# VI. Czech Republic

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In 2012, the Czech Republic adopted a new Civil Code which became effective as of 1 January 2014. In terms of the basic liability concept in Czech civil law, the Civil Code introduces a new concept of damage to Czech law, a change which takes into account the German approach to compensation of dividing damage into contractual and non-contractual forms. In contrast to the former Civil Code, the compensation of damage is no longer based on a general clause but on specific cases of non-contractual compensation for damage (§§ 2904, 2909, 2910) and a clause on contractual damages (§ 2913). This and other fundamental changes are the main reason why all the cases mentioned were heard by the highest judicial instances upon the adoption of the Civil Code and represent new trends in the development of Czech civil law.

## 1. Constitutional Court of the Czech Republic, 28 May 2024, PL ÚS 14/24

The first case deals with causation and secondary victims. It is of exceptional importance as the Constitutional Court attempted to alter long-standing case law concerning the interruption of the causal link, which has been inferred even when, under the theory of adequacy, a chain of causes and consequences exists.

Regarding the interruption of the causal link, Czech law understands this as a situation where the chain of causes does not establish a causal link between the wrongdoer's actions and the damage caused because another event, independent of the wrongdoer's actions, intervenes and is decisive for the damage. While such a conclusion is a question of causal connection, the same conclusion is reached also in cases where 'the cause of the damage is a fact that is itself a consequence for which the wrongdoer is liable for another legal reason.' This approach does not consist in the denial of the causal nexus itself, but rather in the fact that Czech case law disregards the standard normative criterion of imputability.[1]

[1] *J Hrádek* in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2024 (2025) 127, no 85.

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The question of the interruption of the causal link also arose here, where the claimant suffered damage to her health due to shock upon discovering that her family had died in a car accident. The car accident constituted a substantive and decisive cause of the damage to health and without the accident, there would have been no interference in the claimant's absolute rights.

The Constitutional Court refused the past approach and insisted on an examination of the question of the adequacy of the cause as it applies in other jurisdictions. Consequently, if there is a causal link between the harmful event and the injury caused, there is no reason why the general courts should deny liability for damage to health under § 2956[2] of the Civil Code (damage to the primary victim) and instead establish liability for damage suffered by secondary victims (spouse, family, child or other close persons) as laid down under § 2959[3] of the Civil Code.

With this conclusion the Court clearly distinguishes between two results of the wrongful event: a medically detectable interference with physical and mental integrity which often results in a mental illness and a 'mere' interference with private and family life. According to this differentiation between the interferences with the health of a person, the courts are obliged to examine the causal link between the wrongful event and harm suffered by third parties.

Such conclusion means that if a damaging event, such as a road traffic accident, results in serious bodily injury or the death of a person close to the victim, it usually imposes an enormous psychological burden on the person close to the victim as a secondary victim. It is therefore reasonably foreseeable that the accident and the death of a close person may negatively affect the secondary victim's psychological health, with a causal link to those events.

For this reason, the general courts should approach the awarding of compensation with great care and are obliged to examine the causal link, rather than automatically denying compensation based on the doctrine of interruption of the causal link. Consequently, the Constitutional Court's

[2] 'If the wrongdoer comes under an obligation to redress harm to another's natural rights as protected by the provisions of the first part of this Code, he shall compensate the damage and immaterial loss caused thereby; mental suffering caused by such harm shall also be redressed by the wrongdoer as compensation for immaterial loss.'

[3] 'Where death or especially serious harm to health is caused, the wrongdoer shall redress any mental suffering of the spouse, parent, or child of the injured party or other person close to him by means of a monetary sum fully compensating their suffering. If the compensation amount cannot be determined in this way, it shall be determined in accordance with the principles of equity.'

conclusion opened the way for giving priority to the objective criteria of the case over the theoretical conclusions of earlier causation theories.

### 2. Supreme Court of the Czech Republic, 16 May 2023, 25 Cdo 2202/2021

This decision represents a milestone in Czech civil case law, as the Supreme Court addressed a wrongful birth claim for the first time and, in doing so, had to establish criteria for compensation.

In the case at hand, the claimants (parents) sought compensation for interference with their reproductive self-determination, as well as for the impact of raising a disabled child (interference with private and family life), because the examining physician failed to correctly enter all the necessary data, meaning that biochemical markers were not included in the calculation of the risk of the most common congenital developmental defects in the foetus. As a result, the parents lost the opportunity to decide whether to keep the unborn child or to terminate the pregnancy. The Court acknowledged that such interference can occur as a consequence of wrongful medical treatment.

The Court explicitly concluded that Czech law allows for a claim for compensation of non-pecuniary damage caused by a healthcare provider's error during a prenatal examination. The prerequisite for such a claim is the breach of legal duty of the healthcare provider consisting in failure in the prenatal examination, which results in an interference with particular personal rights of the parents. Therefore, proof of a causal connection between an unauthorised interference with a specific partial personal right and non-pecuniary damage must be established.

In the court's decision, it was stated that *non lege artis* medical treatment by a healthcare provider establishes three possible breaches of personality rights: (1) non-pecuniary damage caused by interference with the parents' right to family planning, because they were not properly informed about the condition of the foetus; (2) non-pecuniary damage caused by the discovery of the child's actual state of health; and (3) non-pecuniary damage arising from the fact that parents have to witness the life of their disabled child and that they experience fear about the child's development.

As regards the interference with the parental right to family planning, this fact of the case consists in the misconduct in prenatal genetic examinations, which consequently resulted in a failure to detect the genetic disease. Since the main reason for the unlawful result consists in an error during the prenatal genetic examination and modern analytical prenatal

investigations result in high likelihood that the genetic disease could have been detected, there is a causal connection between the defendant's unlawful conduct and the interference with the personal rights of the claimants. Thus, all prerequisites for the emergence of a civil law obligation to compensate for this non-pecuniary damage are met.

The second and third interference, involving ongoing concerns about the development and future of a child affected by a genetic disease and its impact on the entire family's life, is conditioned by the finding that, but for the healthcare provider's error, the child would not have been born. Thus, it must be proven that, had the prenatal diagnosis been carried out correctly, the claimants would not have only undergone the recommended examinations but also would have chosen to terminate the pregnancy (eg health reasons or their worldview would not have precluded it).[4]

If there is an unauthorised interference with a person's personality, under § 82 of the Civil Code, the injured party has the right to demand that the unauthorised interference be stopped or that the consequences of this interference be removed. Alternatively, under § 2951 of the Civil Code, the injured party has the right to demand adequate monetary satisfaction.[5]

Which form of satisfaction should be deemed adequate will depend on the individual facts of the case. The court must consider the intensity, nature and method of the unauthorised interference or the character and the extent of the affected personality value. Taking into account all these facts, the court should award pecuniary damages as only monetary compensation may compensate for all wrongful results.

As Czech law does not provide for a uniform claim, the courts must award particular satisfaction for each interference separately, taking into account the above criteria for each claimant. As a result, the mother or father can be awarded different amounts of satisfaction if conditions for such an approach are met.

### 3. Supreme Court of the Czech Republic, 26 October 2021, 25 Cdo 1029/2021

The importance of this decision arises from the fact that the Civil Code in force changed the former approach to vicarious liability and laid down new rules for the liability of a helper. In this decision, the Supreme Court for the first time addressed the issue of the helper's liability under

[4] *J Hrádek* in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2023 (2024) 133, no 121.

[5] *Hrádek*, ETL 2023 (fn 4) no 122 f.

the Civil Code and the decision is both topical and fundamental, as the Supreme Court's conclusions directly contradict the position of the doctrine.

Based on the wording of the provision of § 2914[6] of the Civil Code, the crucial issue regarding the helper's potential liability toward third parties is whether the helper is directly liable to them or only secondary liability applies.

The Supreme Court did not deny the direct liability of the helper, stating that 'the injured party is not in principle denied a direct claim for damages against the helper'. However, the Supreme Court presented a certain value analysis and stated that § 2914 of the Civil Code is based on the premise that the person who benefits from the helper's activities should also bear the risks associated with the helper's activities. The purpose of § 2914 is to strengthen the protection of the injured party, because, in the case of a breach of a legal obligation (§ 2910) by a helper, the injured party can claim compensation from both the helper and the principal. Nevertheless, as the Supreme Court concluded, a direct claim will not be possible in all cases and will depend on the relationship between the principal and the helper. Explicitly, the helper's liability is excluded if the helper is in the position of an employee.[7]

As regards the notion of a helper, helpers who do not fulfil a principal's contractual obligations are divided into two separate groups and those groups then directly influence the scope of the principal's liability:

A so-called dependent helper is a person who performs activities for a natural (legal) person under their appropriate supervision and according to their instructions or orders. Thus, the helper is in a subordinate position towards the principal. The principal's liability for this type of helper is based on the rule 'as if it had caused it by itself'.

Whoever carries out activities for another in their own name and at their own risk (a so-called independent helper or subcontractor) is responsible for the damage themselves. However, if such a helper has not been

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[6] 'A person who uses an agent, employee or other helper in conducting his activities shall be obligated to compensate damage caused by this agent, employee or other helper in the same way as if he had caused the damage himself. If a person undertakes to carry out a certain activity independently but this performance serves as another person's performance of his obligation, the person acting independently shall not be deemed the other person's helper. If the other person did not choose him diligently or did not supervise him sufficiently, that person shall guarantee the fulfilment of his duty to compensate for damage.'

[7] *J Hrádek* in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2021 (2022) 91, no 52.

carefully selected or insufficiently supervised by the principal, the principal is liable in surety for the due fulfilment of the helper's obligation to provide damages.[8]

The Supreme Court's conclusion is based on the interpretation of § 2914, which allows for the establishment of a separate obligation on the part of the principal to provide compensation, even if the damage was caused by a helper. According to the court, the phrase 'by itself' presupposes that no one else is liable for the same damage. However, this statement of the Court, which is reasoned by the interpretation, is incorrect for the following reasons:

Firstly, if we interpret § 2914 teleologically, we can conclude that the purpose of the provision in question is to render another entity liable for the damage, not at the expense of the helper, but to strengthen the position of the injured party. The Court, however, does the opposite. It reduces the number of liable persons instead of multiplying them in relation to the injured party.

Secondly, with its interpretation, the Supreme Court introduced two categories of dependent helpers within the meaning of the first sentence of § 2914 of the Civil Code: *genuinely dependent helpers* (employees), who are so dependent on their principal that their direct liability is always ruled out; and *'semi-dependent' helpers*, whose autonomy in relation to the principal is not strong enough for them to be considered independent helpers (typically subcontractors) within the meaning of the second sentence of § 2914, but who have at least some autonomy, justifying their direct liability to the injured parties.[9]

The creation of additional categories of helpers beyond what the legislator intended cannot be considered correct. However, the most important conclusion is that the Supreme Court effectively created a single category of employees for whom personal fault is no longer decisive, since they are not liable to the injured party merely by virtue of being employees.

Furthermore, it must be mentioned that Czech law already provides several mechanisms for reducing a helper-employee's liability. If the Supreme Court wished to restrict an employee's liability toward injured third parties for harm caused in the course of their work, it could rely on arguments derived from the Labour Code. The Labour Code limits an employee's liability to the employer (that is, within the employment relationship) to 4.5 times the employee's average monthly earnings when the damage results from negligence.

[8] *Hrádek*, ETL 2021 (fn 7) no 53.

[9] *Hrádek*, ETL 2021 (fn 7) no 58.

Rather than relying on the statutory framework, the Supreme Court introduced a new concept of a 'helper', defined by the individual's dependence on the principal or their degree of autonomy.

However, the Czech Civil Code also recognises the liability of a helper used in the performance of the principal's contractual duty. This liability of the principal is directly established by § 1935 of the Civil Code.[10] In such a case, the activity of the helper is directly attributable to the principal.

In recent decisions, the Supreme Court has sought to restrict the unlimited scope of its conclusion that a helper who is an employee is not liable directly towards the injured party. However, the conclusion stemming from the given case has never been denied or substantially amended.[11]

### 4. Constitutional Court of the Czech Republic, 2 November 2021, I ÚS 668/21

With this significant decision, the Constitutional Court opposed the decision of the Supreme Court No 25 Cdo 27/2020, which was part of a series of decisions of the Supreme Court on compensation for damage caused by defamation and untrue information published by the media, especially the tabloid media.[12] In these cases, the Supreme Court did not find any reason to deviate from the existing settled case law, according to which the preventive role of monetary satisfaction is not excluded, but its main function is compensatory. In other words, awarded satisfaction should always reflect the injury caused but should never lead to punishment of the wrongdoer.

The Supreme Court held that the preventive-sanctioning function of monetary compensation for non-pecuniary damage resulting from unjustified interferences with personal rights by the media cannot be ruled out in principle, but applies only within the framework of the primary compensatory-satisfaction function. The preventive-sanctioning function

[10] If a debtor performs through another person, the debtor is liable in the same way as if they performed themselves.

[11] Supreme Court File No 25 Cdo 1221/2020 (liability of a legal entity), File No 25 Cdo 108/2020 (liability for interference with personality rights by the media), File No 25 Cdo 2613/2022 (liability of an employee in the position of a sole shareholder of his employer), File No 25 Cdo 612/2022 (liability of a president of a hunting society).

[12] *J Hrádek* in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2020 (2021) 94, no 21 ff, in particular cases Nos 25 Cdo 1004/2020 (Dagmar Havlova) and 25 Cdo 1752/2019 (Karel Roden).

cannot justify significantly higher compensation amounts to be paid by a media company compared to other similar cases in order to punish the media in an exemplary way and to discourage them from repeating such conduct.[13]

However, the Constitutional Court opposes the narrow (but correct) view of the Supreme Court and points out that in determining the amount of such compensation, it is necessary to consider the degree of fault of the perpetrator (unverified dissemination of information to increase publicity), the nature of its activities (gainful activity based on publishing intimate information about celebrities) and property relations (high earnings from sales of printed media).[14]

Combined with the partial conclusion that the principle of deterrence does not fully apply in the case of such media, the Constitutional Court de facto concludes that the amount of pecuniary satisfaction to compensate non-pecuniary damage must always significantly affect the tabloid medium, meaning probably in amounts exceeding the usual hundreds of thousands of Czech crowns. However, the publication of a false 'bombastic' report on the personal life of a celebrity in the tabloid media will almost always fulfil those criteria which, according to the Constitutional Court, justify the award of higher satisfaction using rules corresponding to the punitive nature of damages.[15]

Nevertheless, it appears that the Constitutional Court uses the concept of sanction in the sense of a deterrent or dissuasive function of this institute of private law protection, which, together with its preventive function, serves to promote respect for the rights of others. The main aim of this approach is to discourage the continuation of the conduct or the idea of further intervention.[16]

Moreover, the preventive-sanctioning function of monetary compensation should also reflect time aspects. From the point of view of time, the courts adjudicate that it is important to focus on the flow of information. If a longer break occurs between articles on a similar topic, it might be necessary to qualify the subsequent article already as a new negative act and not merely as an extension of the previous intervention. If the wrongdoer continues its activities, increasing the intensity of its conduct, the subsequent article should be regarded as a new wrongful act.

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[13] *Hrádek*, ETL 2021 (fn 7) no 101.

[14] *Hrádek*, ETL 2021 (fn 7) no 102.

[15] *Hrádek*, ETL 2021 (fn 7) no 103.

[16] *K Eliáš*, Velký akademický komentář [Large academic commentary] (2008) 157; Decision of the Constitutional Court, 6 March 2012, File No I ÚS 1586/09.

The fact that the illegal intervention into the claimant's rights continued for a longer period should be reflected in the amount of satisfaction awarded pursuant to § 2957 of the Civil Code.[17] The circumstances listed in § 2957 set out the general principles for determining the amount of compensation for non-pecuniary damage; however, they are merely illustrative. Accordingly, other circumstances relating both to the injured party and to the wrongdoer will be taken into account. In this context, the fact that the publishing house released the articles as a series should be regarded as a relevant factor.

### 5. Supreme Court of the Czech Republic, 31 August 2017, File No 25 Cdo 2245/2017

The significance of this decision lies in the fact that the Supreme Court had to determine how the scope of compensation for damage to health set forth in § 2958[18] of the Civil Code should be interpreted. Specifically, it needed to clarify whether, in cases of health damage, compensation for pain suffered, impairment of social position and other non-material damage constitute separate claims or form a single claim for non-pecuniary damage to health encompassing all these components.

When interpreting § 2958 of the Civil Code, the legislator has clearly used the same terminology as in the past law, ie the concepts of pain suffered and impairment of social position, without defining or further elaborating upon these terms. It only added the concept of 'other non-pecuniary damage' that cannot be easily defined but is intended to capture the infinite variability of private life and various life situations that have not yet been compensated. Consequently, the Supreme Court concluded

[17] 'The amount of the reasonable satisfaction and the means of providing it must be determined in a manner that also ensures that there is redress for circumstances deserving special merit. Such circumstances include the intentional causing of harm, particularly harm caused by the use of a trick or threat or the abuse of the injured party's dependence on the wrongdoer, the compounding of the effects of an interference by publicly disclosing it, or discrimination against the injured party on the basis of gender, medical conditions, ethnic origin, religion or other similarly serious bases. An injured party's fear of losing his life or being seriously injured shall also be taken into consideration if such fear is evoked by a threat or other cause.'

[18] 'Where harm to health is caused, the wrongdoer shall redress such harm by means of a monetary sum fully compensating the pain suffered and other immaterial loss; if the harm to his health interferes with the future prospects of the injured party, the wrongdoer shall also compensate him for the difficulties in attaining his proper social position. If the amount of compensation cannot be determined in this way, it shall be determined in accordance with the principles of equity.'

that when interpreting the new civil law, it is not possible to conclude that the legislator's intention was to depart from the existing concept of independent claims for non-pecuniary damage to health. There is, therefore, no reason to deviate from this concept when, in addition, such a diversion could restrict the injured party in their claim.

Other non-pecuniary damage to health, which was explicitly added by the legislator to § 2958, is associated with a health intervention that does not consist of temporary pain or long-term (permanent) physical or psychological harm. It covers specific circumstances that do not occur regularly, but which increase the severity of the harm suffered above the usual level. Given the thin boundary between the types and the potential for disputes, the Supreme Court limited the new type of claim to extraordinary cases that do not clearly fall under the definition of pain suffered or impairment of social position, but are nevertheless worthy of compensation.

Particularly in the case of serious and complicated health effects requiring a long recovery period, when convalescence and stabilisation of the health condition of the injured person may last for several years, there is no reason for the injured person not to file a particular claim for pain suffered, ie compensation for the physical and mental hardship associated with the harmful event and subsequent treatment immediately after their occurrence. If there were another approach which accepts the concept of a single claim, the injured party would have to wait for their health condition to stabilise in order to assess the total non-pecuniary damage.[19]

However, there is strong disagreement in the doctrine on the concept of independent claims. The main argument is that assessing personal injury as a single concept better suits the ideas of the legislator, which establishes compensation in similar cases on the basis of equity and proportionality. In such a case, the individual categories mentioned by the legislator only describe the way in which the assessment of the compensation should be considered.

This theoretical distinction has also a practical substantive and procedural significance. In the case of separate claims, although derived from the same damaging event and having the same intangible nature, each claim has its own limitation period unlike the single claim, where only one limitation period exists. Such a limitation is then fundamentally influenced by its commencement, namely the time the injured party gained knowledge about the injury and the responsible party. Moreover, in the

[19] *J Hrádek* in: E Karner/BC Steininger (eds), European Tort Law 2017 (2018) 107, no 80.

case of a single claim, a decision on a claim for pain suffered would possibly constitute an obstacle to *res judicata* for possible redress of social impairment or other non-pecuniary damage.

Despite the different arguments, views and theoretical opinions, in light of the above decision of the Supreme Court, claims for compensation for damage to health under § 2958 of the Civil Code constitute individual, partial and separate claims for compensation for pain, social impairment and other non-pecuniary damage.