

Chapter 7. Civil and criminal liability

7.1 Legal liability

The consequence of a breach of legal duty is a legal liability whether in the field of civil, criminal or administrative law. E.g. if you overlook a person on a zebra crossing a hit him/her by car, you can face a criminal proceedings for battery, you can face civil lawsuit for compensation for personal injury and possibly you can face an administrative proceedings for the breach of road traffic rules. The aims and results of those liabilities are different. The focus of this chapter is on the civil liability but we will explain also the difference between the civil and criminal liability. The administrative liability is outside the scope of this book.

7.2 General conditions of civil and criminal liability

Civil liability is of private nature (unlike criminal or administrative liability). Its main goal is to compensate, not to punish. Civil liability can be defined as a secondary, negative consequence of a breach of legal duty in the field of civil law. It means that liability may arise only if some primary legal duty was breached. It is basically a sanction for a breach of an original legal duty. Such original legal duty may arise directly out of legal act (statute), out of contract or rarely out of good manners.

Criminal liability, on the contrary, is of public nature. Its main goal is to prevent criminality, to punish criminals and to protect society against them (e.g. by detaining and imprisoning them).

7.2.1 Civil delicts v. crimes

When we talk about civil liability, we will say that a person liable committed a civil delict. In case of criminal liability, a person liable committed a crime. What is the difference between the two? A consequence of a civil delict is an obligation (relative property right). Obligation is a relationship between a delinquent and a person harmed by the conduct of the delinquent. There is no third person who would interfere with their relationship, it is just between those particular persons.

On the contrary, committing a crime results in the criminal relationship between the criminal and the state. The content of such relationship is the right and duty of the **state** to punish such criminal and the corresponding duty of the criminal to accept such punishment. The will of the victim of such crime is not important.

Example of civil delict:

Let's imagine that you lend a book to your close friend for a month. After a month, you request it back since you need to start preparing for an upcoming exam. Your friend admits that he has lost it. As a result, you have a right for compensation because it was your book and he breached his contractual duty to return it to you. He may either compensate you by buying exactly the same book and giving it to you, or alternatively, by giving you a purchase price so you can buy a new book yourself. Nevertheless, you probably feel that it is just between you two to solve

the issue with a lost book. Equally you can be so generous and say to your friend that it does not really matter and not claim any compensation at all. It is just up to you, there is no third person who would interfere with. This is quite an obvious example of civil delict.

Example of crime:

On the other hand, let's imagine that you steal a purse of your friend. The purse was very expensive itself and moreover it contained CZK 7000 because your friend was going to buy a new mobile phone. Unlike civil delicts, this relationship arising out of theft (which is a crime defined in the criminal code) is not just between you and your friend. It is a state that interferes with criminal liability because there is a general interest of the whole society to punish criminals. So you may expect a police investigation and a punishment imposed by a criminal court. Even if you return the purse to your friend on a voluntary basis, you would still be investigated and eventually punished by the state. A possible forgiveness of your friend would be of no relevance in that.

You see that in case of civil delict only **compensation** matters (once you buy a new book or provide a money equivalent of the book, the relationship of you and your friend is settled), while in case of crime, compensation is not enough. Criminal liability imposes **repressive** and **preventive** function, so even if you compensate the victim (you return the purse and the money to your friend) you may still expect a punishment imposed by criminal court. Such punishment is believed to prevent people from committing crimes.

7.2.2 Preconditions for civil liability for damage to arise

There are four basic conditions which have to be cumulatively met in order for liability for damage to arise:

7.2.2.1 Unlawful conduct

First is **unlawful conduct** (breach of primary legal duty). That is an act which is contrary to law whether arising out of the statute, contract or good manners (that is rare in practice). If we want to talk about the liability for damage, we always have to ask whether some legal duty was breached at all.

In our example with the lost book, a friend breached his duty to return the book. It was his contractual duty arising out of the borrowing agreement. The first precondition for civil liability for damage to arise was thus met.

7.2.2.2 Existence of damage

Second precondition is the existence of damage. It can take two forms – an **actual damage**, i.e. property damage consisting in decrease, lowering, loss, destruction or other loss of value of the property. It corresponds to the property values which have to be spent to restore the property back to its original state (to the state it would have been in if there was no damage).

In the lost book case, the actual damage is the purchase price of the exactly same book. If you damage a car of your neighbour, the actual damage equals to a price he needs to pay to get it fixed.

The second form of a damage is a **lost profit**. It means that the property of the injured party has not increased due to unlawful conduct of the other party. Such profit must be, however, reasonably expectable. Some sort of hypothetical profit is not subject to a compensation.

Lost profit cases are quite typical in business contracts. Let's imagine that you ordered premium cotton with a delivery date by the end of this month since you have a customer who wants to buy from you 10 shirts for CZK 2000 each. According to the contract with your customer, you are obliged to deliver him 10 shirts by the end of next month. Unfortunately, your cotton supplier failed to deliver you cotton by the end of this month as agreed which means that you are not able to make the shirts on time. It is clear that you expected to earn CZK 20 000 for those 10 shirts but due to the failure of the cotton supplier you get nothing. CZK 20 000 is your lost profit which you can claim against the cotton supplier.

7.2.2.3 Causal link

Causal link between unlawful conduct (cause) and damage (consequence) must always be present in order to talk about liability for damage. It means that an unlawful act must **cause** a damage. There are two dominant theories how to determine whether a damage is a consequence of a relevant conduct.

- a) **Theory of but-for causation** which says that all actions without which certain harm would not have occurred are material causes of such harm. This theory is more suitable for criminal law because it is corrected by fault (see example below).
- b) **Theory of adequate causation** considers relevant those causes without which harm would not have occurred plus a damage is a **typical** consequence of such cause. It means that not all actions that somehow could lead to a damage are relevant, but only those actions that typically lead to such damage. Such damage must thus be a **foreseeable consequence** of such cause. This theory is more suitable for civil delicts where objective liability is possible.

Let's imagine the following example. During a car accident, an injury of one driver was caused. The injury was not very serious but it required medical treatment. An injured person was thus transported to the hospital, where, due to the medical malpractice of the doctors, the patient dies. According to the but-for causation theory, the driver causing the accident would be liable for the death of a patient because if there was no car accident, the patient would not require medical treatment, he would not have been transported to the hospital and thus there would be no death. BUT, you probably intuitively feel that such solution is absurd. The theory of adequate causation is more suitable in this case. According to this theory, the driver causing the accident is liable for the minor injury of the patient but not for his death. It is because the death is not a

typical consequence of such injury. If there was no malpractice of the doctors, the death would not occur.

So where is the theory of but-for causation usable? Mainly in criminal law where fault is always necessary to establish criminal liability. In the case described above, it is clear that the death was not a fault of the driver but of the doctors (at least in the form of negligence) so the criminal liability of the driver is not established even though we would conclude that the car accident was one of the relevant causes of the subsequent death. On the contrary, the driver's fault of the minor injury of the other person is clearly established.

7.2.2.4 Fault

Fault is the last precondition of a civil liability for damage but unlike the first three aspects (unlawful conduct, damage, causal link), fault **does not need** to be present in all cases. It is a subjective aspect which can be defined as an internal, mental relationship of the delinquent to his/her conduct and its consequences. It requires aspects of **knowledge** and **will**. Fault may take four forms:

- (i) First is a **direct intention** which means that you **know** (aspect of knowledge) that your conduct is unlawful and that you may cause damage and you **want** (aspect of will) to cause it.
- (ii) The second form of fault is an **indirect intention** which means that you **know** (aspect of knowledge) that your conduct is unlawful and that you may cause damage and you **do not want** to cause it but you accept that damage may be caused.
- (iii) The third form is a so called recklessness which means that you **know** that your conduct is unlawful but you unreasonably rely that damage will not be caused.
- (iv) And the fourth form is a so called negligence meaning that **you do not even know** that your conduct is unlawful but you should have known (ignorance of law excuses no man).

As we said already, crimes always require fault. Mostly in the form of intention (at least indirect intention), e.g. murder always requires intention. Sometimes, however, even negligence is enough to be criminally liable (causing bodily injury negligently is crime too).

Some civil delicts, on the contrary, do not require fault at all. It is called an **objective liability** or **liability for result** (e.g. damage caused by operation of means of transport, damage caused by animal or **all damage caused by the breach of contractual duty**).

Remember that breaching contractual duty does not require fault. This is quite a new concept in civil law established by the Czech Civil Code effective as of 2014. It makes the position of the claimant (a person injured) much easier since it is not necessary to claim or prove the subjective aspect. In the example of the lost book it would thus be sufficient to prove that your friend breached a duty to return the book (unlawful conduct), how much was the book (actual

damage) and causal link is obvious here (his breach led to your loss). You see that it is absolutely irrelevant why your friend lost the book. He is simply liable for the result – losing your book.

7.2.3 Delictual capacity v. criminal capacity

7.2.3.1 Delictual capacity

If the liability is subjective (fault needed), a person must have capacity to commit delict, otherwise he/she is not liable. This so called delictual capacity includes two aspects: **an intellectual one** which means the capacity to presume the consequences of one's own conduct, and an aspect of **will**, i.e. the capacity to control one's own conduct. Both aspects must be present simultaneously in order to establish delictual capacity.

Human beings gain full delictual capacity at the age of 18 (positive assumption) provided that they do not suffer from any mental illness which would exclude the intellectual aspect or the aspect of will (negative assumption). Human beings who do not meet those two assumptions for full delictual capacity may, however, have still limited delictual capacity. It is the case of children (youths who did not reach 18 years) or persons who suffer from some sort of mental illness. It is up to the court to consider case by case whether such person was able to presume the consequences of his/her conduct and whether he/she was able to control his/her conduct. In case of children, the closer the child gets to the age of 18, the more likely he/she is going to be held at least partially liable. Jointly liable with such child or a person suffering from mental illness is a person who neglected supervision upon them (typically parental supervision). In case a very young child who could clearly not control his/her behaviour and is therefore not liable at all, causes a damage, it is only the parents who are fully liable.

It is important to note that using drugs or alcohol which objectively influence our ability to control our conduct does not exclude or limit our liability.

If the liability is objective (no fault needed, liability for result), a person causing the damage does not have to have delictual capacity and is still liable.

What about legal persons (corporations)? They get delictual capacity since their **incorporation**, i.e. their registration in the commercial register.

7.2.3.2 Criminal capacity

In the Czech Republic, every human being is criminally liable once he/she reaches 15 years of age and sanity (the capacity to presume the consequences of their own conduct and the capacity to control their own conduct). Youth criminals (who reached 15 years but did not reach 18 years of age) must moreover be sufficiently mature in order to be liable. This is to be considered case by case.

Contributory fault

If the damage was partly caused (or was increased) by the fault of the injured party, the injured party is partly liable and the liability of the breaching party is lowered accordingly. Typically in case of a car accident with a cyclist. Even though the car driver caused an accident and the cyclist suffered serious injuries, we always have to think whether the cyclist could have avoided or at least lowered his injuries by e.g. wearing the helmet. It would be the question for expert opinion to say whether wearing the helmet would affect the scope of the injuries and how.

7.2.4 How is the damage compensated?

The Czech Civil Code is based on the preference of **restitution**, i.e. a return to previous state. In the case of lost book, the preference would be that your friend buys you a new book. There are two exceptions from the restitution. First, sometimes restitution is not possible. E.g. if somebody damaged your original painting from Picasso, you can hardly be compensated by some other painting, it is just unique. The other exception is the case when the injured party requires pecuniary (money) compensation rather than restitution. So if you say to your friend that you require the purchase price of the book rather than buying a new book, he is obliged to provide you with the money.

7.3 Compensation for personal injuries

So far we talked mainly about damage, i.e. material harm which is relatively easy to express by money equivalent. If you remember the case with the lost book or damaged car, the damage in those cases can be quite easily determined because it equals to the loss of value of some property.

But what about personal injury? If a person is injured by somebody else, it is obvious that an injured person suffered harm (non-pecuniary) which is, however, not that simply expressible by money equivalent. However, such non-pecuniary harm is always to be compensated by reasonable satisfaction **in money**.

What are the potential claims of a person injured?

There are several potential claims a person injured can claim against a person who caused the injury. Again, in order to establish liability at all, the three, or four basic assumptions must be met: unlawful conduct, harm (injury), causal link and (fault – this is not the case of e.g. injury caused by operating means of transport because such liability is objective).

7.3.1 Compensation of pain and suffering

When personal injury is caused, it is always linked to some degree of pain and suffering. The intensity of that differs according to the seriousness of the injury. The aim of the compensation is to fully compensate pain and other non-pecuniary harms which include stress, discomfort, and fear from serious health injuries or death. It is of course not possible to calculate pain or stress in money but the Supreme Court created guidelines on the compensation of non-

pecuniary loss for personal injuries which contain a set of rules granting the compensation of such injuries. Such guidelines are supposed to create legal certainty and help judges to apply general legal rules on particular cases. The guidelines are based on the system of points. In each case an expert (a medical doctor) should examine a patient and allocate certain number of points to each pain he/she suffered. One point equals to 1 % of an average gross monthly salary (in 2014 it was a gross amount of CZK 251 for 1 point). This system is more flexible than the previous one which allocated CZK 120 to one point. If the economy grows, the compensation for personal injury will grow too. It is, however, still very low. Just to make few examples, if somebody breaks your rib, you get a compensation of approximately CZK 5000. For a broken tight, you would get CZK 38 000.

7.3.2 Compensation for aggravation of social position

Another dominant compensation a person injured can get is a compensation for aggravation of social position. It is important to note that this compensation comes into play only in case of **permanent consequences of the harm**. If a person suffers an injury which did not have permanent consequences, he/she does not have this claim at all (unlike pain and suffering compensation). To be able to say whether a person has any (and what) permanent consequences, it is necessary to wait for some time, usually one year, to let the health condition get stabilized.

Such compensation then includes **limitations in all thinkable aspects of human life**, mainly work, communication, movability, self-care, life in household. This concept is really wide and includes also frustration from permanent injury, stress, loss of opportunities, an abstract loss of the ability to be employed and to participate in all aspects of human life.

The seriousness of the permanent injury is expressed as a percentage of loss of life opportunities (loss of better future) in all aspects of human life. Here again, the guidelines of the Supreme Court are applicable. In case of 100 % limitation in all aspects of human life, i.e. a person is still alive but basically cannot participate in any aspects of human life, the compensation equals to CZK 10 051 200. It is again up to the court in the cooperation with the expert to determine the percentage of such limitation in each aspect of human life. It should be applied on the case-by-case basis, i.e. the court should distinguish whether such permanent consequences were suffered by a young or old person, whether a person was active in some sport or whether there are any further circumstances which would justify an increase of the compensation. According to the guidelines, the courts have a possibility to increase the compensation by 10 % if the harm was caused to a person in the age of 35 – 44, by 20 % if the harm was caused to a person in the age of 25-34 and by 30 % for a person in the age of 0-24. On the contrary, the base amount is decreased by 10 % in case of 55-69 years old person or by 20 % in case of a person 70 years old or older. The courts shall take into consideration also the activity in social life of an injured party before the injury. The compensation can be increased by 10 % if a person was more active than average, by 20 % if its activity was exceptionally intense, by 30 % when absolutely extraordinary.

7.3.3 Compensation of pecuniary loss as a result of personal injury

Usually also some pecuniary losses are connected to personal injury such as medical bills, loss of income (in case a person injured was either employed or self-employed), loss of pension.

In case of death, it is clear that a victim has hardly any claims against a person who caused it. However, there may be a number of persons who suffer mentally from such death. They are especially a husband, a parent, a child but even other close persons. These persons have a right to be compensated financially for their **mental suffering**. The guidelines of the Supreme Court are not applicable to these secondary victims and thus it is only up to the courts to determine the exact amount. The amount will of course depend on the closeness of relationship with the victim or for example on the dependency on the victim (typically in case of a child-parent relationship).

In its case law the Supreme Court expressed the opinion that in a standard case (if there are no specific circumstances such as a special relationship between a person who died and his/her relative), the basic compensation for a child, parent and husband should be CZK 240.000 – 500.000 each.

7.4 Summary

This chapter addressed the basics of the civil liability in the Czech Republic and how it differs from the criminal liability.

Civil liability is of private nature and its main goal is to compensate a person harmed, while criminal liability is of public nature meaning that it is a state that investigates criminal offences and punishes criminals.

The general conditions of civil liability are (i) unlawful conduct, (ii) existence of damage, (iii) causal link between unlawful conduct and the damage, (iv) fault (fault, however, does not need to be present always – objective liability).

If the liability is subjective, a person must have capacity to commit delict, otherwise he/she is not liable. Such capacity includes an intellectual aspect and an aspect of will. Human beings in the Czech Republic gain full delictual capacity at the age of 18 provided that they do not suffer from any mental illness which would exclude the intellectual aspect or the aspect of will. Legal persons gain their full delictual capacity upon their incorporation.

Criminal capacity is a capacity to commit a crime and is gained at the age of 15 on the condition of full sanity. The youths between 15 and 18 years old must moreover be sufficiently mature to consider consequences of their criminal behaviour in order to be liable.

The Czech Civil Code prefers the compensation of damage in the form of **restitution**, i.e. the return to the state before the breach. Thus, if you lose the book of your friend, you should primarily buy exactly the same book and return it to your friend rather than paying the purchase price. There are, however, two exceptions from this rule. First, if the harmed party wishes money equivalent rather than restitution, such pecuniary compensation prevails. Second, if

restitution is impossible (e.g. it is not possible to get such book in the shops anymore), the pecuniary compensation also prevails.

Personal injuries (non-pecuniary harm) is always to be compensated by reasonable satisfaction **in money**.

7.5 Self-assessment questions

1. What are the general requirements for liability for damage to arise?
2. What potential claims does a person injured by some other person have?
3. When does a natural person obtain full delictual liability?
4. What does the theory of adequate causation mean?
5. How is the property damage primarily compensated? What are the exceptions?

7.6 Further reading

Selected provisions (section 2894 and subseq.) of the Czech Civil Code no. 89/2012 Coll., in English available at: <http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>