

## FEAR AS A FORM OF NON-PECUNIARY DAMAGE

### *Abstract*

*The authors analyzed comparative legislation in the area of tort law. The paper referred different legislative solutions in legislations regarding prescribing fear as an independent form of non-pecuniary damage. They found that a small number of legislations in which fear determine as a special form of non-pecuniary damage. Such solutions have been adopted in legislations in states originating through secession from The Socialist Federal Republic of Yugoslavia (SFRY) in which have also taken over that Yugoslav Law of Obligations incorporating it into their own legislation: Slovenia, Bosnia and Herzegovina, Croatia, Macedonia, Serbia, Montenegro. In other european countries fear is not determined as a separate form of non-pecuniary damage, but the compensation for experienced fear, within mental suffering, is awarded by court's decisions.*

**Keywords:** *civil wrong, non-pecuniary damage, fair, mental pain, personal rights, compensation*

### 1. Introduction

The tort law in European legal systems should protect both the economic interest and non-material fundamental values, which should have priority in the hierarchy of protected legal goods. Such differences causes a “splitting” of the concept of damage to material (pecuniary), which included economic losses, and non-material (non-pecuniary), which is expressed as the harm on the rights of personality. Despite the consensus on the protection of fundamental human rights and freedoms (also the fundamental rights of personality), noticeable are large differences between the national legislatives relating to legally

<sup>1</sup> Attorney and Professor at Sigmund Freud University, Wien; mail: petroviczdravko@ikomline.net

<sup>2</sup> Principal Research Fellow, Institute of Comparative Law, Belgrade; mail: petroviczdravko@ikomline.net

recognized for of non-pecuniary damage. Also in Principles of European Tort Law and Draft Common Frame of Reference damage requires injury, so a legally protected interest<sup>3</sup>.

Whereas the pain is primarily bodily sensation (and then vegetative or mental), the fear is a mental sensation and consequence of a danger which a person facing it was exposed to. Fear is a responsive feeling always accompanied by changes in vegetative functions, facial reactions in motor coordination. Thus, one of the key differences between pain and fear is the fact that pain is always caused by a bodily injury, whereas fear can be the result of a bodily injury, but does not have to be. Fear will always appear when a men is faced with certain crisis situations either for himself or for his family or friends. Fear and pain can appear simultaneously, although it is also possible for fear to occur independently of mental or psysical pain, for example, when somebody is involved in a traffic accident, but escapes bodily injury. It is therefore important that anyone has a right to indemnity only for fear of suffering a life threatening or not.

The number of legislation which determine fear as a special form of non-pecuniary damage is insignificant. These are mostly states originating through secession from The Socialist Federal Republic of Yugoslavia (SFRY) which have also taken over that Yugoslav Law of Obligations incorporating it into their own legislation: Slovenia, Bosnia and Herzegovina, Croatia, Macedonia, Serbia, Montenegro. In other european countries fear is not determined as a separate form of non-pecuniary damage, but the compensation for experienced fear, within mental suffering, is awarded by court's decisions. This paper analyzes such different comparative solutions.

## **2. Legislation in which fear is not a special form of non-pecuniary damage**

The Italian law does not recognize definition of non-pecuniary damage, but in the 19<sup>th</sup> century in the theory was made the difference between moral and economic damage. When a claimant's assest were reduced as a result of a criminal act, he was awarded economic damages and also, when that criminal act caused pains, was awarded so called moral damages. The Article 2043 of the Civil Code<sup>4</sup>, enacted in 1941, stipulates that whenever a person causes damage deliberately or through

<sup>3</sup> H. Rogers in: European Group on Tort Law (ed.), *Principles of European Tort Law – Text and Commentary*, Springer, Vienna-New York, 2005, 15.

<sup>4</sup> *Regio Decreto* from 16 March 1942, n. 262, with amendments ended L. from August 6, 2015, no. 132, available on <http://www.altalex.com/documents/codici-altalex/2015/01/02/codice-civile>, 12. 11. 2015.

negligence, he is obliged to compensate for it. This obligation refers both to compensation of pecuniary and non-pecuniary damage. Since the Italian law has not defined the non-pecuniary damage, the legal theory and judicial practice have adopted negative definition<sup>5</sup>. Therefore moral, non-pecuniary damage is the one which does not harm property interest. The Constitutional court has confirmed the negative theory and thus non-pecuniary damage refers to every damage which is, in negative sense, reflected on property typical for the economic interest of the claimant, that is, the damage which cannot be economically evaluated because it involves health impairment and/or physical and mental suffering. With the ruling from 1986, the Constitutional court introduces the notion „biological damage“ (*danno biologico*), which belongs neither to the property damage group nor to the moral damage group. A biological damage is caused by infringement of the right to life and health and grounds for this damage are found in the Article 42 of the Constitution of the Italian Republic. Fear is not accepted as a separate legal category of non-material damage and there is no special indemnity for experienced fear. It is, however, included in mental sufferings. However, during 1990s, the judicial practice has seen cases of recognizing rights to pecuniary compensation for experienced fear, since this kind of damage could not have been classified under already established forms of damage. Thus, on April 15, 1994, the Higher Court in Milan awarded pecuniary compensation to a claimant who was staying in the area under ecological hazard, although he did not suffer biological damage<sup>6</sup>. The decision was explained by the fact that the claimant suffered moral damage with reflected through fear, since he had to undergo medical treatment in order to establish whether his health was impaired by poisonous substances. According to the Cassation Court decisions number 8827, 8828 from 2003 and by the decision of the Constitutional Court number 233 from 2003, the notion existential damage (*danno esistenziale*) is introduced. It is a pecuniary compensation for non-property damage caused by the infringement of personality rights which are protected by the Constitution. In essence, this indemnity coincides with moral and biological damage and therefore is awarded by courts only in cases of really serious infringements of personality rights guaranteed by the Constitution.

<sup>5</sup> N. Coggiola, B. Gardella Tedeschi, M. Graziadei, „Italy“ in: B. Winiger, H. Koziol, B.A. Koch, R. Zimmermann (eds.), *Digest of European Tort Law*, vol 2, *Essential Cases on Damage*, Walter de Gruyter GmbH, Berlin 2011, 29-30.

<sup>6</sup> B. Markesinis, M. Coester, G. Alpa, A. Ullstein, *Compensation for Personal Injury in English, German and Italian Law*, Series: Cambridge Studies in International and Comparative Law, March 2005, No 40, 84-96, available on: [http://assets.cambridge.org/97805218/46134/frontmatter/9780521846134\\_frontmatter.pdf](http://assets.cambridge.org/97805218/46134/frontmatter/9780521846134_frontmatter.pdf), 12. 11. 2015.

The French Civil Code<sup>7</sup> (*Code civil*) from 1804 introduces money indemnity for non-pecuniary damage as a protection of personal rights of citizens. Although the Code does not explicitly regulate the right to pecuniary compensation due to infringement of personality rights, through Article 1382, the judicial practice approved both pecuniary and non-pecuniary damage<sup>8</sup>. Namely, this provision regulated that the person responsible for causing damage has to compensate for it. As technology developed, the number of personal rights which were protected by judicial decisions decreased. As a result, in 2005 the Cassation Court ordered that a taskforce should be established with the aim of determining coherent sub-types of non-pecuniary damage which would make distinguishing from property damage easier. Non-pecuniary damage differs from property damage in adverse consequences. The consequence of non-pecuniary damage is „every limitation of activities or restriction of participation in social life of a claimant's of his surrounding due to the lack of and important, permanent or definite, one or more physical, sensational, mental, cognitive or psychical functions...“<sup>9</sup>. The French traditionally distinguish between damage (fr. *domage*) and *préjudice* (legal term describing the consequence of the harm). Pain and suffering (also caused by fear) the so-called non-pecuniary damage (*préjudice extrapatrimoniaux*)<sup>10</sup>.

In Anglo-American law non-pecuniary damages has been known for quite a while. The main source of American tort law is common law, but the statutory law is seeing an upward trend. The damage liability is related solely to subjective measures and is estimated in accordance with rules of the law of negligence, since the claimant has to prove the tortfeasor's guilt, that is, negligence conduct. All states recognized right to non-pecuniary damages, more precisely – indemnity for non-pecuniary loss, e.c. for mental pain and suffering, loss of amenities, physical inconvenience and discomfort, social discredit, mental distress, loss of society of relatives et cetera<sup>11</sup>. The fear is one of the forms of mental suffering. The fear is known to American law as a possible form of emotional harm. The existence the kind of emotional harm is not seriously in doubt, e.c. reaction of passengers on the Boeing 787s that have had to

<sup>7</sup> Consolidated version from October 17, 2015, available on <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721>, 12. 11. 2015.

<sup>8</sup> J-S. Borghetti, „France“ in: B. Winiger, H. Koziol, B.A. Koch, R. Zimmermann (eds.), 25.

<sup>9</sup> V.G.D., „La nomenclature des préjudices corporels“, *La jurisprudence automobile*, L'Argus de l'Assurance, no 774 dated 2006, 262.

<sup>10</sup> O. Moréteau, „Basic Questions of Tort Law from a French Perspective“, in: H. Koziol (ed.), *Basic Questions of Tort Law from a Comparative Perspective*, Jan Sramek Verlag, Wien 2015, 37.

<sup>11</sup> K. Oliphant, „Basic Questions of Tort Law from the Perspective of England and Commonwealth“, in: H. Koziol (ed.), 2015, 389.

do an emergency landing because of a variety of in-flight problems<sup>12</sup>. The judicial practice has accepted this rule and has always acknowledged the right to damages for mental pain and suffering which are caused by bodily injury or which appear as side-effects of a bodily injury. The following indemnities shall be granted and evaluated in line with provisions of the Law of Negligence: experienced fear which occurred during the adverse event, fear expressed as a worry, anxiety caused by possible consequences resulting from a bodily injury, fear caused by possible development of cancer due to radiation exposure.

Examples of Austrian and German legislation show that compensation for the infliction of physical pain is historically the oldest form of compensation for non-pecuniary damage<sup>13</sup>. The German Civil Law<sup>14</sup> (*Bürgerlichen Gesetzbuch*—BGB) does not provide the definition of damage in general and consequently there is no definition of non-pecuniary damage, although it recognizes this damage, since the paragraph 253 states that pecuniary compensation of non-pecuniary damage is allowed in cases prescribed by law. The claimant, according to the paragraph 847 may claim a fair pecuniary compensation in case of bodily injuries, health impairments, restriction of freedom. A woman may claim compensation if she was a victim of an immoral crime, or was in vicious or appalling manner or by trust abuse coerced into sexual intercourse. According to the broadest interpretation of the provision of paragraph 847 (prior to the reform law in 2002) it is possible to understand fear as a form of mental pain and suffering with granted pecuniary compensation, provided that it is a consequence of bodily injury or health impairment. Non-pecuniary damages for fear cannot be found in BGB, but pecuniary compensation may be classified under compensation for impaired health, which legally recognized category of non-pecuniary damage. Damages for pain and suffering (*Schmerzensgeld*) is a general term for non-pecuniary damages. A pecuniary compensation is awarded to be payable as a lump sum, and may be awarded as pecuniary sum payable in installments. Damage for pain and suffering is determined according to the equity principle taking into account all case circumstances such as: permanent consequences, scars, duration of medical treatment, danger to life and similar. According to the position of the judicial practice, the indemnity is not awarded for minor bodily injuries. Similar solution exists also in Austrian Civil Law, but under § 1325 ABGB compensation for non-pecuniary damage in the

<sup>12</sup> M. D. Green, W. J. Cardi, „Basic Questions of Tort Law from the Perspective of the USA”, in: H. Koziol (ed.), 2015, 460.

<sup>13</sup> H. Koziol, *Basic Questions of Tort Law from a Germanic Perspective*, Jan Sramek Verlag, Wien 2012, 115.

<sup>14</sup> Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I page 42, 2909; 2003 I page 738, last amended by Article 4 para. 5 of the Act of 1 October 2013 (Federal Law Gazette I page 3719), available on <http://www.buergerliches-gesetzbuch.info/>, 12. 11. 2015.

form of pain and suffering damages is owed for injury to bodily integrity even in the case of slight negligence and such claims are also provided for in all non-fault-based strict liability constellations while other non-pecuniary harm only leads to compensation claims in the case of serious fault on behalf of the injuring party ( § 1324 ABGB )<sup>15</sup>.

### 3. Legislation in which the fear is a special form of non-pecuniary damage

Legislations Slovenia, Croatia, Macedonia, Montenegro, Bosnia and Herzegovina and Serbia are an interesting examples those which recognize compensation for the fear as a special form of non-pecuniary damage. This is due to the earlier common legal heritage. All these laws are “inherited” in the obligations law defines damage (pecuniary and non-pecuniary) and stipulate the legally recognized forms of non-pecuniary damage. At the same time, all these laws show significant similarity to the German subtype of continental legal system.

The Yugoslav Law of Obligations enacted in 1978 is still in force in the Republic of Serbia<sup>16</sup>. In subsection 7 (Art. 185-207) The Law of Obligations guarantees compensation both pecuniary damage (as simple damage or lost profit), and indemnity for the person who suffering damage for violation the personal rights to freedom, life, body, honor, reputation et cetera. But, pecuniary compensation can be awarded only for so-called legally recognized non-pecuniary damages - suffered psychical pain, mental pain, fear and mental anguish caused by a sexual offence (Art. 200-203). Article 200 paragraph 1 provides so-called legally recognized non-pecuniary damages: “for physical pains suffered, 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 fear suffered, the court shall, after finding that the circumstances of the case and particularly the intensity of pains and fear, and their duration, provide a corresponding ground thereof – award equitable damages, independently of redressing the property damage, even if the latter is not awarded”. In Art. 200 paragraph 2 are defined criteria for determining fair pecuniary compensation for non-pecuniary damages: “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

<sup>15</sup> H. Koziol (2012), 115.

<sup>16</sup> Federal Law Gazette [*Službeni list SFRJ*], br. 29/78, 39/85, 45/89, 57/89, Federal Law Gazette [*Službeni list SRJ*], no. 31/93, Federal Law Gazette [*Službeni list SCG*], no. 1/2003, available in English (translated by Đ. Krstić), with introduction by I. Janković, 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. 11. 2015.

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”. In the case of death or serious disability of a person, the court may awarded indemnity under Article 201 to the family members and relatives who suffer their mental anguishes.

As in Serbia, in Bosnia and Herzegovina is also the former Yugoslav law adopted as regulations at federative level and in entities the Federation of Bosnia and Herzegovina and Republic of Srpska<sup>17</sup>. Thus, fear is recognized as one of the forms of legally recognized non-pecuniary damage.

Indemnity for fear as non-pecuniary damages is very similar regulated in other analyzed jurisdictions even after the adoption of new legislation.

The Republic of Slovenia passed the Code of Obligations<sup>18</sup> in 2001. Key concepts of former Yugoslav Law of Obligations were incorporated into the Slovenian Code. Article 132 defines non-pecuniary damage - suffered psychological pain, mental pain and fear and tarnishing reputation to the legal entity. Thus, the Code of Obligation regulates non-pecuniary damages almost identically to provision of Article 199-200 of the former Yugoslav Law of Obligations.

The Republic of Croatia also passed the Law of Obligations<sup>19</sup> in 2005. The damage is defined in Article 1046. as causing pecuniary damage (simple damage or lost profit) and violation of personal rights (non-pecuniary damage). The Croatian Law does not prescribe types of non-pecuniary damages, but in Article 1100, Paragraph 1 regulates that in case “...of violation of personality rights, the court shall, should the severity of injury and circumstances of the case justify that, award a fair pecuniary compensation ...”. In Paragraph 2 are listed the same criteria for award equitable damage as well as in the Art. 200 par. 2 the Yugoslav Law of Obligations.

In the Republic of Macedonia is in force the Law on Obligations<sup>20</sup>, which, similar to Croatian, adopts the concept of non-pecuniary damages for all violation of personal rights (in Article 9-a provided protection of personal rights in Law of Obligations Republic of Macedonia). Indemnity for non-pecuniary damage is moral satisfaction or material satisfaction (Article 187-a). In the Article 189 paragraph 2 are listed the same criteria for award

<sup>17</sup> Federal Law Gazette [*Službeni list SFRJ*], no. 29/78, 39/85, 45/89, 57/89, Federal Law Gazette [*Službeni list Republike Bosne i Hercegovine*], no.2/92, 13/93, 13/94, Official Journal of Republic of Srpska [*Službeni glasnik Republike Srpske*], no. 17/93, 3/96, 74/04, Official Gazette of Federation of Bosnia and Herzegovina [*Službene novine Federacije BiH*], no. 29/03, 42/11.

<sup>18</sup> Official Gazette of Republic of Slovenia [*Uradni list RS*], no. 83/01 on October 25, 2001, effective as of 2002.

<sup>19</sup> Official Journal of Republic of Croatia [*Narodne novine RH*], no 35/2005 on March 17 2005 with amendments in no. 41/08 on April 9, 2008.

<sup>20</sup> Official Journal of Republic of Republic of Macedonia [*Службен весник на Република Македонија*] no. 18/2001, 121/2001 –Constitutional Court decision, 4/2002, 59/2002 – Constitutional Court decision, 5/2003, 84/2008, 81/2009, 161/2009).

equitable non-material damages (intensity and duration of psychical pains, mental suffering and fear, in accordance with purpose of compensation), similar to Article 200 paragraph 2 Yugoslav Law of Obligations).

The Law of Obligations<sup>21</sup> in the Republic Montenegro in Article 207 prescribe redressing non-pecuniary damage pecuniary compensation. In Article 207 solutions are taken from Article 200 Yugoslav Law of Obligations.

#### 4. Indemnity for suffered fear in Serbian court practice

An interesting definition of experienced fear as a legal basis for pecuniary compensation for non-pecuniary damage is found in the following decision of the Serbian Supreme Court: “As from the medical viewpoint, the fear is a psychic personality disorder, which can be more or less serious. It can, primarily, be the fear for life, which appears when a person is facing death, but the fear may lead to depression, neurotic conditions, traumatic shocks or permanent mental disorder with possible serious consequences. That kind of fear represents an violation of health and bodily integrity of a man so it is a form of non-pecuniary damage for which, pursuant to Article 200 of the Law of Obligations, a person suffering from these kinds of injuries is entitled to damages in the form of a fair pecuniary compensation, whose amount depends on intensity and duration of fear”.<sup>22</sup>

At some point in previous court practice a distinction was drawn between a primary fear (which arises in the immediate expectation of an event) and secondary (which arises after the averse event as result of fear for one’s own destiny). However, this division does not have any practical meaning, since both fears represent the basis for awarding amount of money, and the justification and amount of such a demand evaluated according to circumstances of the actual case. According to the Article 200 Law of Obligations Republic of Serbia, compensation for experienced fear awarded when intensity of fear and its duration, justify that. Thus, the fear does not have to cause more permanent consequences in the emotional sphere of the claimant’s personality.

Such viewpoint is more realistic since it is objectively closer to reality, primarily due to the fact that permanent consequences of fear (psychical disturbances) rarely appear, and when they do appear it is with people who suffer from psychosomatic illnesses. Consequences of fear, which are defined as a late fear, arise during recollection of the

<sup>21</sup> Official Gazette of Republic of Montenegro [*Službeni list Republike Crne Gore*], no. 47/08 on August 7, 2008.

<sup>22</sup> From decision by the Supreme Court of Serbia, Rev. 409/85 (Z. Petrović, N. Mrvić Petrović, *Damage Compensation for Bodily Injuries and Health Impairment*, German Organization for Technical Cooperation (GTZ), Beograd 2008, 202.



event and last from a few months to one year. The fear in the same or similar situations may last from one to two years<sup>23</sup>. One thing is certain, though. Nowadays, there are many therapeutic methods, treatments and procedures which can, with most people, quickly and completely eliminate fear and phenomena which are based on fear<sup>24</sup>. Hardly could we speak about permanent consequences of fear (apart from people who suffer from psychosomatic illnesses).

According to the conclusion adopted in former SFRY at the conference of civil and civil-economic division of Federal Court, republic supreme courts and the Military Supreme Court held on 15 and 16 October 1986 it is prescribed that: “a fair pecuniary compensation may be awarded for prolonged and intense fear. If the intensive fear lasted for a short period of time, the compensation may be awarded provided that mental balance of a claimant was disturbed”<sup>25</sup>. This attitude is still respected in the court practice in all republics of the former SFRY.

Compensation may be obtained by a person who is experiencing fear caused by a danger he himself is facing and not in case when the fear is caused by concern for another person, not even for a close relative. A distinction (approved by the Law of Obligations as well) according to the source of fear should be drawn at this point: there is fear of one’s own source and fear of an external source, depending on whether we deal with a direct or indirect claimant. Accordingly, a mother, which suffer intensive fear for destiny of her child if it encounters a dangerous situation, is not entitled to compensation just of experiencing fear – it is not legally recognized damage (the conclusion at the courts conference from 15 and 16 October 1986)<sup>26</sup>. This viewpoint explained by the fact that Article 200 of the Law of Obligations regulates exclusively damage of one’s own source i.e. physical pains and fears of the initial victim. In addition, Article 201 regulates the damage of indirect claimants. The Law of Obligations states only two cases in which legally recognized damage is of an external source: mental suffering caused by death, that is, severe disability of a close person. Article 201 does not mention fear and consequently the damage of indirect claimants is not legally recognized non-pecuniary damage.

The courts makes a decision on compensation for fear after the expert has submitted his report and opinion. It is common in court practice that the fear qualified by intensity as fear of weak, medium and strong

<sup>23</sup> L. Koman-Perenić, “Oblici, obim i visina neimovinske štete”, *Sudska praksa* 2/1983, 79.

<sup>24</sup> J. Zdravković, *Strahovi i seksualnost – smetnje i terapija*, Nolit, Belgrade 1985, 245.

<sup>25</sup> Cases from court practice (contribution conference proceedings *Prouzrokovanje štete*, II, Perimeks, Budva 1999, 197.

<sup>26</sup> *Ibid.*

intensity. The expert is required to give explicit opinion on intensity and duration of fear. Having considered everything stated in the presentation of evidence, the court shall award the compensation only if it is justified by case circumstances, intensity and duration of fear. However, a stronger intensity of fear, but short lasting and without consequences, is not sufficient legal reason for awarding compensation.

If the injured receiving treatment in hospital, the fear experienced in hospital should be taken into account if he was exposed to unpleasant and aggressive treatment methods, especially if the injured child, which will still feel uneasy about medical staff because it reminds him of unpleasantness he experienced during the course of treatment.

Pecuniary compensation for fear is awarded pursuant to the Article 232 of the Civil Procedure Law<sup>27</sup> which means at one's own discretion. However, that discretion is limited by the obligation of the court to take into account all circumstances causing damage and other conditions stipulated by Article 200 Paragraph 2 of the Law of Obligations. This kind of compensation is in the court practice always awarded as a lump sum.

## 5. Conclusion

In comparative law it is rare that the fear is an independent form of non-pecuniary damage, more often it is subsumed under suffered mental pain or distress. As an independent form of non-pecuniary damage fear is provided in the legislation of Bosnia and Herzegovina, Croatia, Serbia, Slovenia, Macedonia and Montenegro. This is as a result of the common legal heritage. However, pecuniary compensation for fear, as primarily emotional disorder, is awarded only if the fear was intense and/or long so that it has consequences on the claimant's psyche, and it is determined on the basis of the circumstances of the case. Thus, the former Yugoslav Law of Obligations, because of its quality, is still in force in Bosnia and Herzegovina and Serbia, and also "lives" in new legislations in Croatia, Slovenia, Macedonia and Montenegro.

---

<sup>27</sup> Official Journal of Republic of Serbia [*Službeni glasnik RS*], no. 72/2011, 49/2013 – Constitutional Court decision, 74/2013 – Constitutional Court decision and no. 55/2014.

**Prof. dr Zdravko Petrović**

Advokat, profesor Univerziteta Zigmund Frojd, Beč

**Prof. dr Nataša Mrvić Petrović**

Naučni savetnik, Institut za uporedno pravo, Beograd

## STRAH KAO OBLIK NEMATERIJALNE ŠTETE

### Rezime

Autori su analizirali uporednopravnu regulativu iz oblasti odštetnog prava. U članku daju pregled različitih zakonskih rešenja vezano za propisavanje straha kao samostalnog vida neimovinske štete. Kostatuju da je mali broj zakonodavstava u kojima je strah određen kao naročita vrsta neimovinske štete. Takva rešenja su prihvaćena u zakonodavstvima država nastalih izdvajanjem iz Socijalističke Federativne Republike Jugoslavije (Slovenija, Hrvatska, Bosna i Hercegovina, Makedonija, Srbija, Crna Gora), u kojima su preuzete odredbe nekadašnjeg jugoslovenskog Zakona o obligacionim odnosima. U pravima drugih evropskih država (na primer, Francuskoj, Italiji, Nemačkoj, Austriji, Velikoj Britaniji), kao i u Sjedinjenim Američkim Država strah nije propisan kao izdvojeni oblik neimovinske štete, nego se tretira u sklopu pretrpljenih duševnih bolova i patnji za koje oštećeni može dobiti naknadu u sudskom postupku.

**Ključne reči:** građanskopravni delikt, neimovinska šteta, strah, duševni bolovi, prava ličnosti, naknada štete