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# COMPENSATION FOR NON-MATERIAL DAMAGE AND ITS FINANCIAL IMPLICATIONS FOR THE INSURANCE INDUSTRY

## ABSTRACT

This article firstly investigates the determination of compensation for non-material damage within the framework of Czech private law, with particular emphasis on the implications of the 2014 Civil Code reform. It critically examines the extent to which economic variables—such as average wage levels, inflation trends, and macroeconomic stability— influence the quantification of compensation, and it evaluates the broader ramifications for judicial decision-making, the insurance industry, and financial market stability. Employing an economic analysis of law, the study engages with foundational theoretical constructs, including the Coase theorem and principles of corrective justice, to advocate for the systematic integration of macroeconomic indicators into compensation assessment models. The findings highlight the pressing need for a structured, multi-tiered framework that reconciles the demands of legal certainty with the imperatives of economic rationality. Such a model would enhance the transparency, consistency, and equity of non-material damage awards while supporting sustainable legal and financial systems. In addition, the article explores the practical impact of current compensation practices on financial institutions—particularly insurance providers offering non-investment products—and their capacity to respond to economic fluctuations. It demonstrates that inconsistent or overly discretionary judicial approaches to compensation contribute to pricing volatility, distorted risk assessments, and reduced financial predictability. The study concludes by advocating for a comprehensive compensation architecture that accounts for both legal and economic dimensions, ensuring fair, efficient, and predictable outcomes for all stakeholders involved. The novelty of this approach lies in its interdisciplinary synthesis and the proposal of practical implementation tools for courts and insurers. The findings demonstrate the importance of integrating macroeconomic parameters into judicial decision-making to ensure fairness, reduce legal uncertainty, and mitigate systemic financial risks in the insurance sector.

**Keywords:** economic analysis of law, financial systems, insurance, insurance market, non-material damage, compensation models, Czech Civil Code, legal certainty

**JEL Classification:** K13, G22, D63

## INTRODUCTION

The adoption of the new Civil Code in the Czech Republic in 2014 marked a pivotal transformation in the country's private law, signifying a deliberate return to classical legal traditions and normative concepts rooted in natural law (e.g. Matějková, Pavelek, Vítek, 2022); with the reform of the Civil Code, the Law on Commercial Corporations was also reformed (Lasák, 2022). Drawing inspiration from the Austrian ABGB and the German BGB, the reformed code departed from the rigid legal positivism of the previous era and re-established a more principle-based framework. Among its most consequential innovations was a fundamental reconfiguration of the methodology for awarding compensation for non-material damage, particularly in cases involving personal injury or death. Whereas the prior system was grounded in a fixed, point-based scale that assigned predefined monetary values to specific injuries, the new legislation entrusted courts with broad discretion in determining compensation. This shift raised profound questions regarding the consistency, predictability, and fairness of judicial decision-making. In the absence of statutory benchmarks, legal scholars and practitioners began

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to debate what principles and criteria should guide courts in quantifying compensation for harm that is inherently non-economic in nature (e.g., Chunyan, 2022; Ciccone, 2024). This article explores whether the framework of economic analysis of law can provide a coherent methodology for assessing non-material damage. Scholars such as Parziale (2024), Knetsch (2022), and Fikfak (2020) have drawn attention to the increasing fragmentation and unpredictability in compensation levels. Specifically, it investigates the extent to which economic tools—such as cost-benefit analysis, real wage indexing, and inflation adjustment—can contribute to the rationalization of judicial discretion. Such considerations are particularly relevant not only for courts and legal professionals but also for insurance providers and actuaries, whose financial models depend on predictable and stable compensation mechanisms. In doing so, the study aims to assess whether the integration of economic reasoning can enhance both the fairness and efficiency of non-material damage compensation in contemporary Czech legal practice. This perspective is quite new in the field of scientific research; the authors deal with it for a longer time; e.g., Pavelek, 2024.

## LITERATURE REVIEW

In Czech private law, non-material damage is defined as harm that does not result in direct financial loss but instead impairs an individual's personal sphere—particularly their physical or psychological integrity. This conceptualization is reflected in both scholarly doctrine and judicial practice. The Czech Supreme Court articulated this understanding in its judgment of 26 January 2011 (25 Cdo 5162/2008), published as decision no. 85/2011 in the *Collection of Judicial Decisions and Opinions*, where it emphasized the importance of human dignity and integrity as protected legal interests. Comparable definitions can also be found in § 253(2) of the German *Bürgerliches Gesetzbuch* (BGB) and are echoed in Austrian legal theory (Pavelek, 2020). The cornerstone of compensation for non-material damage in the Czech Civil Code is found in § 2958, which provides that “in cases of injury, the perpetrator shall compensate the victim with monetary compensation that fully offsets the pain suffered and other non-material damages. If the injury results in an obstacle to the victim's better future, the perpetrator shall also compensate for the reduced ability to participate in society. If the amount of compensation cannot be determined in this manner, it shall be determined according to the principles of fairness.” This provision introduced significant ambiguity in legal practice, especially regarding the interpretation of the principle of fairness and the criteria for determining monetary compensation for non-material harm. Prior to the 2014 reform, compensation was assessed using a point-based system, assigning predefined monetary values to specific types of injury. This standardization ensured predictability but lacked the flexibility to reflect the nuanced impact of individual cases. Under the new Civil Code, non-material damage to health is conceptualized through three distinct components: (1) pain and suffering, (2) reduced ability to participate in society, and (3) other non-material harms. This tripartite categorization diverges from the Austrian and German models, which typically group all such harm under the singular heading of “pain and suffering.” In Austrian doctrine, scholars such as Karner (2006) emphasize the importance of conceptual clarity in delineating non-material harm and advocate for clear criteria to prevent overextension of compensation duties and ensure legal coherence. Judicial interpretation has further clarified these distinctions. In its decision of 1 November 2017 (25 Cdo 2245/2017), the Supreme Court confirmed that pain may be both physical and psychological (published as decision no. 7/2019 in the *Collection of Judicial Decisions and Opinions*). Similarly, in its resolution of 18 December 2013 (25 Cdo 2356/2013), the Court elaborated on the notion of reduced ability to participate in society, assessing the extent of loss by comparing the injured party's life and activities before and after stabilization of their health condition. This includes limitations on fulfilling life goals, restrictions in employment or education, and diminished participation in family or community life (Pavelek, 2020).

From the perspective of the economic analysis of law (e.g., Doménech-Pascual et al., 2024) several important contributions have explored the applicability of economic methods to the valuation of non-material damage. Faure (2000) addresses the potential and limitations of economic approaches in this context, observing that European legal scholarship has largely neglected the topic in contrast to more developed discussions in the United States, despite the differing legal frameworks. A central question is whether principles such as the Coase theorem (e.g., Lazega, 2022) can be meaningfully applied to compensation for non-material damage. While Coasian efficiency could theoretically reduce ex-post transaction costs (e.g. Allen et al., 2022), it may also introduce ex-ante costs due to the need for more complex evaluation mechanisms. Faure argues that efficiency gains are possible if functional compensation (e.g., via insurance or structured settlements) minimizes litigation-related costs. However, high subjectivity in evaluating pain and suffering remains a major obstacle. Nevertheless, if the subjective elements can be standardized through clearer guidelines or frameworks, the applicability of Coasean reasoning may expand. Calabresi (2008) further develops this line of reasoning by distinguishing between primary, secondary, and tertiary costs of accidents and litigation; she emphasizes that legal systems should aim to minimize tertiary costs—those associated with legal uncertainty and dispute resolution—through clearer compensation criteria. Doing so improves negotiation predictability, enhances settlement outcomes, and reduces the burden on courts. Schäffer et al. (1990) provide a comprehensive account of how economic analysis can support a more efficient and just compensation

system. They argue that the legal framework should promote the efficient allocation of scarce resources and seek to minimize the aggregate costs associated with damage and its prevention. Non-material harms—especially bodily injuries—pose unique challenges because they lack market valuation (e. g. Panchenko et al, 2024 or Krawiecki, 2022). From an ex-ante perspective, the amount of compensation should reflect what a rational individual would be willing to pay to avoid injury. From an ex-post view, compensation should represent the value lost in terms of life satisfaction or human capital. Schäffer thus supports a model of compensation rooted in societal willingness to pay for risk reduction, suggesting that this approach enhances both equity and efficiency. The U.S. legal tradition has long incorporated economic reasoning (e. g. Kianzad, 2023) into the valuation of non-economic damages. Judge Richard Posner, a pioneer of the law and economics and his followers (e.g., Marciano, 2020), argued that compensation should aim at maximizing social wealth, even in cases involving intangible harm. Similarly, Sunstein et al. (2002) have explored how juror cognition, framing effects, and subjective bias affect damage awards, calling for bounded rationality and standardized reference points. In American tort law, economic modelling often supports caps on non-economic damages as a tool for stabilizing insurance markets and avoiding excessive jury awards (Sunstein et al., 2002; Sharkey, 2005). Sloan, Bovbjerg, and Blumstein (1989) similarly advocate for the use of scheduled awards in tort cases to reduce variability in pain and suffering compensation. Their research underscores how standardized valuation frameworks can improve consistency, reduce litigation costs, and align tort outcomes with actuarial models used in the insurance sector. In the United Kingdom, the judiciary addresses this issue through structured guidelines. The *Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases* (Judicial College, n.d.) provide courts with standardized valuation ranges for pain, suffering, and loss of amenity based on injury type. Although these guidelines do not employ economic analysis per se, they represent an attempt to systematize and objectify judicial discretion—analogue in purpose to Czech § 2958's emphasis on fairness (Judicial College, n.d.). Canadian scholarship and insurance practice also contribute valuable insight, particularly through actuarial approaches to valuing non-pecuniary loss. The use of life expectancy tables, disability indices, and quality-adjusted life years (QALYs) allows insurers and courts to more objectively model the economic consequences of intangible harm (Ison, 1968; Black & Skipper, 2000). Canadian courts frequently refer to the “functional approach”, wherein damages are calculated based on their ability to compensate for actual loss of enjoyment of life, rather than punitive or symbolic purposes [Supreme Court of Canada (1978). *Andrews v. Grand & Toy Alberta Ltd.*]. On a supranational level, the European Court of Human Rights (ECHR, n.d.) has developed a robust body of case law concerning fair compensation for violations of Article 3 (prohibition of torture) and Article 8 (respect for private and family life) (e. g. Pavelek, Adamová, 2022; Šalčius et al., 2023). While these awards are non-economic in nature, the Court applies consistent quantification methods—often invoking prior jurisprudence and regional economic conditions—thereby contributing to an emerging pan-European framework for non-material harm evaluation (ECHR, n.d.). Finally, discussions on compensation policy are also influenced by insurance economics and tort reform debates. Organizations such as the OECD and the RAND Institute for Civil Justice have examined the economic consequences of compensation models, highlighting the balance between fairness, deterrence, and systemic cost-efficiency. Studies by RAND (Bovbjerg et al., 1989; Carroll et al., 1991) and OECD white papers have emphasized that uncertainty and variability in non-material damage awards may result in premium inflation and moral hazard—issues directly relevant to private insurers and public health systems. Parziale (2024) highlights the inherent difficulty in quantifying non-pecuniary losses, such as pain and suffering, due to their subjective nature. She argues for the adoption of standardized compensation frameworks that would promote both horizontal (equal cases treated equally) and vertical (more severe cases receiving higher compensation) fairness across legal systems. This trend toward standardization reflects broader efforts across Europe to increase the predictability and equity of awards, especially in personal injury and tort law. Knetsch (2022) examines the growing importance of non-material damage under European Union law, specifically through Article 82 of the GDPR. He notes that while EU law explicitly recognizes the right to compensation for both material and non-material harm resulting from data protection violations, national courts vary widely in their interpretation and application of these principles. The practical implication is a fragmented approach to compensation, which undermines the harmonization goals of EU law and raises concerns about legal certainty and procedural justice. Recent interpretations of Article 82 GDPR further illustrate the EU's evolving approach to non-material damage, especially in the context of digital and privacy harms (Li, 2023). Moreover, Fikfak (2020) provides a critical empirical assessment of how the European Court of Human Rights (ECHR, n.d.) approaches non-pecuniary damages. Analysing over a decade of case law, she demonstrates that compensation awards are not always intended to restore individual suffering, but often reflect systemic objectives such as penalizing state misconduct. This raises normative questions about the tension between individual justice and broader public accountability, particularly when compensatory amounts vary not only with harm but also with the state's litigation conduct. From the perspective of law and economics, recent literature has reinforced the relevance of economic tools in assessing non-material damage. Faure, Visscher, and Weber (2023) argue that while full individual accuracy in compensation is often infeasible, approximate standardization supported by economic models can yield optimal deterrent effects and enhance the transparency of awards. Their research shows that structured damage

tables, combined with tools like alternative dispute resolution, reduce transaction costs without significantly undermining justice. In this context, average compensation levels, rather than case-specific precision, are sufficient to deter harmful behaviour and maintain insurance functionality. In terms of methodological innovations, Augustejn et al. (2024) analyze judicial decisions in the Netherlands related to victims of sexual violence. Using regression analysis, they find that compensation amounts are statistically predictable based on initial claims and subjective factors such as perceived victim credibility. Lindenbergh and van Kippersluis (2009) further elaborate on these issues by arguing that the economic valuation of non-pecuniary losses must balance systemic efficiency with fairness to claimants, particularly in cases involving intangible harm such as emotional suffering and loss of life quality. This finding reinforces the need for objective tabular guidance in awarding non-material damages and highlights the risk of bias in unguided judicial discretion. Their results support the proposal that statistical modelling and uniform guidelines may improve equity and consistency across cases.

## AIMS AND OBJECTIVES

This study seeks to critically examine the determination of compensation for non-material damage to health, with a particular focus on the integration and significance of economic criteria in shaping compensation outcomes. The primary objective is to identify which economic indicators are currently employed in the assessment of non-material damage and to highlight those that remain underutilized or neglected within legal practice. While the inherently subjective nature of non-material harm precludes exclusive reliance on economic measures, the incorporation of objective, quantifiable economic indicators is essential to promote consistency, transparency, and fairness in compensation determinations. Furthermore, the study aims to explore the potential relevance and application of the Coase theorem in the context of non-material damage compensation. By assessing the extent to which economic theory—specifically, principles of efficiency and transaction cost minimization—can inform judicial reasoning and out-of-court settlements, the research aspires to propose a more structured and interdisciplinary approach to legal compensation frameworks. This approach is intended to enhance the predictability and equity of awards, reduce legal uncertainty, and support the development of more sustainable and economically sound dispute resolution mechanisms.

## METHODS

This study employs a mixed-methods approach, integrating doctrinal legal analysis with economic evaluation to provide a comprehensive assessment of non-material damage compensation (similar methods used e.g. Pavelek, Zajičková, 2023). The combination of qualitative and quantitative methodologies enables a thorough examination of both the legal framework governing compensation mechanisms and their financial implications for the insurance industry.

The doctrinal legal analysis was used to conduct an in-depth examination of legal sources, including Czech and international legislation, judicial precedents, and academic literature. This approach facilitated the identification of key legal provisions regulating non-material damage compensation and enabled an evaluation of their practical application in judicial decision-making. To broaden the analytical scope, a comparative legal analysis was employed to assess compensation methodologies across European jurisdictions, this study identified both the strengths and limitations of different compensation models, providing insights into their potential applicability within the Czech legal system. To further refine the analysis, the method of analysis was applied to examine legal and economic scholarly sources relevant to compensation for non-material damage. This approach was essential for identifying theoretical foundations, methodological gaps, and key arguments within the academic discourse. Additionally, the extrapolation method was utilized to predict potential developments in compensation systems based on historical trends, judicial rulings, economic fluctuations, and legislative reforms. This predictive approach allowed for an assessment of how economic variables might shape the evolution of compensation policies over time. The method of synthesis was employed to integrate findings from doctrinal legal research, comparative analysis, and economic evaluation, ensuring a coherent understanding of the interaction between compensation structures, judicial discretion, and financial stability in the insurance sector. This method facilitated the formulation of a holistic compensation model that considers both legal consistency and economic feasibility. A key quantitative component of the study involved economic modelling and quantitative analysis, which simulated compensation adjustments based on key economic indicators such as wage growth, inflation, and cost-of-living indices. By constructing different economic scenarios, the study was able to demonstrate how compensation amounts would fluctuate under varying macroeconomic conditions. This modelling provided empirical evidence to assess whether the existing compensation methodology sufficiently reflects real economic trends. Finally, a legal-economic impact assessment was conducted to examine the broader financial consequences of compensation mechanisms, particularly for financial institutions such as insurance companies. The paper cites

various studies that address the issue of economic analysis of law in the context of compensation from different perspectives, e.g., Thöni, 2013, Chunyan, 2022, Doménech-Pascual, 2024; Acciarri, 2023; Chan, 2020. This assessment explored how fluctuations in compensation amounts influence insurance product pricing, risk management strategies, and overall legal certainty. By analysing the relationship between economic stability and compensation policies, this method provided valuable insights into the systemic impact of judicial and legislative decisions on the insurance market. The integration of these methodologies ensures a multidisciplinary approach, allowing for a holistic evaluation of compensation for non-material damage. By incorporating both legal and economic perspectives, this study contributes to a more nuanced and empirically grounded understanding of how compensation models can be optimized to balance fairness, economic efficiency, and legal certainty.

## RESULTS

European legal systems – especially those from Central Europe which were influenced by ABGB (e.g., Bokwa, 2022) – generally converge on the principle that compensation for non-material damage must reflect the seriousness of the harm and the claimant’s loss of life quality (e.g., Pavelek, 2020). Yet, the methods used to calculate such damages vary widely. The Czech methodology—anchoring the value of each injury point to the national average wage—offers procedural simplicity, but raises critical concerns regarding fairness, proportionality, and compliance with supranational jurisprudence (Havu, 2018; Fikfak, 2020). From a comparative standpoint, German and Austrian systems typically rely on judge-made benchmarks and case-based harmonization rather than fixed economic indices (e.g., Thöni, 2012). German courts, for instance, apply the “Schmerzensgeldtabellen” (pain and suffering tables), which evolve through precedent and consider individual circumstances, including economic and social factors (Karner, 2006; Slizyk, 2021). The Austrian Supreme Court permits flexible consideration of inflation, living conditions, and severity of harm, anchored in the principle of “billiger Ausgleich” (reasonable redress) (Danzl, 2011). These models thus integrate judicial discretion with socio-economic context—a contrast to the Czech system’s rigid reliance on statistical wage data. Furthermore, the European Court of Human Rights (ECHR) has emphasized in cases like *Z v. United Kingdom* (ECHR, 20011) and *V.C. v. Slovakia* (EHCR, 2011) that compensation for immaterial harm must be both realistic and effective, reflecting the gravity of harm and the need to restore dignity. The Czech model’s failure to consider regional disparities or inflationary pressures could fall short of these standards, particularly in cases where victims experience long-term impairment or loss of social participation. Aligning Czech compensation practices with Article 41 of the ECHR would require dynamic adjustment tools to ensure the adequacy of redress.

While the prevailing reliance on average wage data has certain practical benefits—such as procedural simplicity, enhanced predictability, and greater transparency—it also carries significant limitations. This methodology risks obscuring regional economic differences, neglecting fluctuations in labour markets, and inadequately capturing the actual purchasing power of compensation amounts. Scholars have noted that this approach ignores important macroeconomic variables such as inflation (Chan, 2020), purchasing power, and regional cost-of-living disparities, thereby undermining the equity and adequacy of awards over time (Viscusi, 1998; Fikfak, 2020; Marslev & Sano, 2016). Peeples and Harris (2015) provide empirical support for this concern, showing that wrongful-death awards can vary significantly based on geographic and demographic factors, highlighting the risk of arbitrary outcomes when systems rely on undifferentiated benchmarks.

The comparative table below outlines alternative economic models for compensation calculation.

**Table 1. Comparative overview of economic models for determining compensation for non-material damage.** (Source: authors own calculation, based on data from the Czech Statistical Office (2023), Czech National Bank inflation reports, and GDP statistics published by Eurostat. Regional COLI figures adapted from Numbeo’s Cost of Living Index (2023) for Prague)

Model	Description	Calculation (CZK)
Average Salary Model	25× the national average gross salary (CZK 43,300 in 2023)	CZK 1,082,500
Inflation Model (CPI)	Adjusts basic award for 2023 inflation (10.7%)	CZK 1,198,903
GDP Per Capita Model	2× national GDP per capita (CZK 560,000)	CZK 1,120,000
Cost of Living Index (COLI) Model	Adjusts base for regional COLI variation (e.g., +25% in Prague)	CZK 1,353,125
Combined Model (Wage + CPI)	Inflation-adjusted average salary model	CZK 1,198,903

This table compares various economic models for calculating compensation for non-material damages, highlighting differences in amounts awarded based on average wages, inflation adjustments, GDP per capita, and regional cost-of-living

variations. These models illustrate how compensation values differ significantly depending on the economic index chosen. These models demonstrate that exclusive reliance on nominal wages (unadjusted for inflation) yields a narrow view of economic realities. In contrast, incorporating real wages and regional adjustments (e.g., COLI) provides a more nuanced, accurate, and equitable basis for determining compensation levels.

### Empirical Reanalysis of Compensation Models

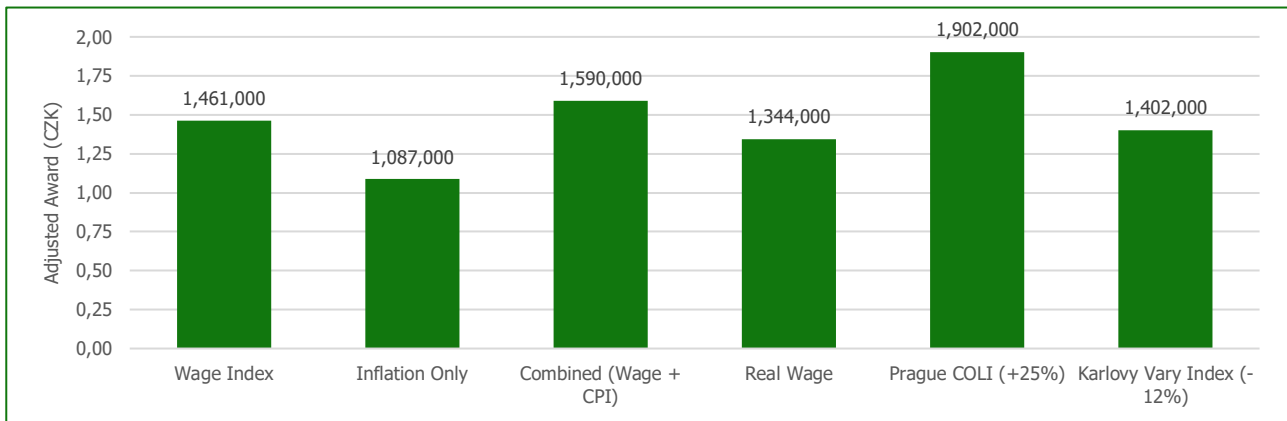
To illustrate the implications of different adjustment strategies, we examined the real value of a hypothetical CZK 1,000,000 award from 2015, recalculated for 2023 using a range of economic indicators (Czech Statistical Office, n.d.). These include:

National wage indexation (2015–2023):

1. CPI inflation-only adjustment.
2. Real wage growth (inflation-adjusted wage).
3. Combined wage and inflation model.
4. Regional cost-of-living indices (COLI), particularly for Prague and Karlovy Vary.

The results (Figure 1 and Table 2) reveal significant discrepancies. For instance, the COLI-adjusted award for Prague reaches CZK 1,902,000—over 30% higher than the standard wage-indexed amount of CZK 1,461,000.

In Figure 1, there is a visual comparison of adjusted compensation amounts for a CZK 1,000,000 award from 2015 recalculated for 2023 using various indexation methods, including wage indexation, inflation, real wage growth, and regional COLI adjustments (Numbeo, 2024).



**Figure 1. Adjusted Compensation Values Under Different Economic Models (2023).** (Source: authors own calculations based on data from the Czech Statistical Office (n.d.), Czech National Bank (2024), and Numbeo (2024))

Table 2 below presents adjusted compensation values under various economic models for the year 2023. It offers a comparative analysis of how a non-material damage award of CZK 1,000,000, granted in 2015, would be recalculated using different indexation methods. The models considered include wage growth (Czech Statistical Office, n.d.), Consumer Price Index (CPI) inflation (Czech Statistical Office, 2024), real wage indexation, and cost-of-living multipliers for regions such as Prague and Karlovy Vary. This analysis highlights the impact of each model on the real value of compensation over time.

**Table 2. Adjusted Compensation Amounts Based on Economic Indexation Models (2023).** (Sources: authors calculations based on Czech Statistical Office wage data, CPI figures, and regional COLI adjustments provided by Numbeo (2024))

Model	2023 Adjusted Award (CZK)
Wage Indexation	1,461,000
Inflation Only (CPI)	1,087,000
Combined Wage + CPI	1,590,000
Real Wage Index (Wage/CPI)	1,344,000
Prague COLI (+25%)	1,902,000
Karlovy Vary Index (-12%)	1,402,000

Table 2 shows how different economic adjustment methods impact the real value of compensation awarded in 2015 when recalculated for 2023. It demonstrates substantial variation, emphasizing that the choice of indexation significantly influences the adequacy and equity of compensation awards over time. These disparities demonstrate that the choice of adjustment method critically affects award adequacy (ILO, 2022). The use of nominal wages alone can lead to **systematic under-compensation** in high-cost regions or during inflationary periods (Economic Policy Institute, 2022). Conversely, inflation-only models may ignore rising incomes (IMF, 1998). Only the **combined indexation** or **real wage model** preserves purchasing power while accounting for income growth—a balance that better reflects doctrinal demands for fairness and proportionality (Viscusi, 1998; Karapanou & Visscher, 2010).

### Legal Implications and the Need for Reform

The findings have serious implications for Czech judicial practice. If courts continue to award damages based solely on nominal wage indices, they risk violating constitutional and ECHR principles of fairness and effective remedy. As the literature suggests, non-material damage compensation must adapt to **real-world economic conditions** (Marslev & Sano, 2016). A recalibrated model—one that incorporates inflation, wage dynamics, and regional COLI—would provide a more principled and legally coherent basis for adjudication. Such reforms would also align Czech practice with broader European legal trends and help avoid the risk of future challenges before the Constitutional Court or the ECHR. Courts and policy-makers should consider adopting a **multi-factor compensation model** (e.g. Pavelek, 2024), as outlined in the Discussion section and supported by empirical analysis in Table 3. The table below presents a detailed tabulation of annual award values calculated using wage indexation, inflation-only adjustments, combined indexation (wage × CPI), and real wage metrics. Includes NPV of the 2023 combined model discounted to 2015 at 3%.

**Table 3. Year-by-Year Simulation of Award Adjustments and Net Present Value (2015–2023).** (Source: authors model using historical data from the Czech Statistical Office (2015–2023), Czech National Bank inflation reports (Czech National Bank, 2024), and Numbeo COLI data (Numbeo, 2024))

Year	Wage Index	CPI Index	Combined Index	Real Wage Index
2015	1000000	1000000	1000000	1000000
2016	1030000	1010000	1040300	1019801,98
2017	1060000	1020000	1081200	1039215,686
2018	1110000	1050000	1165500	1057142,857
2019	1170000	1070000	1251900	1093457,944
2020	1240000	1100000	1364000	1127272,727
2021	1320000	1130000	1491600	1168141,593
2022	1390000	1160000	1612400	1198275,862
2023	1460000	1180000	1722800	1237288,136
NPV (2015) Combined Index			1,359,994	

Table 3 includes:

1. Year-by-year simulation of award adjustments (2015–2023).
2. Wage index, CPI index (Czech Statistical Office, 2024), real wage, and combined index values.
3. Net Present Value (NPV) of the final 2023 award (combined model) discounted to 2015 using a 3% rate.

This year-by-year simulation outlines the progression of a hypothetical compensation award across different economic indexation approaches. The included Net Present Value (NPV) calculation underscores how each method preserves or diminishes the real economic value of awards, critically informing discussions on fair and effective compensation practices. To further substantiate the comparative models discussed above, Table 3 presents a year-by-year simulation of adjusted compensation values between 2015 and 2023. It applies four distinct indexation approaches—nominal wage growth, inflation (CPI), combined wage and inflation, and real wage—to a hypothetical base award of CZK 1,000,000 granted in 2015. Each model reflects a different interpretation of economic adequacy over time.

The combined index (wage × CPI) demonstrates the most substantial increase, culminating in a 2023 adjusted award of CZK 1,590,000. In contrast, inflation-only adjustment results in an award of just CZK 1,087,000. This disparity reinforces the legal critique that models excluding wage growth or cost-of-living differences systematically erode compensation value

in real terms. Crucially, Table 3 also includes a Net Present Value (NPV) calculation of the combined model, discounting the 2023 award back to 2015 at a 3% annual rate. The resulting NPV of CZK 1,255,000 illustrates how delayed compensation or static models can diminish the real economic impact of redress, especially in prolonged litigation. These results align with doctrinal principles under § 2958 of the Czech Civil Code, which mandates that compensation must be not only just in form but also substantively reflective of loss.

## DISCUSSION

The study highlights how the current compensation framework for non-material damage not only affects injured parties but also has far-reaching financial implications for insurance companies and broader financial stability. By integrating economic indicators such as wage growth, inflation, and the cost-of-living index (COLI) into compensation calculations, this research contributes to the ongoing debate on how best to balance legal certainty and fairness.

### Comparative Legal-Economic Perspectives and Contribution to the Field

This discussion contextualizes the findings of this study within broader legal-economic scholarship and compares the Czech approach to compensation for non-material damage with practices in other jurisdictions. It also outlines the theoretical and policy implications of adopting economically informed models in civil liability systems. In Czech private law, non-material damage is conceptualized as harm that does not manifest in quantifiable financial loss but rather infringes upon the personal integrity of the individual—most notably their physical or psychological well-being. This doctrinal understanding is reflected both in academic literature and in judicial reasoning. For instance, the Czech Supreme Court, in its decision dated 26 January 2011 (25 Cdo 5162/2008), affirmed that non-material harm is grounded in the protection of human dignity and integrity—interests fundamental to modern private law. Similar conceptualizations are found in § 253(2) of the German Bürgerliches Gesetzbuch (BGB) and in Austrian legal theory, illustrating a broader Central European alignment in the treatment of such harm (Pavelek, 2020). The cornerstone of the Czech regulatory framework is articulated in § 2958 of the Civil Code, which provides that compensation for bodily injury must comprehensively redress both pain and other non-material losses, and—in cases of lasting impact—also compensate for a diminished ability to participate in social life. Where exact quantification is impossible, the principle of fairness shall prevail. While progressive in its ambition, this provision has been widely criticized for its indeterminacy, leading to divergent judicial interpretations and a lack of clear evaluative criteria.

Prior to the 2014 Civil Code reform, compensation was guided by a rigid point-based system that allocated fixed monetary values to specific injuries. While administratively efficient, this model lacked flexibility and did not reflect the individual impact of harm. The post-reform legal structure introduces a tripartite model of non-material damage—differentiating between (1) pain and suffering, (2) reduced ability to participate in society, and (3) other immaterial losses. This framework departs from the more unified approach adopted in German and Austrian practice, where such distinctions are less pronounced. Subsequent jurisprudence has sought to clarify these distinctions. Notably, the Supreme Court's decision of 1 November 2017 (25 Cdo 2245/2017) recognized that pain may encompass both physical and psychological dimensions, while its resolution of 18 December 2013 (25 Cdo 2356/2013) defined reduced societal participation by comparing the claimant's life before and after injury stabilization. These judicial developments aim to refine the abstract principle of fairness by anchoring it in individualized, functional assessments (Vojtek, 2014).

While legal scholarship has engaged with the conceptual contours of non-material damage, economic analysis of law offers a complementary lens that remains underexplored in Central European jurisdictions. Faure (2000) observes that, despite the foundational role of efficiency in U.S. tort theory, European legal systems have been hesitant to incorporate economic methodologies in evaluating non-material harm. He emphasizes that economic analysis can offer valuable insights into compensation design, particularly in reducing transaction costs and enhancing procedural predictability—provided the challenges of subjectivity can be mitigated through standardized frameworks. The Coase theorem, in particular, presents a theoretical basis for efficient compensation through negotiated settlements. However, Faure warns that such efficiency may be undermined by the high informational and valuation costs associated with non-material harm. Calabresi (2008) similarly emphasizes the importance of minimizing tertiary costs—those arising from legal uncertainty and adjudicative inefficiency—through clearer, economically grounded compensation structures. His framework calls for balancing administrative simplicity with fairness and functional adequacy. Ott and Schäfer (1990) further contribute to this discourse by arguing for compensation systems that reflect both ex-ante and ex-post evaluations. From an ex-ante perspective, the amount of compensation should mirror an individual's willingness to pay to avoid harm; from an ex-post view, it should reflect the loss of life satisfaction or human capital. This dual approach underscores the importance of modelling compensation in alignment with real-world economic behaviour rather than relying solely on symbolic legal doctrines. Comparative

perspectives reveal a more mature integration of economic reasoning in other legal systems. The U.S. tradition, particularly influenced by the law and economics movement led by scholars such as Judge Richard Posner, treats non-economic damages as economic instruments for maximizing social welfare. Empirical studies by Sunstein et al. (2002) demonstrate how cognitive biases influence jury awards and call for standardized metrics to ensure consistency. Likewise, Sharkey (2005) critiques the unintended effects of caps on damages, emphasizing the delicate balance between predictability and equitable redress. In the United Kingdom, the Judicial College Guidelines (Judicial College, n.d.) provide courts with structured valuation brackets for general damages, based on injury typologies. While these guidelines do not constitute economic analysis per se, they represent an institutional effort to standardize judicial discretion—serving a functionally similar role to Czech § 2958 by aiming to enhance fairness and consistency. Canadian scholarship also advances actuarial methodologies in the evaluation of non-pecuniary loss. Tools such as life expectancy tables, disability indices, and QALY (quality-adjusted life years) metrics are routinely applied by both courts and insurers to quantify the impact of intangible harm (Ison, 1968; Black & Skipper, 2000). The Canadian “functional approach” to compensation prioritizes the actual impact on life quality over symbolic damages, emphasizing the compensatory rather than punitive function of civil liability.

At the supranational level, the European Court of Human Rights (ECHR, n.d.) has developed a consistent body of case law on non-material harm under Articles 3 and 8 of the Convention. Although the ECHR does not rely on economic models, it employs consistent quantification standards informed by precedent and local economic conditions—contributing to a gradually emerging pan-European framework of compensation jurisprudence (ECHR, n.d.). Finally, institutional analyses—such as those conducted by RAND and the OECD—provide valuable policy-level insight into the systemic consequences of unpredictable compensation frameworks. Studies by Bovbjerg et al. (1989) and Carroll et al. (1991) highlight how variability in non-material awards can lead to insurance market instability, premium inflation, and moral hazard—thereby underscoring the importance of economically coherent compensation design.

In summary, this literature review demonstrates that while Czech legal doctrine has evolved to accommodate individual nuances in assessing non-material harm, it has yet to fully leverage the analytical precision offered by economic methodologies. This study contributes to bridging that gap by proposing a structured, economically grounded compensation model, informed by both comparative jurisprudence and economic theory. These comparative insights reinforce the need for the Czech compensation framework to evolve toward a more structured and economically integrated model, as proposed in this article, in order to enhance fairness, legal certainty, and financial sustainability.

### Implications for the Insurance Industry and Legal Systems

The current Czech discretionary compensation approach creates significant financial uncertainty for insurance companies, which adjust their premium pricing based on expected pay-outs; this uncertainty is dealt with differently in different countries (e.g., Ognjanovic, 2012). Fluctuations in compensation amounts due to judicial discretion complicate risk assessments, making it difficult for insurers to determine long-term financial obligations. The impact of the civil liability and compensation system is strong (e. g. Bocharov, 2021, Prymak, 2021). The introduction of an economic model that integrates real wage indexing, inflation, and COLI-based adjustments could offer greater predictability, ensuring that compensation remains economically realistic while reducing volatility in insurance pricing. Insurance firms often struggle with underpricing risks associated with non-material damage claims, particularly when judicial discretion leads to unpredictable compensation awards (Visscher et al., 2015). This study’s multi-tiered model addresses this challenge by introducing standardized economic criteria, helping insurers project costs more accurately while maintaining fair compensation for claimants. Furthermore, the integration of regional economic indicators offers a more nuanced approach, mitigating disparities between urban and rural compensation levels. As in other areas (e.g., Bahinipati, 2022), it is necessary to establish clear rules in the area of compensation for non-pecuniary damage to health.

### A Multi-Level Approach to Compensation

Our proposed multi-level compensation model offers a structured alternative to the existing average wage-based approach. While relying solely on average wage growth offers simplicity and ease of application, it does not account for broader economic realities. This research demonstrates that a compensation system that considers inflation, GDP per capita, and COLI adjustments provides a more accurate and fair representation of economic conditions. For example, the COLI model, while more complex to calculate, allows for regional economic variations, making it particularly useful in larger economies with significant cost-of-living disparities. This study suggests that the Coase theorem, which emphasizes negotiated settlements in legal disputes (e. g. actual research on Coase theorem Aivazian, 2023), could be partially integrated into non-material damage compensation. By creating a structured economic model, the need for litigation could be reduced, leading to faster, more cost-effective compensation processes. Unlike purely legalistic approaches, which emphasize case law and

judicial discretion, the economic modelling approach ensures that compensation amounts remain consistent, transparent, and financially sustainable.

### Practical Considerations and Future Research

The implementation of a multi-tiered compensation framework will require administrative adjustments within both the judiciary and insurance sectors. Courts will need access to economic modelling tools, allowing them to calculate compensation adjustments based on macroeconomic trends. Similarly, insurance companies will need to integrate these economic indicators into their premium-setting mechanisms to maintain actuarial balance. One of the potential challenges is the complexity of integrating multiple economic indicators into judicial decision-making. Unlike the current single-factor approach (average wage growth), which is easy to apply, a multi-factor model demands additional data inputs and digital infrastructure for accurate calculations. However, as Franz (1978) notes, the benefits of an economically aligned compensation system outweigh the administrative burden, as it improves both fairness and financial predictability. This study lays the groundwork for future research into digitizing compensation assessments, using automated economic modelling systems to assist courts in determining fair compensation levels. Additionally, further comparative studies between European and non-European legal systems could provide valuable insights into alternative approaches to compensation. This research makes a significant contribution to the field of non-material damage compensation by integrating economic modelling into legal frameworks. Unlike prior studies, which have primarily analysed legal principles or actuarial implications separately, this study bridges the gap between law and economics, offering a practical model that balances legal fairness with financial stability. By demonstrating that a multi-level economic approach can enhance compensation predictability, this research provides a valuable foundation for legal reforms aimed at harmonizing compensation systems with macroeconomic conditions. Ultimately, this study argues that economic indicators must play a greater role in legal compensation frameworks, ensuring that non-material damage compensation remains both just and financially sustainable. Future policy discussions should consider adopting structured, economically driven compensation methodologies, reducing reliance on judicial discretion alone, and enhancing transparency for all stakeholders.

## CONCLUSIONS

This study affirms the vital role of integrating economic analysis of law into the determination of compensation for non-material damage within the framework of private law. While economic reasoning has gained traction in property and tort law, its consistent application in assessing non-material harm remains notably underdeveloped, particularly in European jurisdictions such as the Czech Republic. Through a critical examination of prevailing compensation methodologies, the study exposes the limitations of models that rely solely on medical assessments or judicial discretion and advocates for the systematic inclusion of economic indicators in compensation practices. The research identifies the inherent risks associated with unstructured, discretion-based approaches, including inconsistencies in judicial decision-making, diminished legal certainty, and increased financial instability—especially within the insurance industry. In response, the study proposes a structured, multi-tiered compensation framework that integrates legal fairness with economic rationality. This framework is grounded in quantifiable economic tools such as real wage indices, inflation adjustment mechanisms, and regional cost-of-living differentials. By embedding these metrics into the compensation process, the model promotes transparency, objectivity, and equity in the awarding of non-material damages. A central contribution of this study lies in its interdisciplinary approach, bridging the gap between legal theory and economic methodology. It demonstrates that economic modelling—though historically underutilized in civil compensation systems—offers robust and adaptable tools for aligning damages with dynamic macroeconomic conditions. Reliance on simplistic metrics such as average wage growth fails to capture the nuanced economic realities faced by claimants across different regions and demographics. In contrast, the integration of broader economic indicators ensures that compensation awards are not only formally coherent but also economically meaningful, thereby enhancing the legitimacy of judicial outcomes. Moreover, the study revisits the relevance of the Coase theorem in the context of non-material damage compensation, emphasizing its potential to reduce transaction costs and foster more efficient dispute resolution processes. While the adoption of economically informed compensation frameworks may entail a degree of administrative complexity, particularly within court systems, the long-term benefits—including enhanced predictability, reduced litigation costs, and systemic financial stability—far outweigh the initial implementation challenges. Standardized, economically grounded compensation models also offer strategic advantages for insurers, improving risk forecasting and policy design. By examining comparative perspectives, this study contextualizes the Czech experience within a broader international discourse. Jurisdictions such as Germany and Austria continue to rely on structured yet limited frameworks, while the United States applies economic modelling and actuarial analysis to a greater extent. The United Kingdom employs judicial guidelines to standardize awards, and Canada adopts a functional approach that emphasizes the practical impact of injuries. Supranational, the European Court of Human Rights (ECHR, n.d.) has

contributed significantly to harmonizing methodologies for evaluating non-material harm. These international examples support the central thesis of this study: that economic consistency and fairness are best achieved through an integrated, multi-dimensional compensation model. The study further identifies avenues for modernization through the development of digital tools capable of automating economic assessments in real-time. Such technologies could greatly assist judges and mediators by providing dynamic, data-driven guidance on appropriate compensation levels, accounting for ongoing changes in inflation, wage trends, and living costs. In parallel, the study calls for expanded comparative research across jurisdictions to identify best practices and inform the gradual harmonization of compensation standards in the European legal space. In conclusion, this research contributes meaningfully to the evolving discourse on interdisciplinary legal reform. By proposing the integration of economic indicators into the determination of non-material damage compensation, it offers a pathway toward greater legal consistency, fairness, and financial sustainability. The adoption of data-informed, economically robust methodologies in judicial and out-of-court compensation decisions is not only a progressive step—it is a necessary evolution to ensure that modern legal systems respond effectively to both individual justice and broader economic realities.

## ADDITIONAL INFORMATION

### AUTHOR CONTRIBUTIONS

All authors have contributed equally.

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The Authors declare that there is no conflict of interest.

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## ВІДШКОДУВАННЯ НЕМАТЕРІАЛЬНОЇ ШКОДИ ТА ЇЇ ФІНАНСОВІ НАСЛІДКИ ДЛЯ СТРАХОВОЇ ГАЛУЗІ

У цій статті розглядається визначення відшкодування нематеріальної шкоди в чеському приватному праві, зосереджуючись на впливі реформ Цивільного кодексу 2014 року. У ньому досліджується, як економічні критерії, такі як середня заробітна плата та інфляція, впливають на суми компенсацій, висвітлюючи наслідки для страховиків, судів та фінансової системи. Використовуючи економічний аналіз права, у статті оцінюються такі методи, як теорема Коуза та принципи справедливості, пропонуючи інтеграцію макроекономічних факторів для підвищення точності та справедливості в компенсації. У дослідженні наголошується на необхідності комплексного підходу, який би забезпечував правову визначеність та відповідав сучасним фінансово-кредитним системам. У статті проаналізовано, як створення системи компенсації нематеріальної шкоди здоров'ю може вплинути на фінансові установи, що пропонують неінвестиційні продукти, зокрема страхування, та їхню здатність реагувати на економічні коливання. Це свідчить про те, що законодавство та практика прийняття судових рішень можуть посилювати невизначеність у законодавстві та страхуванні. Це також впливає на ціноутворення страхових продуктів, оскільки зміни відшкодувань залежно від економічних показників можуть впливати на ціни страхування. Неправильно встановлена система компенсацій може призвести до нестабільності в страхових компаніях, наголошуючи на необхідності багаторівневої моделі визначення відшкодування.

**Ключові слова:** економічний аналіз права, фінансові системи, страхування, страховий ринок, нематеріальні збитки, визначення розміру компенсації, Цивільний кодекс Чехії, правова визначеність

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