

## COMPENSATION FOR SUFFERED PHYSICAL PAINS

### Abstract

*The authors analyzed the foreign legislation and the legislation of the Republic of Serbia relating to compensation for physical pain. They recognize that the old civil codes from 19. century (in French or German Civil Codes e.g.) does not define the concept of damage, nor immaterial, while in modern codes accurately are determine which forms of non-pecuniary losses be legally justified. And the legal systems of the former socialist countries recognize the right to pecuniary compensation for non-material damage in case of serious violations of personal rights, for example Russia and Poland. In the law of obligations Serbia (as well as Slovenian, Croatian, Macedonia, Montenegro, Bosnia and Herzegovina) suffered physical pain is stipulated as a legally recognized form of non-material damage. Pecuniary compensation is determined on the duration and intensity of pain and other circumstances related to an event when the damage occurred, medical treatment and recovery and of the personality characteristic of the injured person.*

**Keywords:** *tort law, non-material damage, bodily injury, psysical pain, compensation*

### 1. Introduction

The pain is a subjective feeling which regularly occurs with a conscious person and healthy body when his bodily integrity is impaired. The key feature of physical pain is that it is highly subjective feeling. There are no objective criteria for measuring the intensity and duration of pain. Different people experience pain differently. Therefore, it could be said that the pain threshold is individual and changeable.

There are various types to the nature of pain: neuralgic, pulsationg, diffuse and vegetative. It is very important to establish the nature of pain

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in order to be able to determine its intensity. Thus, the neuralgic pain is the most intense and it appears in regular time intervals and shootings. A pulsating pain is weaker than neuralgic, it intensifies with each heartbeat, and then it decreases its intensity. A diffuse pain is a skin or mucous membrane pain whose intensity remains unchanged. It is usually weaker than the first two. Vegetative pain is characterized by burning sensation, but it appears very rarely. In practice, the most common are combinations of all listed pains<sup>3</sup>.

The pain can be felt only by a body whose receptors and conductors were completely functional at the time of injury. For this reason, the pain may be felt only by a fully conscious person, since the quantitative reduction of consciousness reduces, in general, the experience of pain intensity. This is very important for injuries or the central nervous system, which very often compromise the consciousness for longer or shorter period of time.

There is no universally accepted definition of physical pain in medicine. Also is absent exact explanation mechanism of pain. It is reasonable to be warned that psychological elements are important in pain syndromes and that is and that it is difficult to separate the organic and psychological causes of pain<sup>4</sup>.

All these circumstances impact that is in judicial practice is difficult to award reasonable compensation for suffered physical pain as specific type of non-material damage if it is permitted under national legislation.

## **2. Compensation for non-material damages for suffered physical pain from comparative perspective**

Compensation for non-material damages for suffered physical pain is present in almost every European legislation. But, previous and significant civil codes enacted during the 19<sup>th</sup> century, such as French and German, which made a historical influence on later civil codes throughout Europe, contain neither provisions referring to compensation for non-material damages as a consequence of bodily injury, health impairment or death of a person, nor compensation for non-material damages as a consequence of suffered physical pains. In fact, notes that Olivier

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<sup>3</sup> Z. Petrović, N. Mrvić Petrović, „Pravo na naknadu štete po Zakonu o obligacionim odnosima Republike Srbije“, in: *Sudskomedicinsko veštačenje nematerijalne štete* (eds. G. Šćepanović, Z. Stanković, Z. Petrović), Beograd, 2015<sup>2</sup>, 657.

<sup>4</sup> J. H. Olender, „Proof and Evaluation of Pain and Suffering in Personal Injury Litigation“, *Duke Law Journal*, 1962.,354-355.

Moréteau “French law has nothing to say on compensation of damage”<sup>5</sup>, however it is nothing to say on compensation of non-material damage<sup>6</sup>.

Thus, it was necessary for the judicial practice to, by extensive interpretation, find ways for damages. Consequently, based on the general provision of Article 1382 Civil Code<sup>7</sup> the French Court of Cassation imposed an obligation of compensation for non-material damages (for suffered physical and mental pains caused by injury or course of medical treatment). The compensation for non-material damages is awarded for suffered physical and mental pains which were the consequence of bodily injury or medical treatment pain (*prétium dolores*). Therefore, according to the decision from French law and judicial practice, the compensation for suffered paid is only for pains of relevant duration and intensity, and the severity of pains is determined solely on the basis of medical expertise ordered by the court. Compensation is given for sustained pain at the time of the injury and for the pain that will continue to suffer injuries. In practice is difficult to assess the occurrence of future pain, so, usually considered that they exist if there is a reduction of life activities of the injured<sup>8</sup>. The same solutions are accepted by Belgian and Luxemburg civil codes and practice. Similarly, in Spain as well, which generally does not envisage right to non-material damage caused by suffered physical and mental pains, the judicial practice has started awarding this kind of compensation.

German Law<sup>9</sup> (*Bürgerlichen Gesetzbuch* – BGB) enacted in 1896, does not provide the definition of damage in general and consequently there is no definition of non-material damage. From paragraph 253 is stipulated that basically only material damage can be awarded and that „pecuniary compensation for non-material damage may be claimed only in cases stipulated by law“. According to the paragraph 847 the plaintiff may claim a fair pecuniary compensation (so called pain and suffering - *Schmerzensgeld*) in cases when the damage was caused deliberately or through negligence resulting in life or body or impairments of health, or

<sup>5</sup> O. Moréteau, „The law of damages within the system for the protection of rights and legal interests“, in: *Basic Questions of Tort Law from a Comparative Perspective* /ed. H. Koziol/, Wien 2015., 10.

<sup>6</sup> Z. Petrović, „Naknada neimovinske štete u francuskom pravu“, u: *Uvod u pravo Francuske* (ur. O. Nikolić, V. Petrov), Beograd 2013., 242.

<sup>7</sup> Consolidated version from October 17, 2016, available at: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721>, 17. 10. 2016.

<sup>8</sup> M. Cannarsa, „Compensation for Personal Injury in France“, *The Cardozo Electronic Law Bulletin*, 8/2002, 17, <http://www.jus.unitn.it/cardozo/Review/2002/Cannarsa.pdf>, 15. 9. 2016.

<sup>9</sup> Civil Code in versions promulgated from 2 January 2002 (*Federal Law Gazette* [*Bundesgesetzblatt*], last amended by art. 6 G from 19. 2. 2016 I, <http://www.buergerliches-gesetzbuch.info/>, 12. 10. 2016.

as special satisfaction for infringement of sexual freedom (only for raped women). German Civil Code was significantly reformed in 2001 (has been in force since 2002), but , provision on damage compensation have not be fundamentally changed. New paragraph 253. legally permitted the right to pecuniary compensation for non-material damage caused by bodily injury, health impairment or freedom restrictions<sup>10</sup>. So, non-material damages may be awarded only if the damage was caused by a severe and the intentional infringement of personal rights specified by law<sup>11</sup>. Therefore, the pain is not recognize as special form of non-material damage, but only in context the total suffered non-material damage (pain and suffering)<sup>12</sup>. But, fair pecuniary compensation for non-material damages is awarded if another form of compensation and is not possible and only in case of more serious injury. The compensation amount is a lump sum determined according to circumstances of a concrete case (severity of injury, the degree of guilt of perpetrator, duration and intensive suffering pain, etc.).

In the Scandinavian legislation the compensation for non-material damage for suffered physical and mental pains, as recognized by Danish, Finnish and Swedish law, was introduced exclusively for the benefit of a claimant and is awarded upon the submission of the medical expert's report proportionally to severity of the suffered injury, duration of hospital treatment and recovery period, that is, incapacity to work<sup>13</sup>. Pursuant to provision of the Finnish Traffic Insurance Act this right may not be exercised by the claimant who did not undergo hospital treatment. On the other hand, according to the Swedish legislation, it is possible to claim this compensation even though the painful bodily injury did not have permanent harmful consequences on the claimant's health. Compensation is calculated using tables containing data on medical tretment duration and severity of suffered injury, applied both by insurance organizations and courts. In order to determine damages for pain and suffering, the most important is disability duration, wheres other circumstances have secondary significance (severity of insury, intensity of pain, duration of

<sup>10</sup> Reform of German tort law in 2002 did not change earlier concepts, except that the extends right to pecuniary compensation for non-material damage (see: Z. Petrović, N. Dožić, „Naknada nematerijalne štete u njemačkom pravu“, in: *Uvod u pravo Nemačke* (eds. M. Vasiljević, V. Čolović), Beograd 2011., 455-457).

<sup>11</sup> U. Magnus, J. Fedtke, „Non-Pecuniary Loss under German Law“, in: *Damages for Non-Pecuniary Loss in a Comparative Perspective* (ed. W. V. H. Rogers), Tort and Insurance Law, vol. 2, Wien-New York 2001., 109; E. Deutsch, H-J. Ahrens, *Deliktsrecht (Unerlaubte Handlungen, Schadenersatz, Schmerzengsgeld)*, Köln-Berlin 2002<sup>4</sup>., 214.

<sup>12</sup> Z. Petrović, N. Mrvić Petrović, „Fear as a Form of Non-Pecuniary Damage“, *Foreign Legal Life [Strani pravni život]*, 4/2015, 35-36.

<sup>13</sup> Characteristics of the Scandinavian laws listed by: M. Ćurković, *Obvezna osiguranja u prometu*, Zagreb 2007., 130-134.

medical treatment). The Norwegian law does not recognize compensation for suffered pain in classical sense, although the Law on Damages Claim according to sec.3, paragraph 2 awards compensation to the claimant for particular sufferings caused by bodily injury. The right to compensation is recognized only if the damage is caused on purpose or by reckless carelessness of the tortfeasor. The compensation amount is determined according to medical expert's reports and is proportional to severity of suffered injury, duration of medical treatment and recovery period, as well as the incapacity to work, that is, determined level of permanent disability which must be at least 15%. That is why this compensations functions more like satisfaction for claimant's suffering caused by decreased activities of daily living as a consequence of injury, than damages for pain and suffering.

The right to compensation for damage to non-material damages in the name of endured pains, had never been allowed in earlier legislation of Socialist countries (with the exception of ex-Yugoslavia), because the pecuniary compensation for suffered physical and mental pains was not in correlation with the verdict moral. Both, today, the right to pecuniary compensation for suffered physical and mental pains is guaranteed when the harm is caused by wrongful activities. So, Russian Civil Code allow, in general, compensation for non-material (moral) damage endured due to the undertaken wrongful anti-legal activity of another person (Art. 12, 151 paragraph 1)<sup>14</sup>. It is paid in money or another kind of material value, and the concrete amounts is determined for each case individually by court verdict. According to the Article 1101, a court awards the compensation takes into account the nature and degree of physical and mental suffering (connected with specific circumstances of the injured person), the degree of guilt of the offender and other actual circumstance for which the harm is caused<sup>15</sup>. Even when it is granted, the right to compensation for suffered physical and mental pains is linked to the severity of consequence of injury.

<sup>14</sup> Civil Code of the Russian Federation Parts I-IV from 30. 11. 1994, *Federal Law Gazette*, 51/1994, 14/1996, 146/2001, 230/2006 with the Amendments and Additions of February 20, August 12, 1996, October 24, 1997, July 8, December 17, 1999, April 16, May 15, November 26, 2001, March 21, November 14, 26, 2002, January 10, March 26, November 11, December 23, 2003, June 29, July 29, December 2, 29, 30, 2004, March 21, May 9, July 2, 18, 21, 2005, January 3, 10, February 2, June 3, 30, July 27, November 3, December 4, 18, 30, 2006, January 26, February 5, April 20, June 26, July 19, 24, October 2, 25, November 4, 29, December 1, 6, 2007, April 24, 29, May 13, June 30, July 14, 22, 23, November 8, December 25, 30, 2008, February 9, April 9, June 29, July 17, December 27, 2009, February 21, 24, May 8, July 27, October 4, 2010, February 7, April 6, July 18, October 18, 19, November 21, 28, 30, December 6, 8, 2011, March 8, 2015.

<sup>15</sup> P. B. Maggs, O. Schwartz, W. Burnham, *Law and Legal System of Russian Federation*, Huntington 2015<sup>6</sup>, 495; O. A. Papkova, „Reparation of Moral Damages and Judicial Discretion in Russian Civil Legislation“, *Review of Central and East European Law*, 3-4/1988, 269.

Similar to that, the article 445 § 1 of the Polish Civil Code<sup>16</sup> grants the right to compensation for sufferings and mental pains caused by bodily injury or death a person, as well as a deprivation of liberty (article 445 § 2), sexual assault or misconduct (article 445 § 2) and infringement upon personal rights (interests) - article 448 CC. The amount for such compensation is usually determined through litigations according to the previously ruled individual cases in the judicial practice. For estimation of the the scope of suffered damage, the following is taken into account: how the injury occurred, recovery period, the claimant's age and degree of disability, which is estimated by a medical committee or medical expert engaged by the insurance organization and/or authorized by the court<sup>17</sup>.

### **3. Right to compensation for suffered pains in the legislation of the Republic of Serbia**

Pecuniary compensation could be awarded pursuant to the Law of Obligations<sup>18</sup> (article 200 Paragraphs 1 to 203) for different type of non-material damage: for suffered and future physical pains, for mental anguish suffered due to reduction of life activities, for becoming disfigured, for offended reputation, honor, freedom or rights of personality, for death of a close person, as well as for suffered fear, for suffered mental anguish of victims of sexual violence. The court shall award appropriate damages, after finding that the circumstances of the case and particularly the intensity of pains and fear, and their duration, independently of redressing the property damage, even if the latter is not awarded. So, the claimant has the right to pecuniary compensation only if he is suffered pain of a particular intensity and particular duration.

As it was already mentioned, the key feature of pain is that it is purely subjective feeling. However, when determining physical pains and their scope, objective criteria should be applied. Namely, a subjective element in determining pain involves uncertainty, as it deals with inner phenomenon of person which is very difficult to grasp.

<sup>16</sup> Act of 23 April 1964, *Civil Code of the Republic of Poland, Law Gazette [Dziennik Ustaw, Dz. U.]* 16/1964, item 93 as later amended in *Dz. U.* 380/2016, item 585.

<sup>17</sup> E. Bagińska, "Poland : Developments in Personal Injury Law in Poland: Shaping the Compensatory Function of Tort Law", *Journal of Civil Law Studies*, 2/2015, vol. 8, article 17, 322-323, <http://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=1149&context=jcls>, 7. 10. 2016.

<sup>18</sup> *Federal Law Gazette Social Federal Republic of Yugoslavia [Službeni list SFRJ]*, br. 29/78, 39/85, 45/89, 57/89, *Federal Law Gazette Federal Republic of Yugoslavia [Službeni list SRJ]*, no. 31/93, *Federal Law Gazette State Union of Serbia and Montenegro [Službeni list SCG]*, no. 1/2003; English version on [http://www.mpravde.gov.rs/files/The%20Law%20of%20Contract%20and%20Torts\\_180411.pdf](http://www.mpravde.gov.rs/files/The%20Law%20of%20Contract%20and%20Torts_180411.pdf), 15. 10. 2016.



It should be noted that when awarding compensation for sustained pains, the court shall award a fair pecuniary compensation if it finds that case circumstances, especially pain severity and its duration, justify that. In deciding on the request for redressing non-material loss, as well as on the amount of such damages, the court shall take into account the significance of the value violated, and the purpose to be achieved by such redress, but also that it does not favour ends otherwise incompatible with its nature and social purpose (Article 200 Paragraph 2 Law of Obligations). It would mean that the claimant would not have the right to damages for sustained physical pains caused by minor bodily injury, unless he suffered pains of higher or medium intensity, or if they (although minor) lasted for longer period of time. Thus, one of the decisions of the Supreme Court of Serbia states: “Regarding the defendant’s audit, the Supreme Court has decided that the claimant may exercise the right to compensation for non-proprietary damage for sustained physical pains caused by minor bodily injury, if they were of higher or medium intensity, or if they lasted for longer period of time, as it is the case with the plaintiff”<sup>19</sup>.

When determining damage and deciding upon compensation amount, all pains from the beginning of the adverse event up to completion of medical treatment should be taken into account, whereas pains that appeared later should be awarded within the compensation for mental anguish suffered due to reduction of life activities. Also, when deciding upon compensation amount, the court should take into account every uneasiness felt by the claimant during the medical treatment. In that respect, the following standpoint was adopted at the joint meeting of the Federal Court, republic supreme courts and Supreme Military Court held on 15 and 16 October 1986:

“1. Uneasiness during the course of treatment (e.g. short periods of unconsciousness, hospitalization, being confined to bed, various kind of immobilization and fixation, infusions, transfusions, injections, bandaging wounds, removing stitches, using wheelchairs, going to the clinic, physiotherapy et cet.), sustained by the claimant, it taken into account when deciding upon compensation amount for physical pains.

2. It should also be estimated, taking into account all circumstances of the case, whether and under which conditions may any of the uneasiness listed above grow into some other kind of independent non-material damage (e.g. mental anguish suffered due to reduction of life activities)”<sup>20</sup>.

<sup>19</sup> The decision of the Supreme Court of Serbia Rev. No. 627/82, dated 29/3/1982 (*Zbornik sudske prakse*, 43/1982, decision 4461).

<sup>20</sup> Z. Petrović, N. Mrvić Petrović, *Naknada nematerijalne štete*, Službeni glasnik, Beograd 2012., 104-105.

Earlier judicial practice provided guidelines for estimating the compensation amount, emphasizing that it is measured not only according to the duration and intensity of pain, but also according to the character of injuries suffered by the claimant. Other circumstances accompanying the treatment are also taken into consideration: number of surgical operations, being confined to bed for a long time, difficulties with eating, physical therapy and similar. In addition, it was taken into account that coronary patients or emotionally unstable persons, children in particular, were more sensitive to physical pain.

The fact that the claimant was given painkillers during treatment is significant since it is considered that the damage caused by physical pains was thereby reduced. There were opinions in the civil law theory that for each specific case it should be assessed if and to what extent was the damage decreased (having in mind some detrimental effects of painkillers). Also, it would be unfair not to admit the loss, which obviously exists, as personal damage, although the person sustaining that loss does not have subjective feeling of pain because of painkillers he is taking (for example, high degree burns). Nonetheless, as medical experts support the view that in given cases victims do not feel pains, we are of the opinion that the court is obliged to reject such damages claims, as according to the article 200 of the Law of Obligation (the compensation is awarded for suffered physical pains).

The same problem arises when an injured person is not capable of feeling pains because of his unconscious state. The theory has seen mixed opinions regarding awarding compensation for sustained physical pains during unconsciousness. Thus, the first group of opinions supports the view that an unconscious person does not feel pain and there are no grounds for awarding compensation. On the other hand, there is an opposite opinion, which emphasizes that the state of unconsciousness has several levels of consciousness and that the person is unresponsive to physical pain only in total coma (which is also detrimental for human body)<sup>21</sup>. The fact that an unconscious person has lost some days of his life, which is another form of sustained mental sufferings, should be evaluated separately<sup>22</sup>.

It is true that the time a claimant spent in an unconscious state cannot be made up for and that the loss of that time presents special form of mental suffering. However, according to the explicit provision of Article 200 of the Law on Obligations, pecuniary compensations is awarded for specifically determined forms of mental pains, providing that certain

<sup>21</sup> Compare: M. and N. Miličević, „Vještačenje intenziteta i dužine trajanja fizičkih bolova posle saobraćajnih povreda, *Pravni život*, 5/1979, 65; opposite: B. Boras, „Evolucija stanja s poremećenom svešču i postupak sa komatoznim bolesnikom“, *The Conference on Neurology and Psychiatry*, Ljubljana 1969, 191.

<sup>22</sup> L. Koman-Perenić, „Oblici, obim i visina neimovinske štete“, *Sudska praksa*, 2/1983, 77.



prerequisites have been met. So, it is necessary to ask an expert whether the claimant could have sustained pains in an unconscious condition, and based on his report to decide whether to determine pecuniary compensation or not. In our opinion, it would not be in line with Article 200 of the Law of Obligations, when determining pecuniary compensation for physical pain, to assess separately whether the claimant lost a certain number of days due to unconsciousness. Although it is certain that such a loss really represents special form of mental sufferings, for which a claimant should be, *de lege ferenda*, awarded a fair pecuniary compensation<sup>23</sup>.

Another problem with this kind of non-material damage is definitely lack of generally accepted criteria which would enable determining the character of injuries, particularly intensity and duration of pain, as objectively as possible. The help to assess medical expertise suffered physical and mental pain (*Schmerzensgeld*) in Germany is widely used so called Fischer's system of classifying bodily injuries into six categories from very easy cases (I group) to extremely difficult cases (VI group)<sup>24</sup>.

Although this system proved to be functional in our judicial practice as well, especially for achieving objective criteria which should exclude unjustified differences in experts' opinions, it should be noted that in the science has not yet developed a method which would enable determining the existence of physical pain or measurement of its intensity in concrete cases. Sometimes physical symptoms may indicate existence of pain: rapid pulse, fast breathing, higher blood pressure, EKG changes, excessive sweating. But these symptoms are not always reliable indicators of sustained pain - in some cases blood pressure and pulse may decrease, not increase<sup>25</sup>.

So, it could be said that there is not a measurement which could calculate the quantity of pain and suffering of a person, because variability of level of pain is almost endless. This is supported by the fact that in some cases the feeling of pain is purely psychological without any valid physical reasons (e.g. placebo effect, „phantom pain“ in amputated leg, psychoneuroses etc). Also, it happens that a victim becomes obsessed with the injury and feels pain long after they had been cured.

Therefore, when determining this kind of non-material damage the following circumstances have to be taken into account: personality of the plaintiff, duration and intensity of pain, character of the injury, plaintiff's age, application of painkillers.

<sup>23</sup> Z. Petrović, N. Mrvić Petrović, *Naknada štete zbog povrede fizičkog integriteta ličnosti*, Vojnoizdavački zavod, Beograd 2008., 73.

<sup>24</sup> A. W. Fischer, *Schmerzensgeld in Haftpflichtsachen vom Medizinischen Standpunkt*, 1932. On this most used classification in German practice see in: B. Bloemertz, *Die Schmerzensgeldbegutachtung*, Berlin-New York 1984., 56-57.

<sup>25</sup> J. H. Olender, 361.

When giving expert's opinion, circumstances which frequently occur should definitely be taken into account: that the plaintiff feels pain caused by more simultaneous injuries. In that case the pain should be expertized uniquely, because the feeling is unique. If the pain is felt in more than one spot, then the most intensive pain „covers“ for other pains. This is called pains, their duration and intensity are expertized together by an expert neuropsychiatrist and expert traumatologist, where the former can give complete opinion on personal characteristics of the plaintiff, time of occurrence and quality of pain, and the latter gives opinion on continuity of pain and effect of painkillers.

The compensation amount for suffered physical pains is determined at court own discretion. However, that discretion is conditioned by the obligation of the court to take into account all circumstances causing damage and other condition stipulated by Article 200 Paragraph 2 of the Law of Obligations.

#### **4. Conclusion**

The compensation for non-material damage can be explicitly provided for in legislation or tacitly acknowledged in the case law based on the principle of the prohibition of committing harm another. Different national legal tradition and different socio-economic conditions affect on regulation of the right to compensation for non-pecuniary losses. Mostly in modern European legislatures are regulated when and where the non-material damage can be compensated. The right to pecuniary compensation for suffered physical pains in a series of legislations (German, French, Italian, Russian, Poland, in Scandinavian legislations and etc.) are approved within the overall suffering as a result of bodily injuries. Legislation of Republic of Serbia can be classified in the group rare legislations in which the suffered physical pain are compensable as a special type of non-material damage. In addition to Serbia in this group are legislations of Slovenia, Croatia, Macedonia, Montenegro, Bosnia and Herzegovina – all these laws stipulate the suffered pain as the legally recognized forms of non-material damage. This is the result of accepting the solution of the former Yugoslav Law on Obligations in the new legislations in these countries.

In Serbian judicial practice pecuniary compensation for suffered physical pain depends on personality or age or the damaged person, duration and intensity of pain, character of injury and application of painkillers. At that, injuries and part of body which is injured influence the amount of compensation. Small intensity or short duration of suffered pain may lead to situation that the injured person is admitted the right to pecuniary compensation of non-material damages.

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## **NAKNADA ŠTETE ZA PRETRPLJENE FIZIČKE BOLOVE**

### Rezime

Autori analiziraju strana zakonodavstva i zakonodavstvo Republike Srbije koje se odnosi na naknadu štete zbog pretrpljenih fizičkih bolova. Oni konstatuju da stari građanski zakonicima (francuski, nemački) ne određuju pojam štete, pa ni nematerijalne, dok se u savremenim zakonicima tačno određuje koji se oblici nematerijalnih gubitaka priznaju. I u pravima ranijih socijalističkih zemalja priznaje se pravo na novčanu naknadu nematerijalne štete za slučaj teških povreda prava ličnosti. To pokazuju primeri Rusije i Poljske. U obligacionom pravu Srbije (kao i Slovenije, Hrvatske, Makedonije, Crne Gore, Bosne i Hercegovine) pretrpljeni fizički bolovi su regulisani kao jedan od pravno priznatih oblika nematerijalne štete. Novčana naknada određuje se na osnovu trajanja i intenziteta bolova i drugih okolnosti vezanih za štetni događaj, lečenje i oporavak i za ličnost samog oštećenog.

**Ključne reči:** građansko odštetno pravo, nematerijalna šteta, telesne povrede, fizički bolovi, naknada štete.