

Slovakia

Anton Dulak

Judgment of the Constitutional Court of the Slovak Republic of 10 October 2018, Case No PL ÚS 10/2016

Unconstitutionality of § 446 of the Civil Code

PL ÚS 10/2016

Judgment:

Article 446 Act No 40/1964 CC in its subsequent provisions, is not in accordance with Art. 12 (1) and Art. 20 (1) of the Slovak Constitution.

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Facts:

- Motor road accident
- Claimant incapacitated for work (47 days in 3 months)
- Loss of earnings

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Facts:

- Average 3 months income before accident: € 6,160 EUR
- Covered:
 - € 3,202 (Salary)
 - € 404 (Sickness benefit)
 - € 374 (Art. 466 CC - Social Insurance)
- Covered total: € 3,980
- Not covered: € 2,180 (Claim)

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Claim:

“the unconstitutionality of Art. 446 CC lies in the fact that the law does not allow the aggrieved party to obtain damages in the extent of the damage that they suffered.”

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Comments:

Art. 466 CC:

the compensation for damage is to be evaluated and the amount to be compensated is to be determined by the same method as an accident allowance, as defined by general regulations on social insurance.

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Comments:

Art. 466 CC (explanatory memorandum):

“The proposer hereby reacts to the stimulus of insurance companies that compensate this damage under civil liability in cases of motor road accidents, and these recommend to establish the same method in cases of occupational accidents”.

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Comments:

- Compensation for the loss of earnings is the same “label” for two fundamentally different juridical institutes
- Different institutes pursue various goals
- Each of the respective institutes should be handled by their own algorithm