Another important rule for the service authority's liability is stipulated in Section 177 (2) of the Civil Service Act, according to which legal and other safety and health protection related rules and provisions to protect health and safety of civil servants shall be understood to be the provisions of Article 349 (1) and (2) of the Labour Code. For the purposes of the Civil Service Act, a work injury according to Section 271k of the Labour Code shall be understood to be a service injury. An accident that a civil servant has suffered during the performance of his/her service duties is also treated as a service injury (e.g. an attack on a civil servant for the purpose of carrying out his/her duties but outside his/her working time). On the other hand, a service injury is not an accident that occurred on the way to and from work. Occupational diseases are diseases listed in a special legal regulation (currently Government Regulation No. 290/1995 Coll.)<sup>17</sup>.

As mentioned above, the Labour Code rules apply to the compensation system, so this issue is discussed in more detail in the previous chapter.

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<sup>16</sup> Closer Pavlátová (2018).

<sup>17</sup> Closer Pichrt et al. (2015).

**VI. Liability for damage to health when providing assistance by a third party**

Liability for personal injury to a person who has provided the public authority (public officials) with cooperation, is at the borderline of responsibility towards “own” (persons in service) and “someone else’s” (third parties). This is the responsibility for the result.<sup>18</sup> Applicable laws do not address this issue alone, but mostly refer to a different regulation (fourteen out of seventeen). It should done as follows:

- a) according to the VojZ, to assist the armed forces (Section 43 (2) of Act No. 219/1999 Coll., on the Armed Forces of the Czech Republic, and Section 61 (2) of Act No. 222/1999 Coll., on Ensuring the Defense of the Czech Republic);
- b) according to the Labour Code in assisting fire brigade (Section 80 and 81 Act No. 133/1985 Coll., on Fire Protection; the Prison Service (Section 23 (2) of Act No. 555/1992 Coll., on the Prison Service and the Judicial Guard of the Czech Republic), nature, forestry, hunting and fishing guards (Section 81b para. 114/1992 Coll., on Nature and Landscape Protection, Section 39a (2) of Act No. 289/1995 Coll., Forest Act, Section 16 (1) of Act No. 449/2001 Coll., on Hunting, and Section 18 (6) of Act No. 99/2004 Coll., on Fisheries)<sup>19</sup>, by work duty (Section 60 (2) Act No. 222/1999 Coll., on Ensuring the Defense of the Czech Republic), the components of the Integrated Rescue System (Section 30 (3) of Act No. 239/2000 Coll., on Integrated Rescue System and on Amendments to Certain Acts) and crisis management bodies (Section 36 (3) Act No. 240/2000 Coll., on Crisis Management);
- c) according to the Civil Code, to assist the police (Section 24 (4) of Act No. 553/1991 Coll., on Municipal Police, and Section 95 (4) of Act No. 273/2008 Coll., the Police Act), GIBS (Section 55 Act No. 341/2011 Coll., on General Inspection of Security Forces) and Customs Administration (Section 51 (2) of Act No. 17/2012 Coll. on Customs Administration of the Czech Republic); in cases worthy of special consideration, one-off extraordinary compensation may also be provided;
- d) according to the Commercial Code (which is not explicitly stated, but it is derived by literature) when assisted the BIS (Section 17 of Act No. 154/1994 Coll., on the Security Information Service); 374/2011 Coll., on Emergency Medical Service) and the Service Office (Section 125 of Act No. 234/2014 Coll., on Civil Service).

<sup>18</sup> Cf. Mates; Škoda; Vavera (2011); Klíma et al. (2013) and Kopecký (2014).

<sup>19</sup> In the case of guards, this responsibility was introduced by an amendment to certain acts relating to a public official (Act No. 238/1999 Coll.), with effect from 1 January 2000.

## VII. Transfer of claims to heirs

The death of an employee, a soldier, or a security officer (hereinafter called “worker”) terminates most of the legal relationships, including employment and service relationship, but it is necessary to settle the rights and obligations resulting from them. Compared to the civil law (see § 1475 para. 2, § 1701 and 2009 OZ), the ZP and the Employment Act include some specifics which are designed to increase the protection of the worker, his/her family or heirs, their claims and the claims of the employer/state<sup>20</sup>.

The issue of the transfer of property rights after the death of a worker (except the state administration) is similar (the common inspiration source of all modifications is Act No. 65/1965 Coll. the Labour Code, hereinafter referred to as “ZP 1965”) in the employment, as well as in the service relationship. However, labour law and service law differ precisely in solving the transfer of non-proprietary damages.

The employee’s financial rights (existing before the termination of the employment or service) do not, in principle, terminate upon death: either they are gradually transferred to the qualified heir (first to a spouse, then to children or parents if those persons lived with a worker at the time of his death in a common household) or they become the subject-matter of inheritance (unless the close persons exist, or if the claims are more than three times the average monthly earnings of the worker).

Pursuant to the ZP 1965 (§ 260 para. 1), only the claims for compensation for pain and suffering and diminished social function, previously perceived as purely personal (see also § 579 para. 2 OZ 1964<sup>21</sup>, but differently § 335 OZ 1950<sup>22</sup>–<sup>23</sup> represent exceptions in the *VojZ* (§ 159 para. 6) of the ZSP (§ 212 para. 1). These claims terminate even though they have been awarded by the courts or have been ordered to be enforced.

However, a similar regulation has not been adopted in the ZP, which brought interpretation problems. In principle, the situation can be solved in two different ways: either 1) subsidiary way – we use the OZ, or 2) autonomous way – without taking into account the OZ.

Ad 1) according to the “subsidiary” solution, the rights resulting from the effectiveness of the OZ 1964 (until December 31, 2013) were not transferred to the heirs, under the effectiveness of the current OZ (from January 1, 2014) were transferred only if they were recognized or applied to a public authority (compare § 1475 para. 2 and § 2009 para. 2 OZ)<sup>24</sup>.

Ad 2) the above-mentioned rights (or claims under earlier terminology) do not cease to exist, but become the subject-matter of inheritance proceedings in the full amount (e.g.

<sup>20</sup> Closer Horák (2016); cf. Bělina; Drápal (2015); Vysokajová; Hůrka et al. (2015) and Tomek (2012).

<sup>21</sup> § 579 para. 2: “The right shall be terminated by the death of the creditor, if the performance was limited only to himself; the right to reparation money, as well as the right to damages for diminished social function.”

<sup>22</sup> § 335: “8. the death; The obligation shall be terminated by the debtor’s death, if the fulfilment is to be effected personally by the debtor or, by the death of the creditor, if the fulfilment was limited only to his or her person. The obligation to compensation for the reparation money and to compensation for the disfigurement shall not be terminated by the death of the entitled party if the claim has already been exercised by the entitled person.”

<sup>23</sup> Cf. a. o. comments to § 193, 196 and 260. In Součková et al. (2004) and Škárová (2009).

<sup>24</sup> § 1475 para. 2: “A decedent’s estate of a decedent except for the rights and duties exclusively bound to him personally, unless they have been acknowledged or enforced as a debt before a public body.” A § 2009 para. 2: “A creditor’s right is extinguished upon his death if the performance was to be provided only to him personally.”

SC 21 Cdo 936/2010), which is justified by the purpose and specifics of the labour law (increased employee protection)<sup>25</sup>.

The part of a newer literature also denies the exclusive personal nature of the right to pain and suffering damages and compensation for diminished social function, and it is assumed that the mentioned rights are transferred to the heir, even if they are not recognized or applied to a public authority (§ 1475 para. 2)<sup>26</sup>.

### VIII. Comparison of legal regulation of damages for non-proprietary damage

The types of damages are similar in both employment and service relationships (damages for loss of earnings, pain and suffering, diminished social function, meaningful cost of treatment, material damage). In addition, the member of security forces, the soldier and the survivors of the soldier may recover one-off (extraordinary) compensation.

**Table 1: Overview of damages for non-proprietary damage**

Regulation	Damages for pain and diminished social function	One-off indemnity		Mandatory to decide	Appeal authority	Body of judicial review
Act No. 221/1999 Coll., on Professional Soldiers	250 CZK/point	6 times min. wages	1st and 2nd degree of disability	Service authority (body)	Superior service authority (body)	Competent administrative court
		24 times min. wages	3rd degree of disability			
Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces	250 CZK/point	230,000 CZK	Termination of service relationship due to injury	Service official	Director of security forces	Competent administrative court
Act No. 262/2006 Coll., the Labour Code	250 CZK/point	It is not provided (only in case of survivors)		Employer	Does not exist	Competent civil court
Act No. 234/2014 Coll., on Civil Service	250 CZK/point	It is not provided (only in case of survivors)		Service official	Superior service authority	Competent administrative court

*Source: Authors, using relevant above-mentioned legal regulations*

Private lawsuits are decided in civil justice (the Supreme Court is the last instance) and service litigation in administrative judiciary (Regional courts and the Supreme Administrative Court). In civil law, there is no statutory instrument for compensation for personal

<sup>25</sup> Same as Comment to § 328. In Bělina; Drápal et al. (2015). Closer: Pichrt (2009).

<sup>26</sup> Cf. Fiala; Beerová (2015).

injuries, the determination of compensation should be individual, and the Supreme Court methodology<sup>27</sup> may be used in the alternative. In labour law and in service law, the following implementing regulations apply: government order No. 276/2015 Coll., for an employee, the decree No. 346/2015 Coll., for a soldier, in the case of a member of the security forces decree No. 277/2015 Coll. is used.; an employee may, however, seek a reasonable increase in compensation (§ 271s of the ZP).

## IX. Conclusion

In the case of liability for damage, the protection of workers in the public sphere has traditionally been higher than in the private sphere. The regulation of damages in both private and service relationships was similar before the effectiveness (2014) of the Civil Code, but after the modernization of private law, the protection of persons and their relatives in service relationships becomes weaker.

The right to compensation for pain and diminished social function has traditionally been terminated by the death of a worker (there was no transfer to his/her heir), which persists in the service relationships until today. However, in current private law, such a right does not terminate (in civil law it is transferred to the heir if it has been recognized or at least claimed in court, and in labour law it is transferred without further action).

The different regimes in labour law and in-service law are unjustified in the case of damages. The following amendments to the existing legislation would be appropriate for *de lege ferenda* legislation. Firstly, to adapt the outdated terminology in public law and replace it with the conceptual apparatus enshrined in the Civil Code from 2014. Secondly, to harmonize the method of calculation and the amount of lump sum compensation in the case of damages resulting from service relationships. Thirdly, to harmonize the legislation on the transfer of rights to heirs in the case of the death of soldiers, security officers and civil servants with the labour law.

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<sup>27</sup> Nejvyšší soud, 2014. *Metodika k náhradě nemajetkové újmy na zdraví* (bolest a ztížení společenského uplatnění podle § 2958 občanského zákoníku). Sp. zn. Cpjn 14/2014. Available at <https://www.codexisuno.cz/5Ew#!17>. Closer: Žďárek, R. et al. (2015). *Metodika odškodňování imateriálních újem na zdraví*. Praha: C. H. Beck.

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