

Satisfaction and its Importance for the Victim in Criminal Proceedings

The term satisfaction is not directly found either in the Criminal Code or in the Code of Criminal Procedure. It is, however, an inseparable part of court proceedings and it is most markedly manifested in cases when the court has to decide about punishment and compensation for damage.

Satisfaction is a certain redress for the victim for the suffering caused to them by the criminal offence. It can be expressed as:

- **Moral satisfaction** of the victim in the form of a court decision finding the offender guilty, however, in particular in the form of imposing a just punishment;

- **Moral conduct** of the crime offender towards the victim (e.g. apology, pleading guilty and sincere expression of remorse over the crime and its consequences, etc.);

- **Pecuniary damage compensation** to the victim who incurred bodily harm as a result of the crime, in the form of pecuniary compensation for the harm and compromising of social position;

- **Pecuniary damage compensation** to the victim, who incurred property damage as a result of the crime, in the form of its pecuniary compensation or restoration of the thing into its original condition (e.g. if the crime involved theft or inflicting damage upon a thing belonging to another person, etc.),

- **Pecuniary damage compensation** to the victim who incurred moral or other damage, in the form of non-pecuniary damage compensation within the scope as stipulated by the judgment in the statement on damage compensation (e.g. if the crime involved rape, etc.).

1. Moral satisfaction of the victim by imposing a just punishment

I know from my many years of courtroom experience what a huge meaning the imposition of a just punishment upon the offender has for the victim, in particular in cases when the victim suffered moral or other harm.

This mostly involves cases of survivors of the deceased who was killed in a violent crime, or victims of sexual crimes, victims of abuse or victims of defamation or perjury, etc. To put it simple, victims of crimes not involving property damage. For such victims, satisfaction in the form of imposition of a just punishment acquires an extraordinary, if not the most important, meaning. In many cases, however, the victims' expectations as for the type and duration of punishment that should be imposed upon the offender are inappropriate, as their view, especially with regard to the duration of the prison sentence, is mostly unilateral and influenced by the biblical "an eye for an eye, a tooth for a tooth". In imposing the punishment, however, the court has to take all criteria set forth by the law into consideration, and in doing so it shall consider both the interest of the victim as well as appropriateness of the punishment for the offender from the aspect of its tailoring as well as proportionality to the actual crime and its consequences.

The Slovakian Criminal Code defines the purpose of punishment in the provision of Section 34(1), pursuant to which punishment shall ensure protection of the society against the offender by preventing them from committing further crimes and by establishing conditions for educating the offender to lead a decent life, and at the same time by deterring others from committing crimes; the punishment at the same time expresses the moral condemnation of the offender by the society.

Punishment is a measure of state force imposed upon the offender for the crime they committed by competent courts on behalf of the state, on the basis and within the limits of the law, following a prescribed procedure. This definition expresses the principle of „*nulla poena sine lege, sine crimine, sine iudicio*“. Punishment as a legal consequence of crime may directly affect the crime offender only (principle of personality of punishment) to ensure the least impact on their family (Sec. 34(3) of the Criminal Code).

Punishment is one of the means of meeting the purpose of the Criminal Code. This also determines its function in those directions where the law for protection of the society shall operate, both with regard to protection against the crime offender being the subject of the repression element (prevention of criminal conduct) and of the individual prevention element (education to lead a decent life – rehabilitation), as well as with regard to other members of the society – potential offenders, with regard to whom the general prevention element is applied (educational impact of the punishment on other members of the society).

Thus, protection of the society is ensured via two elements - the element of force (repression) and the element of education. As a matter of principle, both elements come into play simultaneously in each punishment, provided that the importance of proportionality between criminal repression and prevention shall be kept in mind.

Protection of the society against crime offenders, including protection of rights and freedoms of citizens, makes the punishment a means of self-defence of the society against crimes. At the same time, punishment must not be a means of addressing other societal challenges. Therefore, the Criminal Code is grounded on the idea that the fundamental purpose and goal of punishment is to protect the society against crimes and their perpetrators.

Individual prevention rests upon creation of conditions for education of the convict to lead a decent life. General prevention shall ensure both deterring of other potential offenders from committing crimes, as well as reassurance of the feeling of legal certainty and justice in other members of the society. A just and timely imposition of punishment communicates to other members of the society that the conduct for which the punishment was imposed is unlawful and undesirable, it warns them against committing crimes and enhances the feeling of legal certainty and of the rule of law. The Criminal Code is based on the unity of individual and general prevention, assuming that both of these elements complement and condition each other. As a matter of principle, any disproportion between the different types of prevention results in insufficient educational effect of the punishment both with regard to the crime offender as well as with regard to other members of the society.

Of course, punishment shall also express the moral condemnation of the offender by the society. Thus, punishment includes both the social condemnation, negative assessment of the offender and their offence, both in legal and ethical terms.

Another provision to be applied by the court in its considerations regarding the imposition of punishment is Sec. 34(4) of the Criminal Code, pursuant to which, in determining the type and scope (duration) of punishment, the court shall consider in particular the manner of committing the crime and its consequence, fault, motive, aggravating circumstances, mitigating circumstances and the person of the offender, their situation and the possibility of their correction.

The scope of punishment shall refer both to stipulation of the punishment within the limits of severity of sentence where the punishment is quantified in this way, as well as to stipulation of various modalities or content of the punishments, if the court is tasked with such stipulation (e.g. determination of the type and scope of unlawful conduct, scope of assets to be confiscated by the state, stipulation of conditions, restrictions for a punishment expressed as prohibition of stay/residence, for conditional sentence). It is the very range of the statutory severity of sentence for certain punishments that allows and at the same time obligates the court to tailor the punishment to be imposed. In stipulating the severity of the sentence imposed, the court shall consider any and all circumstances set forth in the provision of Sec. 34(4), (5) of the Criminal Code.

There is a strict duty imposed upon the court by the Slovakian Criminal Code to consider mitigating and aggravating circumstances as regulated in Sec. 38 of the Criminal Code in connection with stipulating the severity of the sentence. This duty is not only formally declared. As a matter of fact, the court shall impose the punishment in regulated degrees of severity of sentence in such way that if mitigating circumstances prevail, the upper threshold of the statutory severity of sentence shall be reduced by one third (Sec. 38(3) of the Criminal Code) and if aggravating circumstances prevail, the lower threshold of the statutory severity of sentence shall be increased.

„It shall be pointed to the fact in this regard that actually all aggravating circumstances are already given by completing the crime, while the offender may create mitigating circumstances also after the crime has been committed (pleading guilty of committing the crime and sincere remorse, participation in rectification of harmful consequences of the crime, damage compensation, etc.). The mitigating and aggravating circumstances of the punishment are an important means of tailoring the punishment and they are at the same time significant for achieving the purpose of the punishment, as they express the possibility of correction of the offender or the situation of the offender, and thus influence the type and severity of the punishment to be imposed in favour or to the detriment of the offender. As legally material facts they are generally aggravating or mitigating circumstances, as they may be used in imposing any punishment, unless it is a punishment for a crime which has the mitigating or aggravating circumstances as its constitutive elements.“¹

„The person of the offender shall be assessed in all relations. The possibilities of correcting the person of the offender cannot be evaded in assessing them. The court arrives at its conclusion on the possibility of correction of the offender for most part already based on assessing the nature and severity of the committed crime (i.e. whether it is a minor offence, a crime, a grave crime (felony)), while reasonably assessing the person of the offender. The possibility of correction of the offender specifies their person in all major regards. The primary goal is to determine the outlook of future development of the offender's conduct based on clarification of their personality traits and their associations with the committed

¹ Trestné právo s vysvetlivkami a judikatúrou [Criminal Law with Explanatory Notes and Case Law]. 1st volume – Trestný zákon [Criminal Code] – IURA EDITION, 2006, pp 89-90

crime, including the influence of their social microstructure. What is of major importance for assessing the possibility of correction of the offender is their overall lifestyle and their behaviour/conduct prior to committing the crime and their attitude towards the committed crime.“ (Rt 23/1967) The court’s conclusion on the possibility of correction of the offender shall always be in full alignment with the protection provided by the court via the imposed punishment to the interests of the society, the state and the citizens against the attacks of the crime offenders, as well as with the educational effect on other members of the society.

What shall also be taken as a basis in imposing punishments is at the same time the connection and mutual balance of the principle of lawfulness of the punishment and the principle of tailoring of the punishment.

Punishment shall be proportionate to the committed crime (principle of proportionality of punishment).The proportionality of punishment is, besides others, also determined by the motive of the offender and by the possibilities of their correction.

„The purpose of punishment is not expressed *expressis verbis* in the Czech Criminal Code. It is replaced by formulations of general penalisation principles directly applicable to the concrete case, which are set forth both for all penalties (Sec. 36 to 38), as well as particularly for punishments (Sec. 39 to 45) and injunctions (Sec. 96 and 97). The purpose of punishment shall be derived both from these general principles that set the basic legal background for imposing penalties, as well as from the particular provisions governing the imposition of penal sanctions and from overall understanding of the Criminal Code.”²

„The meaning and purpose of punishment in the most general sense is protection of the society against crime. Punishment must not be a means of addressing other societal challenges. Punishment imposed upon the offender combines both the element of penal repression and prevention in relation to the person of the offender (individual repression and individual prevention), as well as the element of educational effect on other members of the society (general prevention). Both prevention and repression shall be understood in a balanced way in each individual case, as only then does individual prevention work as a means of general prevention. The matter is that general prevention, deriving from individual prevention, shall ensure a protective effect in relation to other potential offenders, and that individual prevention is understood as an instrument of general prevention. The said proportion between individual and general prevention shall not be reversed. If so, the unity or balance between prevention and repression would be disturbed, and the general prevention backed by deterring by strict repression would become a means of individual prevention. If the element of penal repression prevailed, this would in fact mean exemplary punishment, which is contrary to these principles.“ (Constitutional Court of the Czech Republic, case ÚS ČR 47/1998-u)

Although the provisions governing punishment in either the Slovakian Criminal Code or the Czech Criminal Code do not explicitly refer to the term „satisfaction“ as a fact of importance for the victim in imposition of punishment, theoretical and academic interpretations also count on such purpose of punishment.

„The requirement to consider the interests of the victim protected under the law in imposing the punishment comes to the forefront of attention in particular in connection with

² Šámal a kol.: Trestní zákoník I – komentář [Criminal Code I – Commentary], C. H. BECK, 1st edition, 2009, p. 412

assertion of ideas of “restorative justice”, which puts emphasis on conciliation of the offender with the victim and on restoration of the social relations disrupted by the crime, attempting to strengthen the rights of the victim in criminal proceedings and looking for a way of facilitating damage compensation and redress of the harm caused to the victim.³

„The restitution theory of the purpose of punishment develops the idea of satisfying the interests of the victim in the form of both the damage compensation as well as satisfaction. This is of importance from the viewpoint of achieving the general prevention effect of punishment, as it contributes both to satisfaction of the victim as well as to that of the general public and thus suppresses the urge to punish by taking justice into one’s own hands.“⁴ „It is undoubtedly the purpose of punishment to also achieve restoration of peace in the society and to achieve the general prevention effects also by providing appropriate satisfaction to the victim. The necessity to also take the protection of the crime victims’ interests into consideration in imposing punishment under the Czech Criminal Code derives from the provision of Sec. 39(3), pursuant to which the interests of crime victims protected under the law shall also be considered in imposing penal sanctions. Thus, punishment should make the offender try and redress the damage or possibly try and provide other forms of reasonable satisfaction.“⁵

Moral satisfaction of the victim by imposing a just punishment upon the offender apparently equals to the highest possible form of satisfaction that can be received, in particular for those victims who suffered moral damage.

2. Moral damage compensation by the crime offender in relation to the victim

What is the precondition for satisfaction of the victim and for achievement of just satisfaction in the victim’s eyes are neither the activities nor the decision of the court (imposition of a punishment or duty to compensate the damage incurred) in this case, but active conduct of the offender in terms of the basic ethical and moral rules of decent conduct. In many cases, when the victim already received the damage compensation in terms of the criminal proceedings, e.g. the insurance company paid the insurance benefit in case of a major traffic accident, the victim seeks apology from the offender, which the offender has not yet expressed. It is mostly up to the offender themselves whether and when they show their willingness to satisfy the victim also in the intangible way. However, the offender is motivated. Motivation is provided by the provision of Sec. 36(k),(l) of the Criminal Code, pursuant to which the mitigating circumstances include if the offender participated in rectification of the harmful consequences of the crime or if they voluntarily compensated the damage incurred and pleaded guilty of committing the crime and sincerely expressed their remorse with regard to the crime.

If the offender actively acts by pleading guilty, rectifying the harmful consequence, expressing sincere remorse for the crime, and, of course, apologises to the victim, this will always have a positive impact on the victim’s view of the actual harm inflicted upon them by

³ Šámal a kol.: Trestní zákoník I – komentář [Criminal Code I – Commentary], C. H. BECK, 1st edition, 2009, p. 429

⁴ Šámal a kol.: Trestní zákoník I – komentář [Criminal Code I – Commentary], C. H. BECK, 1st edition, 2009, p. 429

⁵ Šámal a kol.: Trestní zákoník I – komentář [Criminal Code I – Commentary], C. H. BECK, 1st edition, 2009, p. 415

the crime and also of the person of the offender, and in turn also on the actual court verdict concerning the punishment.

3. - Pecuniary damage compensation to the victim who incurred bodily harm as a result of the crime, in the form of pecuniary compensation for the harm and compromising of social position

For the purposes of the Criminal Code, bodily harm shall refer to any damage to health (Sec. 123(1)). The general term of bodily harm has been defined for the needs of the Criminal Code from the aspect of consequences of the crime to the victim's health. It is the umbrella term and it also includes bodily injury and grievous bodily harm as more severe degrees of harm or injury to health. The conditions for awarding and disbursing damage compensation for pain and damage compensation for compromising of social position are regulated in Act no. 437/2004 Coll. on Damage Compensation for Pain and on Damage Compensation for Compromising of Social Position and on Amendments to Act of the Slovak Parliament no. 273/1994 Coll. on Health Insurance, Funding of Health Insurance, Establishment of the General Health Insurance Company and Establishment of Departmental, Industrial, Corporate and Civic Health Insurance Companies as amended.

Pursuant to the said law, pain shall refer to any harm caused by bodily injury, its treatment or elimination of its consequences. Compromising of social position is a condition in connection with bodily harm, which has provably adverse consequences for life arrangements of the victim, for meeting their life and social needs or for performing its social tasks. The damage compensation for pain as well as for compromising of social position shall be granted as a one-off payment on the basis of a medical expert opinion.

4. Pecuniary damage compensation to the victim who incurred property damage as a result of the crime, in the form of pecuniary damage compensation of the same or by restoring the thing to its original condition

Damage pursuant to Sec. 124 of the Criminal Code shall refer to damage to property or actual reduction in the property or rights of the victim or another harm being in a cause-and-effect relation with the crime, regardless of whether it is a damage to a thing or to rights. For the purposes of this law, damage shall also refer to obtaining of any benefit in a cause-and-effect relation with the crime.

Damage pursuant to Sec. 124(1) of the Criminal Code shall also refer to any harm to profit whereto the victim would otherwise be entitled or that they could reasonably achieve with regard to the circumstances and their situation.

In crimes against the environment, damage shall refer to the total of the environmental harm and pecuniary damage, provided that pecuniary damage also includes the costs of restoration of the environment into its previous condition. In the crime of unlawful waste disposal pursuant to Sec. 302 of the Criminal Code, the extent of the crime shall refer to the price for which the waste is normally collected, transported, exported, imported, recycled, liquidated or dumped at the time and place of identification of the crime, and the price for removal of the waste from the location, which is not intended for its disposal.

A common precondition for pecuniary damage compensation to the victim who suffered bodily harm, but also in cases if they suffered pecuniary damage or moral damage,

another damage, or whose rights or freedoms protected under the law were infringed or compromised, is the commencement of adhesion proceedings. Adhesion proceedings constitute a part of the criminal proceedings and shall be commenced upon the victim's damage claim. The adhesion proceedings are regulated in the Code of Criminal Procedure in the provisions of Sec. 46(1), (3), (4), Sec. 256(2), Sec. 287 and Sec. 288 of the Code of Criminal Procedure.

The purpose of the adhesion proceedings is in particular to facilitate the damage compensation and to save the litigation costs of the parties to the dispute. It is not an independent part of criminal proceedings, however, it coincides with the criminal proceedings. It addresses the compensation of the damage incurred by the victim as a result of the crime. On the basis of its outcomes, the court shall decide, unless prevented from doing so by statutory obstacles, on damage compensation, or it shall refer the victim to civil damage proceedings or to proceedings before another competent authority.

If the victim incurred damage as a result of the crime, they may claim damage compensation directly in the criminal proceedings against the indicted person. If the court finds the person guilty and the damage claim follows from such guilt, the criminal court shall decide on the damage claim along with the decision on the crime, unless prevented from doing so by statutory obstacles.

The victim may also claim in the criminal proceedings that the court imposes a duty upon the indicted person in the convicting judgment to compensate the damage caused by the crime; the victim shall lodge such claim no later than by the end of the investigation or abbreviated investigation. It shall be apparent from the claim what are the reasons for the same and what is the amount of the damage claim.

The basic condition allowing the victim to claim damages in the adhesion proceedings is that the damage must have been caused by the crime committed by the accused. It is a requirement that there is a cause-and-effect relation between the damage and the committed crime for which the accused is prosecuted. This implies that a damage caused by a different crime for which the offender is not prosecuted cannot be claimed in the adhesion proceedings, even though it was related to the crime being the subject-matter of the criminal proceedings. What is decisive here is the statement of the crime in the indictment or in the proposal for approval of an agreement on crime and punishment, as it is the court that decides on the damage claim.

Pursuant to Sec. 46(1) of the Code of Criminal Procedure, the victim is a person that suffered **bodily harm, pecuniary, moral or other** damage or whose **other rights or freedoms protected under the law** were infringed or compromised as a result of the crime.

Bodily harm shall refer to such harm that means a damage to normal bodily or mental functions, makes the performance of usual activities more difficult, or has another impact on the usual way of life of the victim and requires medical treatment, even though it does not cause permanent health consequences.

Pecuniary damage shall refer to a damage incurred in the property domain of the victim, and which can be objectively expressed in monetary terms. An actual damage to a thing shall refer to such damage that means a reduction in the property balance of the victim compared to the balance before the damage event, and represents property values that need to be expended to put the thing into its prior state.

Moral damage is a damage incurred by infringement of the right to human dignity. It is expressed by psychic trauma, stress, anxiety, frustration, etc.

Another damage is a damage that can be caused with regard to other rights of the victim e.g. infringement of copyright or rights under contracts – licence contract, work contract.

In deciding about damage compensation to the victim by the accused, the court usually applies the provisions of civil substantive law, most frequently those of the Civil Code governing damage compensation (Sec. 420 et seq.), to the damage claim, however, for the procedural part, it still applies the Code of Criminal Procedure.

If the court convicts the indicted person for a crime whereby damage set forth in Sec. 46(1) of the Code of Criminal Procedure was caused to a third party (pecuniary, moral or another damage, or other rights or freedoms of that person protected under the law were infringed or compromised), the court will usually impose in the judgment to compensate the damage to the victim, if the claim was made duly and in time. If there is no statutory obstacle, the court will always impose a duty upon the indicted person to compensate the damage, if its amount is included in the description of the crime stated in the guilty verdict.

The statement on the duty of the indicted person to compensate the damage shall precisely identify the person of the beneficiary and the claim awarded to such person. In justified cases, the court may state that the liability shall be met in instalments, and it shall at the same time set the repayment terms, also taking into account the victim's statement.

The judgment statement on damage compensation may be expressed in means of payment in a foreign currency upon the victim's proposal, unless this is contrary to the circumstances of the case and if the damage was incurred to means of payment in a foreign currency or to things bought for such means of payment, or if the indicted person or the victim are foreign nationals.

If the outcome of the evidence procedure does not provide a background for imposition of the damage compensation duty or if further evidence would be required to decide on the damage compensation duty, where such production of further evidence goes beyond the needs of the criminal prosecution and would prolong it, the court shall refer the victim to the civil court procedure or to a procedure before another competent authority. The victim shall be identified by their name and surname, date and place of birth and place of residence. If the victim is a legal entity, it shall be identified by its trade name or commercial name, registered office and identification number as per the record in the commercial register, register of small traders or in a different register.

The court shall also refer the victim to civil proceedings or to proceedings before another competent authority with regard to the rest of their claim, if it only awards a part of their claim on any grounds.

If the court acquits the indicted person, it shall always refer the victim to civil proceedings or to proceedings before another competent authority with regard to their damage claim.

5. Pecuniary damage compensation to the victim who suffered moral or another damage, in the form of non-pecuniary damage compensation within the scope as stipulated by the judgment in the statement on damage compensation

Moral damage from the viewpoint of our Code of Criminal Procedure shall refer to a damage incurred as a result of infringement of the right to human dignity (psychic trauma, stress, anxiety, frustration) and may concern in particular crimes against human dignity and crimes against other rights and freedoms (crimes of rape, sexual violence, sexual abuse, incest, dangerous threats and other crimes - Sec. 359 to 378a of the Criminal Code).

„Moral damage shall refer to damage incurred by the victim usually as a result of interference with their personal sphere. The term „moral damage“ in relation to the harmful effect caused by a deliberate violent crime pursuant to a specific law (Act no. 215/2006 Coll. on Damage Compensation to Violent Crime Victims) shall, in cases of death, rape or sexual violence be interpreted in accordance with interpretation of the term „non-pecuniary damage“ in civil proceedings.“⁶

Another damage is damage incurred as a result of the crime, which is not a pecuniary damage, moral damage or bodily injury. It can be e.g. bodily harm not achieving the intensity of bodily injury. Another damage may be caused with regard to other rights of the victim (e.g. infringement of copyright or rights under contracts – licence contract).

It shall be stated in connection with exercising of the victim's non-pecuniary damage claim in the adhesion proceedings that the criminal court applies the provisions of the Code of Criminal Procedure for the procedural aspect, however, as for the conditions of the actual claim, it applies the provisions of civil substantive law, in particular the provisions governing personality rights of individuals included in the Civil Code under personality protection in the provisions of Sec. 11 to 16.

In one of its decisions (resolution, file no. 5 Cdo 265/2009 dated 17/02/2011) concerning non-pecuniary damage compensation, the Supreme Court of the Slovak Republic stated the following:

„The intrinsic features of personality rights are their absolute nature, intangible character, generality and exclusiveness, principal non-transferability, no limitation in time and exemption from the statute of limitations. They act towards an unlimited or uncertain circle of other subjects of law, their subject-matter includes exclusively non-pecuniary values (personality), they pertain to each and every individual „a priori“, (they are an expression of the human personality in relation to other subjects, i.e. be it individuals or legal entities) with the same legal status, the exclusive entitlement to use the various aspects of their personality during a person's entire life within the limits set by law is held by the individual, these rights cannot be alienated, separated from their bearer, they attach to the individual during their physical existence in the society (they are unlimited in time during the life of the individual), they cannot be inherited (they are not part of the decedent's estate), they are exempt from the statute of limitations, they cannot be precluded and be subject to the enforcement (bailiff) procedure. Contrary to them, property rights can be separated from their bearers, they can be

⁶ Minárik Š. a kol.: Trestný poriadok – Stručný komentár [Code of Criminal Procedure – Brief Commentary]. Iura Edition, 2006. p. 731. Please also refer to Section (§) 287(1) of the Code of Criminal Procedure. Burda, E. – Gaňa, S. – Tobiášová, L.: Odškodňovanie osôb poškodených násilnými trestnými činmi [Damage Compensation to Violent Crime Victims]. In.: Justičná revue, 59, 2007, no. 4, pp 503-526.

transferred (alienated), they are subject to the enforcement procedure, statute of limitations and preclusion. The specificity of the subjective personality rights rests upon their subject, being directly the personality of a human being, an individual in their integrity. The right to personality protection (a subjective, purely personal or personality right) is regulated in the Civil Code as a uniform right (quoted wording „an individual shall have a right to protection of their personality“). As a result, the individual rights emerging in this unified framework shall be understood as partial rights, differing from each other by their relation to different values, aspects of personality, however, stemming from the personality constituting a physical and moral unity. The fundamental personality values of each individual include, as per the Civil Code, Sec. 11, explicitly, life, health, civic honour and human dignity, as well as privacy, reputation and expressions of personal nature.

Pursuant to the provisions of Article 8(1) of the Convention for the Protection of Human Rights and Fundamental Rights and Freedoms (published under no. 209/1992 Coll.), everyone has the right to respect for his private and family life, his home and his correspondence. The provisions of Article 17 of the International Covenant on Civil and Political Rights (published under no. 120/1976 Coll.) imply that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, and everyone has the right to the protection of the law against such interference or attacks.

The right to privacy in various forms may include both the protection of family life, privacy of residence, privacy of correspondence, as well as the protection of honour, reputation of the person, or protection against unauthorised collection of data about a person. On the constitutional level, it is set forth in Article 16 of the Constitution of the Slovak Republic – the integrity of a person and their privacy is guaranteed, it may only be restricted in cases set forth by the law; in Article 19(1) – everyone has the right to protection against unauthorised interference with their private and family life, (2) – everyone has the right to protection against unauthorised collection, disclosure or other abuse of data of their person, in Article 21 guaranteeing the integrity of residence; in Article 22 guaranteeing the protection of privacy of correspondence, privacy of delivered reports and other documents and the protection of personal data.

In its judgment of 16 December 1992 in the case of Niemetz against Germany, the European Court for Human Rights stated that „...it does not deem it possible or necessary to attempt to word an exhaustive definition of the term “private life”. However, it could be too restrictive to limit this term "by the exclusive circle", in which an individual may live their own personal life as they may choose, and fully exclude the outer world not included in this circle from the same. Respect for private life shall, to a certain extent, also contain the right to enter into and develop relations with other people.”

The right to privacy also includes the right to family life. In its judgment of 21 June 1988 in the case of Berrhab against the Netherlands, the European Court for Human Rights concluded: „The term family, on which Article 8 is based, implies that a child born out of such relation is ipso iure a part of such relation. For this reason, a relation equaling “family life” does exist from the moment of birth of the child and with regard to the actual existence of this fact between the child and its parents, even if the parents later do not live together anymore.“ The essence of family life is the individual’s right to enter into, maintain and develop relations between family members founded on strong emotional ties.

If there are social, moral, emotional and cultural relations between individuals established in terms of their private and family life, an infringement of the right to life of any of them may result in unlawful infringement of the right to privacy of the other of these persons. Such unlawful infringement of the right to privacy or the right to family life by a third party may cause such damage to the other party to the relation, which partially or fully prevents them from fully meeting their emotional needs, i.e. a non-pecuniary damage affecting another than the pecuniary sphere of personality, the personality sphere, which undoubtedly also includes emotional harm. In case of death of any of the members to the family relation, the surviving person may suffer emotional harm in the form of shock, grief over the loss of a close person and also over the loss of partnership (relation) with a close person.

The personality protected under the general personality right may, in case of any infringement of such right, take advantage of the legal remedies for personality protection, which are detailed in the provision of Sec. 13 of the Civil Code. They come into question, if there is a threatening or actual harm in the non-pecuniary personality sphere, and they are of different natures. Which of these legal remedies the respective individual will apply to protect their personality will above all depend on their will influenced in particular by the intensity and nature of the infringement. An infringement of the emotional sphere of an individual caused by unlawful conduct of a third party and resulting in death of a close person establishes the right to seek personality protection under the personality protection provisions of the Civil Code. Seeking of such protection is in the exclusive interest of persons having such a close relation with the affected individual that integrity protection of their personality even after their death (“post-mortem protection”) is in their personal interest; these involve the closest relatives, in particular the spouse and children, and the parents, if there are no children.

The various personality protection remedies are relatively independent. They can be used individually or cumulatively, also depending on the intensity of the unlawful interference with the individual’s personality sphere. The law explicitly allows the option of lodging a claim for refraining from the infringement (action to repel a claim); what is also explicitly admissible is the claim for rectification of consequences of already effected infringement (action for restitution) and a claim for reasonable satisfaction (action for satisfaction), not having the nature of pecuniary compensation, i.e. it is not a monetary compensation, but it is exclusively a means of moral, intangible effect. By its nature, it is not a means of repression or reparation, but it is a special means of personality protection with a satisfaction nature, which is not immediately reflected in the pecuniary sphere of the affected individual, therefore, it cannot be expressed and stated in terms of money. If moral satisfaction would not seem sufficient, the Civil Code allows, in Sec. 13(2), to award monetary compensation of non-pecuniary damage, with the purpose of balancing and alleviating the non-pecuniary damage in monetary form, and it also meets the satisfaction function. The above implies that also actions seeking another form of protection are admissible besides actions for refraining from infringements and actions for rectification of consequences of an infringement. This is implied by the word „in particular“ used in the first sentence of the provision of Sec. 13 of the Civil Code. This other form of protection includes actions for declaration that the personality rights of the plaintiff were infringed in a certain way, or actions for declaration that certain statements are not true. These actions are not declaratory actions pursuant to the provisions of Sec. 80(c) of the Code of Civil Procedure. It is not necessary therefore to prove a legal interest in such declaration.

In some instances of infringements of personality rights, e.g. the right to life, personal freedom and safety, the right to privacy and family life, the European Court for Human Rights concluded that the actual declaration that the right was infringed is a sufficient satisfaction for the applicant (judgments Český vs. Czech Republic dated 6 June 2000, Malhous vs. Czech Republic dated 12 August 2001, Pavletič vs. Slovakia dated 22 June 2004, Indra vs. Slovakia dated 1 February 2005). In other cases, besides concluding that these rights were infringed, the court at the same time awarded compensation to the successful applicants for the harm suffered (judgments Kučera vs. Slovakia dated 17 July 2007, Babylonová vs. Slovakia dated 20 June 2006, Turek vs. Slovakia dated 14 February 2006).“

The single personality protection right applicable to an individual is ensured by a series of partial remedies that can be perceived as relatively fully independent. The right to non-pecuniary damage compensation in monetary terms pursuant to the provisions of Sec. 13(2) of the Civil Code represents one of the partial and relatively independent means of protection under the single personality protection right with regard to an individual. It is established when moral satisfaction as a purely personal right is not sufficient to balance and alleviate the harmful effects of the infringement of the personality rights. Although it is a satisfaction under intangible personality rights (similarly as in case of reparation payment and compromising of social position or right to compensation of non-pecuniary damage caused by an unlawful decision or wrong official course of procedure pursuant to the provisions of Sec. 17(2) of Act no. 514/2003 Coll. on Liability for Damage caused in the Execution of Public Power), its expression in monetary terms makes it a personality right of pecuniary nature. Against the background of the above, the Supreme Court of the Slovak Republic adjudicated that **the right to monetary compensation of non-pecuniary damage – monetary satisfaction - is, pursuant to the provisions of Sec. 13(2) of the Civil Code, a personal right of pecuniary nature that can be expressed as a money equivalent and subject to the statute of limitations in the general three year period commencing from the moment of infringement of the individual's personality protection rights** (resolution, file no. 5 Cdo 265/2009 dated 17 February 2011).

„The right to monetary satisfaction, **intended** to balance and alleviate the non-pecuniary damage in monetary terms, is subject to the statute of limitations, as this satisfaction function, similarly as in case of compensation for suffered pain and for compromising of social position“ (R 28/1970) comes close to the reparation function, as in case of damage compensation, as far as possible to redress by providing money.

What also comes into consideration in connection with the assessment of a reasonably raised objection of the time bar against the asserted claim for monetary compensation of non-pecuniary damage, is the issue of collision of raising the time bar objection with the provision of Sec. 3 of the Civil Code, pursuant to which the exercise of rights and duties under civil-law relations shall not, without a legal ground, interfere with the rights and legitimate interests of others and shall not be contrary to good morals. The provision of Sec. 3 of the Civil Code is a general substantive-law provision granting the authorisation to the court to assess whether the exercise of the subjective right is in compliance with good morals, and if not, to refuse the requested protection. Although good morals are not defined in any statutory provision, what can in general be considered as good morals is a sum of social, cultural and moral standards that manifested a certain degree of stability (unchanging nature) throughout history, that express material historical tendencies and a relevant part of the society identifies with them.

In relation to accepting the time bar objection as well as from the viewpoint of its compliance with the provision of Sec. 3 of the Civil Code, the Supreme Court of the Slovak Republic stated in the already mentioned resolution, file no. 5 Cdo 265/2009, dated 17 February 2011 that: „It can generally be reasoned without doubt that raising a time bar objection against the claimed receivable by a party to the proceedings in the proceedings cannot be deemed a conduct contrary to good morals, as the institute of good morals is a statutory institute and contributes to certainty in legal relations. Under specific circumstances, however, the exercise of the right to object against the time bar of a raised claim could be a conduct allowing damage to be incurred by the other party to the legal relation who has not caused the expiration of the period of limitation in vain and against whom the time-barring of the raised claim as a result of expiration of the period of limitation would be an unreasonably harsh sanction compared to the extent and nature of the right exercised by them and compared to the reasons for which they have not exercised their right in time. The distinctive features of a conduct manifesting a direct intention to harm the other party shall be derived from these circumstances under which the objection of time bar on such claim was raised, and not from the circumstances and reasons from which the establishment of the exercised claim is derived, in other words, what is decisive (determining) for rejection of the effects of the time bar objection are circumstances that existed at the time of raising the time bar objection. These circumstances shall be met in such an extraordinary intensity that justifies such a major interference with legal certainty as not allowing the right to raise the time bar objection.“

In criminal proceedings, with regard to the definition of the term damage (Sec. 46(1) of the Code of Criminal Procedure), the duty to decide on its compensation in the convicting judgment, if the damage claim was duly made, relates both to pecuniary, moral as well as another damage, as well as to infringement or compromising of other statutory rights or freedoms of the victim, provided that the term „moral damage“ in relation to the harmful effect caused by a deliberate violent crime shall, in case of death (e.g. also rape, sexual violence, damage to reputation in case of perjury), be interpreted in compliance with interpretation of the term „non-pecuniary damage“ in civil proceedings.

It is evident that the criminal-law term „damage“ is much broader and more embracing in terms of its content than the term „damage“ in private law. As a matter of fact, criminal law, in particular in the said provision of Sec. 46(1) of the Code of Criminal Procedure, is based on the term of damage, or, as applicable, it defines its content not in terms of the idea of damage as an interference exclusively with the property rights of the victim, which idea has gradually been overcome in Europe to date, but it treats damage with a more contemporary, more advanced European understanding as an infringement of both tangible as well as intangible rights, provided that such infringement can logically result in both tangible damage (damage to property or pecuniary damage) as well as intangible damage, i.e. harm or damage not manifested in the tangible sphere, but in a different sphere, constituted by all other rights of a different – intangible nature, which enjoy legal protection under the law and their infringement or interference with the same is penalised under the law. Thus, the Code of Criminal Procedure perceives damage as pecuniary, moral and another damage, while referring in terms of content to infringement or compromising of other statutory rights or freedoms of the victim, provided that the terms „moral damage“ and „another damage“ shall, in relation to the harmful effect caused by the deliberate unlawful conduct be penalised by the standards of criminal law, be perceived as terms standing in direct relation with the general term „non-pecuniary or intangible damage“ in civil law, i.e. with a term so diverse in terms of its content, as diverse the statutory rights and freedoms are in terms of their content, which rights and freedoms enjoy protection under the law and any infringement of the same is

penalised under the law (usually in the form of an order to remove/redress/discontinue such infringement). With regard to these facts, i.e. above all with regard to the intangible nature of these protected rights, such (non-pecuniary) damage incurred as a result of such infringement, may only be alleviated in monetary terms, it cannot be redressed in any case, as this is not possible with regard to the nature of these rights (infringement resulting in compromising of health or honour of an individual cannot be redressed by money or by any financial reparation, the monetary compensation is only intended to alleviate the consequences of such conduct, if any).

In deciding about the damage claim in adhesion proceedings, the substantive law provisions of specific legal regulations on which the lodged claim is based and which also govern it shall be respected. These regulations specifically regulate the establishment of a damage claim, its content and the scope and the manner of compensation. Thereafter, as already stated also for decision-making on infringements of personality rights and on legal remedies, decisions are made pursuant to the provisions of Sec. 11 et seq. of the Civil Code.

Pursuant to Sec. 11 of the Civil Code, an individual shall be entitled to the protection of their personality, in particular their life and health, civic and human dignity, as well as privacy, their reputation and expressions of personal nature.

What is subject to the protection pursuant to Sec. 11 of the Civil Code are such purely personal rights of the citizen that impact the development of their personality and are closely connected with them. Overall development and assertion of a person's personality is the main purpose and goal of this protection under civil law. This viewpoint is essential in assessing the question of whether and which rights are protected by the provision of Sec. 11 of the Civil Code.

Pursuant to Sec. 13(1) of the Civil Code, an individual has the right particularly to seek discontinuation of infringements of the right to protection of their personality, rectification of the consequences of such infringements, and to receive reasonable satisfaction.

What is a reasonable satisfaction depends on the circumstances under which the infringement occurred, and it will rest upon a moral performance, e.g. apology or taking back of offensive statements, etc., usually where they were made (in the work team, in the newspaper, etc.).

Pursuant to Sec. 13(2) of the Civil Code, unless a satisfaction pursuant to Sec. 13(1) of the Civil Code is deemed sufficient, in particular as the dignity of the individual or their esteem in the society have been considerably jeopardised, the individual also has a right to monetary compensation of non-pecuniary damage.

Unless moral satisfaction is sufficient, the victim also has a right to monetary satisfaction. An individual shall also be entitled to monetary compensation of non-pecuniary damage, if the **moral satisfaction** is no longer applicable.

Pursuant to Sec. 13(3) of the Civil Code, the amount of compensation pursuant to Sec. 13(2) of the Civil Code shall be determined by the court with consideration of severity of the damage incurred and of circumstances under which the right was infringed.

The court shall determine the amount of monetary satisfaction at its discretion, which, however, cannot be arbitrary. The law stipulates a duty for the court to consider two aspects in this determination, being the severity of the damage incurred as well as the circumstances under which the infringement occurred. Determination of the monetary satisfaction amount shall be made with regard to the circumstances of each particular case in line with the requirement of fairness. Although the court applies its discretion in determining the amount of monetary satisfaction, it shall be apparent from the action (from the claim in adhesion proceedings) what amount is sought by the victim. As a matter of fact, the court cannot go „*ultra petitem*“ and adjudicate more than sought by the victim. **However, it is not possible to also award interest on arrears on the monetary amount awarded,** as the debtor did not fall into arrears until the court decision.

The regulation of protection of privacy, including family privacy, is based on the principle of no unlawful interferences with the private life of a person and inflicting of no harm upon their private life. As a matter of fact, it is a function of the right to privacy to ensure that the private sphere of an individual where they may develop their personality in diverse ways is kept undisturbed. The constitution at the same time associated family life with private life, with this association to be interpreted in such way that family life and the right to its protection are part of privacy. The Constitution also protects the privacy of an individual in their family relations from other individuals, which includes social, cultural as well as moral or material relations. Unlawful interferences with these relations may be qualified as interferences with family life – with family privacy. If the interpersonal relations constituting the basis and framework of an individual’s private life achieve a certain intensity and manifest certain other distinctive features, such destruction of relations can result in an unlawful infringement of the right to protection of privacy as a partial right to protection of personality under the condition that the conduct of the initiator of the infringement is unlawful, it is objectively capable of interfering with the right to protection of personality and there is a cause-and-effect relation between the unlawful interference with the personality of the individual that is objectively capable of causing non-pecuniary damage resting upon the infringement or compromising of the individual’s personality and the origination of such non-pecuniary damage. It shall also be noted that the legal remedy to seek protection against such infringement is the very claim, whereby the individual seeks reasonable satisfaction under the provisions on personality protection, which satisfaction can also be in the form of monetary compensation of non-pecuniary damage.

It shall be concluded with reference to the above that the provisions of Sec. 11 et seq. of the Civil Code provide the legal basis for the claim for compensation of non-pecuniary – intangible damage caused to an individual by killing of their close person. Respect for private life shall, to a certain extent, also include the right to enter into and develop relations with other human beings. The private life includes the family life, also including relations among close relatives, especially the social and moral relations.

The case law of domestic courts admitted actions for monetary compensation of non-pecuniary damage brought by affected close persons whose right to private and family life was infringed by death of a close person. It is without doubt that the death of a close person represents a major interference with the right to privacy of the affected individual as one of the partial personality rights of the individual.

Monetary compensation of non-pecuniary damage sought by the victims in adhesion proceedings may be awarded by the court pursuant to Sec. 13(2) of the Civil Code, if moral

satisfaction would not seem sufficient, especially if the dignity of the individual or their esteem in the society were compromised to a considerable degree. The reasons for admitting compensation are only set forth in a demonstrative way in this provision. The law sets forth a single condition for awarding monetary compensation of non-pecuniary damage, which will be met if the intangible (moral) satisfaction does not seem sufficient.

The existence of a severe damage is always – depending on the individual circumstances of the case in question - a condition for awarding monetary compensation of non-pecuniary damage (i.e. tangible satisfaction). What shall be considered a severe damage is a damage considered as a major damage by the individual with regard to the circumstances under which the right was infringed, the intensity of the infringement, its duration or impact and consequences. However, what is decisive in this case are not their subjective feelings, but an objective viewpoint, i.e. whether also every other individual would perceive the damage in question in this way at the given place and time (in the same situation).

„The actual severity of the damage incurred as a result of the unlawful infringement of the right to protection of personality is not the only and exclusive criterion for determination of the amount of monetary compensation of non-pecuniary damage. In determining this amount, the court shall also consider the circumstances under which the right was infringed. These circumstances may be significant both for the affected person as well as for the person who caused the unlawful infringement.“ (R 29/2001)

Although the actual distinctive parts of an individual's personality and personality rights protected under Sec. 11 of the Civil Code (human dignity, honour, reputation, esteem, privacy, etc.) are values that can essentially not be expressed in monetary terms, this does not mean that money could not be used to express the amount of compensation of non-pecuniary damage caused by an unlawful interference with the personality. The award of monetary satisfaction presupposes meeting of certain statutory conditions. The amount of compensation to ensure such satisfaction shall be determined by the court with consideration of severity of the damage incurred and of circumstances under which the right was infringed. The Civil Code does not set any upper or lower threshold for the amount of monetary satisfaction. The provision of Sec. 13(1) of the Civil Code only stipulates that the satisfaction shall be reasonable. Stipulation of the amount of monetary compensation of non-pecuniary damage is a matter of consideration for the court, which shall consider two criteria set forth in the law in its decision making (Sec. 13(3) of the Civil Code – severity of the damage incurred and circumstances under which the right was infringed), and the court shall take these criteria as its starting point in its decision making on the amount of monetary compensation of non-pecuniary damage. The court cannot take other than the aforementioned criteria into consideration in deciding on this issue. In this regard I shall point to the decision of the Supreme Court of the Slovak Republic, file no. 3Cdo/137/2008 of 18 February 2010, where it is stated that in case of an infringement of the right to privacy, considerable compromising of dignity or esteem in the society is not the only relevant form of severity of damage incurred by an individual in respect of their protected rights.

I shall note that the monetary damage compensation to the victim for moral damage and suffering (or for death of a close person due to a violent crime) can never on its own sufficiently compensate the loss of a close person, however, it can to a certain extent compensate the emotional harm of the victim caused by the crime. If the financial satisfaction is also accompanied by a just punishment for the offender, it can really happen that the victim

will leave the courtroom with a good feeling and with trust in justice in the broadest sense of the word.

With regard to the above, it is appropriate to say that penal courts in the Slovak Republic have sufficient statutory means available in terms of adhesion proceedings to also decide on non-pecuniary damage compensation in judgments of conviction. It is probably just a question of time when the courts will start applying these means to a greater extent. This would complete the satisfaction process for the victim already in the criminal proceedings without the victim having to seek satisfaction of their claim in different, civil proceedings. I trust that education on this subject as part of the training of judges will contribute to comprehensive satisfaction of all rights of the victim in criminal proceedings.

JUDr. Martin Bargel