

DISABILITY PENSION GRANTED DUE TO THE REDUCTION OF PROSPECTS FOR SUCCESS IN THE FUTURE

KRZYSZTOF MULARSKI*
KRZYSZTOF GRZESIOWSKI**

DOI 10.2478/in-2023-0014

ABSTRACT

The aim of this article is to interpret the conditions for, and the content of, a claim for an appropriate disability pension granted due to the reduction of prospects for success in the future (referred to as the third disability pension condition under Article 444 § 2 of the Civil Code). The chosen subject of analysis is primarily justified by the relative lack of attention this disability pension has received in legal literature compared to pensions granted due to other conditions specified in Article 444 § 2 CC. The authors focus on resolving some of the interpretative doubts in the civil law related to the phrase “reduction of the prospects for success in the future”. The derivative conception of legal interpretation serves as the foundation for their analyses. The article posits that a claim for a pension due to the reduction of prospects for success in the future is available to every natural person (including a conceived child) who has suffered a bodily injury or health disorder resulting in a loss of the ability to work (in the broad sense of the term), including the ability to perform household chores and, consequently, the material or financial benefits such work would provide. According to the authors, the provision’s apparent role is to resolve interpretative doubts regarding the pecuniary benefits that the aggrieved party would likely obtain in the future. This likelihood is higher than low or small, but lower than the probability bordering on certainty (or at least very high), which is the usual requirement for lost benefits in order to be granted a disability pension. This result of the interpretation is fully justified in both functional and systemic interpretative directives,

* LLD, Professor of Adam Mickiewicz University, Faculty of Law and Administration of Adam Mickiewicz University in Poznań (Poland), e-mail: krzysztof.mularski@amu.edu.pl, ORCID: 0000-0002-4664-9812.

** LLD, Faculty of Law and Administration of the University of Szczecin (Poland), e-mail: krzysztof@grzesiowscy.pl, ORCID: 0000-0003-3287-7790.



as the legislator, to a certain extent, favours the interests of the person who suffered personal injury over those of the entity responsible for the damage.

Keywords: disability pension, reduction, prospects, success, future

INTRODUCTION

The subject matter of the present paper covers the conditions for and the content of a claim for an appropriate disability pension granted in the event of the reduction of prospects for success in the future (the so-called third disability pension condition; Article 444 § 2 CC).

The choice of the subject is primarily justified by the fact that, in the legal literature, a disability pension granted in the event of the reduction of prospects for success in the future has been given much less attention than a pension granted in case of other entitlements laid down in Article 444 § 2 CC, i.e. a disability pension granted in the event of total or partial loss of capacity to work and earn money or due to the increased needs of the injured person. In this context, A. Szpunar many times spoke about a “stepmother’s” style of treatment of the third disability pension condition.¹ However, it must be admitted that, since he expressed his opinions, there has been a significant increase in the number of doctrinal statements, which are still relevant today. Relatively, in comparison with other entitlements to a disability pension, little interest in a pension granted in the event of the reduction of prospects for success in the future would not have to be a problem in itself if the stance of the doctrine were uniform and clear. However, the way of understanding the third condition for a disability pension is not established; quite the contrary, different (at least to some extent) meanings of “the reduction of prospects for success in the future” are proposed. As a result, depending on the adopted stance, a set of events (actual states) relevant to the claim considered herein is shaped differently. The greater complexity of the reduction of prospects for success in the future as an entitlement to a disability pension (in comparison with other entitlements) constitutes the justification for this state of affairs.² Taking into consideration the needs of practice is also what supports the idea of analysing this issue. The above-presented state of doctrinal considerations on the third condition for a disability pension, and more precisely its non-exhaustively indicated reasons, seem to make

¹ See Szpunar, A., ‘Głosa do wyroku SN z 28 stycznia 1963 r., 2 CR 193/62’, *Nowe Prawo*, 1964, No. 4, p. 419; Szpunar, A., ‘Czyny niedozwolone w Kodeksie cywilnym’, *Studia Cywilistyczne*, 1970, Vol. XV, p. 97; Szpunar, A., ‘Uwagi o rencie na rzecz poszkodowanego’, in: *Studia z prawa prywatnego. Księga pamiątkowa ku czci Profesor Biruty Lewaszkiewicz-Petrykowskiej*, Łódź, 1997, p. 344; Szpunar, A., *Odszkodowanie za szkodę majątkową. Szkada na mieniu i osobie*, Bydgoszcz, 1998, p. 152 et seq.

² See Szpunar, A., in: *Materiały dyskusyjne do Projektu Kodeksu Cywilnego Polskiej Rzeczypospolitej Ludowej. Materiały Sesji Naukowej 8–10 grudnia 1954 r.*, Warszawa, 1955, p. 347; Rezler, J., *Naprawienie szkody wynikłej ze spowodowania uszczerbku na ciele lub zdrowiu (według prawa cywilnego)*, Warszawa, 1968, p. 97; Śmieja, A., in: Olejniczak, A. (ed.), *System Prawa Prywatnego, Prawo zobowiązań – część ogólna*, Vol. 6, Warszawa, 2018, p. 749; Sobolewski, P., in: Osajda, K. (ed.), *Kodeks cywilny. Komentarz. Zobowiązania. Część ogólna*, Warszawa, 2022, Article 444, Ref. No. 73.

it the most difficult to prove and the least reliable entitlement to a compensatory pension.³ The stance of the doctrine corresponds harmoniously to rare and often divergent, at least in terms of details, judicial decisions.⁴ Legal uncertainty in this area generates increased transaction costs (e.g. increased cost of an evidence proceeding or costs of legal representation), which could probably be at least partially avoided if the interpretation of a relevant fragment of Article 444 § 2 CC were stable.

The outlining of the subject matter of the analysis and arguments for undertaking it allows for moving on to highlighting its purpose. The aim of the analysis is to try to solve some interpretative doubts occurring in civil law concerning the phrase “reduction of prospects for success in the future”. It is necessary to emphasise the word ‘some’ used above, because detailed analysis of the issue would require at least an extensive study if not a monograph. In particular, historical and legal issues⁵ as well as comparative-legal ones⁶ will remain outside the scope of the analysis. The procedural issue concerning the statement in the judgement admitting the claim for a disability pension due to the reduction of prospects for success in the future will not be discussed either (the issue is important first of all with regard to minors and consists in a question whether a court can grant a disability pension for the future, determining the date from which it will be payable, or whether it can only

³ See Szpunar, A., in: *Materiały dyskusyjne...*, op. cit., p. 347; Kaliński, M., *Szkoda na osobie i jej naprawienie*, Warszawa, 2021, p. 267.

⁴ It is difficult to indicate judgements that entirely focused on the third condition for a disability pension; the subject matter discussed in the present paper occurred almost always, if not marginally, at least beside considerations on other issues (in particular, a disability pension granted for the loss of capacity to work and earn money); for latest judgements see and cf. in particular: judgement of the Appellate Court in Kraków, of 9 March 2022, I ACa 911/20; judgement of the Appellate Court in Warszawa, of 14 April 2021, V ACa 576/20; judgement of the Appellate Court in Szczecin of 25 February 2021, I ACa 272/20; judgement of the Appellate Court in Poznań of 28 January 2021, I ACa 850/19; judgement of the Appellate Court in Białystok of 6 April 2020, III APa 110/19; judgement of the Appellate Court in Szczecin of 11 December 2019, I ACa 696/18; judgement of the Appellate Court in Warszawa, of 6 September 2019, VI ACa 197/19; judgement of the Appellate Court in Warszawa, of 18 March 2019, VI ACa 1032/17; judgement of the Appellate Court in Warszawa, of 11 May 2017, I ACa 361/16; judgement of the Appellate Court in Warszawa, of 19 December 2016, VI ACa 1575/15; judgement of the Appellate Court in Szczecin of 2 March 2016, I ACa 1117/15; judgement of the Appellate Court in Szczecin of 21 May 2015, I ACa 55/15; judgement of the Appellate Court in Białystok of 21 March 2014, I ACa 853/13; judgement of the Appellate Court in Poznań of 15 January 2014, I ACa 1096/13; judgement of the Appellate Court in Łódź of 3 December 2013, I ACa 637/13; judgement of the Appellate Court in Kraków, of 18 June 2013, I ACa 507/13; judgement of the Appellate Court in Szczecin of 23 April 2013, I ACa 639/12; judgement of the Appellate Court in Poznań of 27 March 2013, I ACa 156/13; judgement of the Appellate Court in Lublin of 26 March 2013, III APa 1/13.

⁵ The source of the present regulation is Article 161 KZ, which is based on § 1236 ABGB in its primary version. Up to now, the examples of events relevant in relation to the third condition for granting a disability pension provided in the past by R. Longchamps de Berier affect discussion on the issue (Longchamps de Berier, R., *Uzasadnienie projektu Kodeksu zobowiązań z uwzględnieniem ostatecznego tekstu Kodeksu*, Warszawa, 1934, p. 206), which A. Szpunar rightly points out (Szpunar, A., ‘Glosa do wyroku...’, op. cit., p. 419; Szpunar, A., ‘Czyny niedozwolone...’, op. cit., p. 97; Szpunar, A., ‘Uwagi o rencie...’, op. cit., p. 344; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 152 et seq.).

⁶ A sceptical opinion on the role of comparative studies for the subject of the analysis undertaken in the present paper: Kaliński, M., *Szkoda na osobie...*, op. cit., p. 271.

determine the liability of the defendant in the event of another court dispute in the future).⁷ It should be emphasised that reference to other conditions for a disability pension will be made only to the extent deemed necessary and, what is more, in a rather narrow scope. On the one hand, the subject of the analysis justifies it; on the other hand, there are reasons for emphasising in literature that all conditions for granting a disability pension are closely correlated; each of them at least to some extent depends on the others, and each of them to some extent determines the others.⁸

The analysis in the present paper is conducted with the use of a dogmatic legal method, which is understood as interpretation of the text of a normative act in accordance with a specific conception of interpretation; possibly drawing particular legal conclusions based on the rules (directives) of inference adopted in the legal culture.⁹ The conception of derivation constitutes this chosen conception of interpretation.¹⁰ The application of the derivation conception should clarify some issues and, in particular, make it possible to observe some previously overlooked aspects of the topic considered.¹¹

GROUNDS FOR CLAIMING A DISABILITY PENSION DUE TO THE REDUCTION OF PROSPECTS FOR SUCCESS IN THE FUTURE

1. Attempting to determine the grounds for claiming a disability pension due to the reduction of prospects for success in the future and, in the next step, to determine the scope (set) of events, states of affairs or phenomena (actual states) relevant to them, it is first of all necessary to carry out linguistic interpretation of the phrase (fragment of a normative act) "reduction of prospects for success in the future" (Article 444 § 2 CC). To maintain readability of the analysis, it is necessary to determine the meaning of particular phrases: "prospects", "success in the future",

⁷ For a more detailed approach, see Burian, B., 'Roszczenie małoletniego o rentę z tytułu uszkodzenia ciała lub rozstroju zdrowia', in: *Aktualne zagadnienia prawa prywatnego*, Marszałkowska-Krześ, E. (ed.), Wrocław, 2012, *passim* and the literature exhaustively indicated therein.

⁸ See, in particular, Szpunar, A., 'Glosa do uchwały siedmiu sędziów Sądu Najwyższego z dnia 17 czerwca 1963 r., III CO 38/62', *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych*, 1965, No. 9, item 196, p. 414; Szpunar, A., 'Roszczenie małoletniego o rentę wypadkową', *Nowe Prawo*, 1968, No. 4, p. 531; Szpunar, A., 'Czyny niedozwolone...', *op. cit.*, p. 94; Szpunar, A., 'Uwagi o rencie...', *op. cit.*, p. 344; Szpunar, A., *Odszkodowanie za szkodę...*, *op. cit.*, p. 147.

⁹ With regard to philosophical and theoretical legal problems connected with the choice of the specific conception of interpretation, see Mularski, K., 'Kilka uwag o granicach prawa i dyskusji nad tymi granicami', in: Szczepaniak, R. (ed.), *Problemy pogranicza prawa cywilnego*, Warszawa, 2022, p. 83 et seq.

¹⁰ For a friendly presentation in a nutshell for a reader who is not savvy about the theory of law, see Zieliński, M., *Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa, 2017, *passim*.

¹¹ It is necessary to highlight, however, that the conception is of little, if at all, use for considering the terms such as "harm" (maybe the term is one of the so-called primary terms of civil law as a specific branch of law).

and “reduction [of the prospects for success in the future]”; although, some threats will be intertwined with each other.

Dictionaries of the (general, universal) Polish language provide a few categorically different meanings of the term “prospects” [in Polish: *widoki*]. Taking into account the context in which the term is used by the legislator in Article 444 § 2 CC (it should be emphasised that the term is not used in any other provision of the Civil Code) leads to the conclusion that the word means “hopes for something or the possibility that something will happen”¹² or, similarly, “possibilities of fulfilling some expectations”.¹³ Within the meaning that we are interested in, prospects can be good, excellent, better or they can be gloomy, bleak and poor. One can have prospects for “good luck”, as well as “promotion, money, work, future, success, changes and victory”.¹⁴ On the basis of the semantic rules of the general Polish language, it has not been decided whether the meaningful use of the term requires that the subject whom, to put it simply, the prospects concern should be aware of them. To tell the truth, the terms referring to mental states (“hopes”, “expectations”) suggest that; however, the examples of the word uses provided in dictionaries contradict that; from the point of view of an external observer, it can be sensibly stated that someone has prospects e.g. for a promotion, although that person has no hopes for that nor expects that. The examples of the term uses also show that what someone has prospects for does not constitute a uniform ontic category; and it concerns events (e.g. a promotion), state of affairs (e.g. work understood as the state of employment), as well as phenomena (e.g. changes).

The above findings allow us to see that the term “prospects” is in fact a two-argument predicate taking the form “X has prospects for Z”. Referring this predicate to the context of Article 444 § 2 CC raises no doubts that a variable X runs through a set of natural persons (except for Article 446¹ CC, only a natural person can incur bodily harm) and a variable Z concerns some (not determining which) future events, states of affairs or phenomena. Reconstructing the predicate in the language of modal logic, one can say that X has prospects for Z when and only when it is possible that X obtains (in the broadest sense of the word) Z. It is not possible to overlook that such interpretation of “prospects” is extremely broad; in fact, it concerns everything that may happen in the future.

The legislator does not determine “prospects” alone but “prospects for success in the future”. In the light of the above findings, the phrase “for the future” should be recognised as an obvious statutory *superfluum* added to the text of a normative act most probably for stylistic and maybe also didactic reasons.¹⁵ Thus, it is sufficient to focus on “success” [in Polish: *powodzenie*]. If the meanings that are impossible due to

¹² See *Słownik języka polskiego PWN*: <https://sjp.pwn.pl/sjp/widoki;2535769.html>. Thus, also *Uniwersalny słownik języka polskiego*, Vol. 4, T-Z, Dubisz, S. (ed.), Warszawa, 2003, p. 415.

¹³ See *Wielki słownik języka polskiego PAN*: <https://wsjp.pl/haslo/podglad/40384/widoki>, accessed on 4 April 2023.

¹⁴ *Ibidem*: <https://wsjp.pl/haslo/podglad/40384/widoki>, accessed on 4 April 2023.

¹⁵ For more with regard to the conditions that must be fulfilled in order to recognise a particular fragment of a text of a normative act as a *superfluum* (rejecting an assumption that a legislator is linguistically rational) see: Mularski, K., ‘Kilka uwag o zbędnych fragmentach aktów normatywnych’, in: *Prawo wobec wyzwań współczesności*, Tom V, Poznań, 2008, p. 15 et seq.

the context in which the term “success” is used in Article 444 § 2 CC are excluded, it means “a successful turn of events, a triumph, a desired result” (probably also, in a narrower sense, “popularity, being in demand”.¹⁶ Similarly, people speak about “success at work”, i.e. “the achievement of intended goals in some activities”. Dictionaries provide numerous examples of the use of the term discussed herein. Apart from quantifiers specifying the size or scale of it (“great, outstanding, extraordinary, some, little” etc.), success may be “financial”, “economic” or “life-related”. It can concern many different spheres: economic activities, trade, breeding, business, career, love, education, undertakings, sport, personal matters, affairs of the heart, finance, fight for something, life, games, elections, competitions, home, work, school, society, treatment, search, and performance of various activities. It may be illuminating to juxtapose the term “success” with terms recognised as synonymous; they include, inter alia, success and wealth, success and prosperity, success and fame, success and triumph, success and happiness, success and recognition, and success and perseverance.¹⁷

The reflection concerning the meaning of the term “success” determined by the semantic rules of the general Polish language allows for drawing the following conclusions. Firstly, success is always, generally speaking, referred to something beneficial (positively assessed); whereby dictionaries do not determine an entity that should make this assessment (whether the benefit should be recognised from the perspective of an entity generally involved or from the point of view of possible common social beliefs determining what can be recognised as someone’s success) nor the axiology (the system of values, ideology) from the perspective of which the assessment should be made. Secondly, success is quite clearly associated with (gainful, professional) work; however, it certainly cannot be identified with it and can in fact concern any events, states of affairs or phenomena (provided that they are positively assessed from some perspective). Thirdly, the interpretation of “success” is in fact the interpretation of one of the variables of the above-reconstructed predicate: X has prospects for Z.

The above findings concerning the meaning of “prospects for success in the future” allow for moving on to the analysis of the reduction of those prospects. First of all, it should be pointed out that the term “reduction” confirms the formerly adopted modal characteristics of prospects for success: only what could have occurred or happened may be reduced, as well as confirms the pleonastic nature of the phrase “in the future”: it is not possible to reduce something that has already occurred. However, another issue is more important, i.e. the categorisation of explicitly elliptical reduction in the terms corresponding to the formerly adopted considerations. As usual, the semantic rules of the general language are a starting point.

The term “reduction” [in Polish: *zmniejszenie*] does not have its dictionary-based characteristics, but a dictionary provides the meaning of its meaning basis, i.e. the

¹⁶ See *Słownik języka polskiego PWN*: <https://sjp.pwn.pl/sjp/powodzenie;2506707.html>, accessed on 4 April 2023. Also see Dubisz, S. (ed.), *Uniwersalny słownik języka polskiego. Tom 3. P-Ś*, p. 469.

¹⁷ See *Wielki słownik języka polskiego PAN*: <https://wsjp.pl/haslo/podglad/46071/powodzenie/4918545/w-pracy>.

verb “reduce”. It means “to cause the size, scope, number, intensity of something or distance between some objects to become smaller”.¹⁸ Referring the meaning determined by the rules of the general language to the former findings, one can state, with very strong conviction, that the reduction of prospects for success means reduced probability of success. If the axiology attributed to the legislator (who, inter alia, in particular protects life by establishing an interpretative directive in Article 444 § 1 CC, which rules that doubts as to the scope of indemnity of “one-off” injuries resulting in the recognition of harm to the person should be solved in favour of the injured) is taken into account, there are no longer any doubts that *a maiori ad minus* decrease in the probability of success also means a situation in which the formerly existing probability falls to zero (somebody loses whatever prospect for success). Giving up mathematical formalisation, the reduction of prospects for success takes place when the achievement of success was possible (and thus, the probability of achieving it was higher than 0 and lower than 1¹⁹), but the probability of achieving it decreased (also in case it decreased to 0 and made someone’s success impossible).

The meaning of the term “reduction of prospects for success [in the future]” is also determined by the close and the closest linguistic context in which the term is used.

Firstly, not prejudging the scope of injuries indemnified by a disability pension under Article 444 § 2 CC and, in particular, not determining whether the injuries exceed the scope of damage within the sense given to this term by Article 361 § 2 CC, one can state that the injuries are undoubtedly ones of a financial nature. Such a result of the interpretation, regardless of the undisputed stance of the doctrine and case law, is determined, inter alia, by the meaning of words used by the legislator in Article 444 § 2 CC, which speaks about “the injured” and “the obliged to redress the damage”. The term “success” and, as a result, its scope is subject to considerable limitation. Thus, it may concern only economic or financial success. This stance, although its justification differs in some details, is presented in the doctrine in an almost uniform way.²⁰

Secondly, also the term “disability pension” is important for the interpretation process. Refraining from analysing details unimportant in the present paper, we can

¹⁸ See *Wielki słownik języka polskiego PAN*: <https://wsjp.pl/haslo/podglad/4781/zmniejszyc>. Also see *Słownik języka polskiego PWN*: <https://sjp.pwn.pl/szukaj/zmniejszenie.html> (04.04.2023) (“uczynić coś mniejszym lub mniej intensywnym” – make something smaller or less intensive); Dubisz, S. (ed.), *Uniwersalny słownik języka polskiego. Tom 4. T–Ż*, Warszawa, 2003, p. 1039.

¹⁹ If the occurrence of success were certain, we would not speak about events, states of affairs or phenomena only possible. One can point out that approaching the issue in this way is not only in conformity with standard philosophical assumptions (the assumption that the occurrence of a given event, especially one that is understood as a man’s success, is certain would require that very strong rather unintuitive ontic assumptions should be adopted) but also elementary life experience (or rather cultural one). It quite often happens that people who were foretold success in life for various reasons did not experience that. Maybe, the decrease in the probability of achieving success is never going to reach zero and can only go in this direction (e.g. someone incurred severe and permanent harm to health but later won a lottery organised by a foundation taking care of disabled people).

²⁰ In fact, the authors of all the works quoted herein present this stance; it is in conformity with the uniform case law.

say that it is a temporary benefit granted (being aware of its blur) for a longer period, quite often (probably usually) for life, the amount of which may change over time subject to circumstances (Article 907 § 2 CC). Assuming that the legislator rationally relates the language of a normative act to the extra-linguistic reality, one should also assume that, based on Article 444 § 2 CC, there can only be such relevant success that would consist in obtaining specific financial benefits for a long time, even (although not necessarily) for life. It excludes the relevance of success understood as a single or repeated (even economic or financial success²¹) in a particular field or sphere. In consequence, it is necessary to assume that among the standard ontic categories, only states of affairs or phenomena, but not events, can obtain relevance on the basis of the fragment of Article 444 § 2 CC analysed in this paper. And in this case, the same view is almost uniformly adopted in the doctrine. It is usually said that the damage that is indemnified by the claim discussed in this paper should be *permanen*t²² or (quite closely if not synonymously) continuous²³ in nature. Statements in accordance with which a disability pension does not correspond to the nature of damage in the form of the loss of prospects for success²⁴ may be kindly interpreted as an accurate recognition of the fact that the content and scope of the term “success” determined by the semantic rules of the general language (the scope that may of course include consequences, not necessarily financial ones, of single events) is narrowed by the close and direct linguistic context of Article 444 § 2 CC.

2. The result of the linguistic interpretation should be now confronted with the systemic rules of interpretation. Giving up burdening the paper with broader theoretical and legal explanations, we need to remind that the set of norms established by the legislator is a coherent one, *inter alia*, within the meaning that the norms laid down by the legislator are not contradictory or in conflict with each other. If it is

²¹ Maybe differently, suggesting legal relevance of the chances for obtaining benefits resulting from single (incidental) events: Strugała, R., in: Gniewek, E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa, 2021, Article 444, Ref. No. 12. *Expressis verbis* against indemnification of the loss of prospects for single opportunities: Kaliński, M., *Szkoda na osobie...*, op. cit., p. 273 et seq.

²² See Rezler, J., *Naprawienie szkody...*, op. cit., p. 69; Szpunar, A., ‘Czyny niedozwolone...’, op. cit., p. 93 et seq.; Szpunar, A., ‘W sprawie ustalenia renty z tytułu uszczerbienia ciała’, *Nowe Prawo*, 1979, No. 3, p. 19; Szpunar, A., ‘Uwagi o rencie...’, op. cit., p. 344; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., pp. 145 and 152; Bieniek, G., *Odpowiedzialność cywilna za wypadki drogowe*, Warszawa, 2007, p. 140; Drela, M., ‘Renta deliktowa’, in: Drela, M. (ed.), *Renta w prawie polskim*, Wrocław, 2016, pp. 28 and 44; Wałachowska, M., in: Frasz, M., Habdas, M. (eds), *Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część ogólna (art. 353–534)*, Warszawa, 2018, Article 444, Ref. No. 21; Jantowski, L., in: Balwicka-Szczyrba, M., Sylwestrzak, A. (eds), *Kodeks cywilny. Komentarz*, Warszawa, 2022, Article 444, Ref. No. 7.

²³ See Szpunar, A., ‘Głosa do uchwały...’, op. cit., p. 414; Szpunar, A., ‘Czyny niedozwolone...’, op. cit., p. 94; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 146; Drela, M., ‘Renta deliktowa’, op. cit., p. 30 referring to E. Bagińska. In case law, see in particular the Supreme Court resolution (7) of 17.06.1963, III CO 38/62; the Supreme Court judgement of 17.06.2009, IV CSK 37/09, *Orzecznictwo Sądów Polskich*, 2010, No. 9, item 93. On “successive repetition in the future”: the Supreme Court resolution (7) of 17.06.1963, III CO 38/62; Burian, B., ‘Roszczenie małoletniego...’, op. cit., p. 25 et seq.; Drela, M., ‘Renta deliktowa’, op. cit., p. 28. Very similarly: Strugała, R., op. cit., Ref. No. 11.

²⁴ See clearly Kaliński, M., *Szkoda na osobie...*, op. cit., p. 267.

assumed, and in fact this assumption is not contentious in the contemporary Polish legal culture, that damages are compensatory in nature (are aimed at redressing legally relevant injuries incurred by the aggrieved), the meaning of “prospects for success in the future” should be determined in such a way that it does not make the scope of the term cover injuries that are subject to claims constructed based on legal provisions other than those under Article 444 § 2 CC.

Taking the above into account, it is necessary to recognise that “prospects for success in the future” does not cover injuries classified as non-pecuniary damage (harm) and subject to compensation based on a claim under Article 445 § 1 CC.²⁵ A different result of the interpretation would immediately result in double compensation for the same harm and would infringe the compensatory aim of damages. The thesis adopted here is also uniformly represented in the doctrine and case law²⁶ and is fully coherent with the uniformly accepted opinion that the permanent nature of the effects of the infringement of someone’s personal interest (including health) is one of the most important criteria (factors) determining the amount of harm and, as a result, the amount of financial compensation. Of course, it may happen that the blurred boundaries of the meaning of damage to property and harm can overlap in the context of damage consisting in the reduction of prospects for success in the future.²⁷ Then, assigning harm (in fact, its fragment or element raising classification doubts) to damage compensated by a disability pension under the third condition or to harm compensated by damages becomes, as it seems, secondary within the sense that the obligation to take it into account is more important than the type of classification applied. The question whether the disability pension under the third condition or the (adequately increased) compensation will be the means of indemnification of the fragment or element of the impairment that raises classification doubts seems to be within the limits of a court’s discretion.

3. For the sake of order, it should be pointed out that at this stage of the analysis, the functional rules of interpretation do not seem to be helpful; they will be used later in the process of specifying the above-achieved preliminary result of the interpretation.

²⁵ It should be pointed out that Article 444 § 2 CC does not solve the problem unambiguously. The provision, determining the “the aggrieved” and “the obliged to compensate damage”, suggests that only damage to property is relevant, however, does not per se exclude the interpretation that it also concerns an entity who incurred harm, because in some provisions of the Civil Code the term “damage” covers not only damage to property but also harm.

²⁶ See Rezler, J., *Naprawienie szkody...*, op. cit., p. 97; Bładowski, B., Gola, A., *Szkoda i odszkodowanie*, Warszawa, 1984, p. 70; Drela, M., ‘Renta deliktowa’, op. cit., pp. 28 and 44; Wałachowska, M., op. cit., Article 444, Ref. No. 57, 61; Kaliński, M., *Szkoda na osobie...*, op. cit., pp. 270 and 274; Banaszczyk, Z., Kaliński, M., in: Dukiet-Nagórska, T., Liszewska, A. (eds), *System Prawa medycznego. Tom III. Odpowiedzialność prawna w związku z czynnościami medycznymi*, Warszawa, 2021, p. 147; Radwański, Z., Olejniczak, A., Grykiel, J., *Zobowiązania – część ogólna*, Warszawa, 2022, p. 279. In case law, see in particular the Supreme Court resolution (7) of 17.06.1963, III CO 38/62. Double compensation for the same damage (to a small extent) seems to be admitted (inaccurately if the attribution of this opinion is accurate) by E. Bagińska in: Bagińska, E. (ed.), *System Prawa Medycznego. Odpowiedzialność prywatnoprawna. T. 5*, Warszawa, 2021, p. 711.

²⁷ See in particular Kaliński, M., *Szkoda na osobie...*, op. cit., p. 274. Cf. also Szpunar, A., in: *Materiały dyskusyjne...*, op. cit., p. 347.

4. The above-presented result of the interpretation is preliminary or general in nature in the sense that it still does not say much (or at least it does not say everything), *inter alia*, about the states of affairs or phenomena that should be treated as designates of “success” within the meaning attributed to it in Article 444 § 2 CC. Also, it does not say anything about the probability of those states of affairs or phenomena in the future, leaving a huge space between the impossibility and the necessity of achieving success by the aggrieved. In order to provide more detailed findings in the field, it will be necessary to refer more decisively to the *acquis* of the doctrine and case law, which have been deliberately omitted in most of the former analyses.²⁸

Let the observation, which corresponds to the elementary life experience and is probably indisputable, that a man’s success understood through the economic and financial prism is first of all, if not exclusively, connected with work, be the starting point for further analysis.²⁹ Obviously, work should be broadly understood, i.e. as any type of activity (not in conflict with the norms binding in the system), which provides economic or financial benefits for a worker in the long term or even life-long perspective. Thus, of course, it concerns employment based on an employment contract but also self-employment, farming, artistic and sports activities (but not accidental ones), running income-generating websites or Internet services, regular participation in various types of income-generating contests or competitions³⁰ etc. This approach fully corresponds to the clearly majority stance in the doctrine, where the reduction of prospects for success [in the future] is primarily understood (although again not exclusively) as a decrease in (also deprivation of) chances for gaining economic or financial benefits from work in its broad meaning.³¹ Most of the statements refer to work not as such but to its specific manifestation or aspects, which are invariably positively assessed. Thus, it concerns, *inter alia*, success understood as achieving (extraordinarily) good results or accomplishments at work,

²⁸ The opinions of the doctrine and case law are not in fact established in a particular interpretative conception; they find their basis more in linguistic intuition (in literature, e.g., general language dictionaries are not referred to as a basis for the purpose of legitimating proposed results), systemic or moral entities providing arguments. Quite often, arguments are limited to the provision of cases in which a provision was applied (the so-called argument of typical cases) or a statement that the scope of the provision is not limited to those cases. It was also common to specify the relationship between the scope of application of the claim based on the reason for sets of actual states discussed herein and the conditions for claims for other reasons (especially the loss of ability to work) producing a difficult to eliminate blur of the language of the interpretation process and the meta-language used for classifying its results; the issue will be discussed again in the further part of the paper. Of course, this does not make the *acquis* of the doctrine worth rejecting, but prompts using it in an adequate (to the planned objective and methodology of the paper) way.

²⁹ In an inspiring way about socially useful work: Karoń, K., *Historia antykultury*, Warszawa, 2018, *passim*.

³⁰ As regards the last example, see Śmieja, A., *op. cit.*, p. 750; Kaliński, M., *Szkoda na osobie...*, *op. cit.*, p. 270 et seq.

³¹ For a very clear approach see e.g. Sobolewski, P., *op. cit.*, Article 444, Ref. No. 73, 74; also see Bładowski, B., *op. cit.*, p. 69; Dreła, M., ‘Renta deliktowa’, *op. cit.*, p. 37; Strugała, R., *op. cit.*, Ref. No. 11.

professional promotion, or having especially well remunerated work.³² A similar idea was probably assumed in an enthymematic way in the so-called reasoning from typical cases, where the disfigurement of an actor is usually indicated as a factor preventing him from playing main roles.³³

A question arises at this point whether success understood in terms of finance (property) may result only from work in the broad meaning of the word or whether other types of states of affairs or phenomena may be taken into account. It seems that (single or incidental) events are excluded from the scope of legally relevant success and a sufficiently broad understanding of work is adopted, the space for designates of success other than work will become extremely limited, or perhaps there will be no space like that at all. Even very untypical or unusual life paths that come to mind, which a man can choose, and which do not constitute (or rather do not seem to constitute) work in its broad meaning, are very difficult to associate with economic or financial benefits that such choices might bring.³⁴ Taking into account the cultural tradition, within work in the broad meaning, one should distinguish work meaning doing the household chores in general and taking care of children in particular in order to emphasise that the reduction of prospects for doing it may also be relevant on the basis of a disability pension condition considered in the paper.³⁵

³² Speaking about benefits gained from extraordinary skills or talents, we usually have more or less explicit opinions that a disability pension based on the third condition should compensate just (and only) the benefits that the aggrieved would gain thanks to his extraordinary skills and talents. Anyway, the element of extraordinary skills or talents is agreeably emphasised in the entire doctrine. See Szpunar, A., 'Glosa do uchwały...', op. cit., p. 415; Szpunar, A., 'Roszczenie małoletniego...', op. cit., p. 531; Bładowski, B., op. cit., p. 69; Szpunar, A., 'Uwagi o rencie...', op. cit., p. 344; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 152 et seq.; Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 142; Matys, J., 'Szkoła na osobie – uwagi na tle art. 444 KC', *Monitor Prawniczy* 2004, No. 10, p. 459; Burian, B., 'Roszczenie małoletniego...', op. cit., pp. 12 et seq., 23, 28 et seq., 39 et seq.; Olejniczak, A., in: Kidyba, A. (ed.), *Kodeks cywilny. Komentarz. Zobowiązania. Część ogólna. Tom III*, Warszawa, 2014, Article 444, Ref. No. 22, Ref. No. 23; Śmieja, A., op. cit., p. 750; Wałachowska, M., op. cit., Article 444, Ref. No. 32, 57, 59; Kaliński, M., *Szkoda na osobie...*, op. cit., pp. 268 et seq., 270; Strugała, R., op. cit., Ref. No. 12; Bagińska, E. (ed.), *System Prawa Medycznego...*, op. cit., p. 711; Długoszewska-Kruk, I., in: Załucki, M. (ed.), *Kodeks cywilny. Komentarz*, Warszawa, 2023, Article 444, Ref. No. 8. In case law see in particular the Supreme Court resolution (7) of 17.06.1963, III CO 38/62; the Supreme Court judgement of 19 October 1963, II CR 976/62, *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych*, 1964, item 222; also see e.g. the judgement of the Appellate Court in Szczecin of 21.05.2015, I ACA 55/15.

³³ See Longchamps de Berier, R., *Uzasadnienie projektu...*, op. cit., p. 206; repeated many times later (e.g. Szpunar, A., 'Renta dla okaleczonego dziecka', *Nowe Prawo*, 1962, No. 9, p. 1136; Szpunar, A., 'Roszczenie małoletniego...', op. cit., p. 531 et seq.; Rezler, J., *Naprawienie szkody...*, op. cit., p. 97; Szpunar, A., 'Uwagi o rencie...', op. cit., p. 344; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 152 et seq.; Bładowski, B., op. cit., p. 69; Safjan, M., in: Pietrzykowski, K. (ed.), *Komentarz KC. T. I*, Warszawa, 2020, Article 444, Ref. No. 27.

³⁴ For example, joining a contemplative order by definition is (or at least should be) connected with poverty; similarly, the choice of a volunteer fighting in a war, even a just war, may give only honour and fame that is difficult to calculate and express in terms of pecuniary advantages.

³⁵ In this sense, an example, given for about a hundred years, of the disfigurement of a young woman, which reduced her prospects for good marriage (in the sense of financial state ensured by a husband), is still relevant, provided that, which will be discussed later, it can be assumed that the success of the aggrieved could be most probably connected with such a life path. In this context, especially see Longchamps de Berier, R., *Uzasadnienie projektu...*, op. cit.,

Not decidedly prejudging whether success understood in terms of finance (property) may be associated with something different than work in the broad sense of the word, in particular, not decidedly prejudging whether other forms of work, apart from doing household chores and taking care of children, should or should not be distinguished, in the light of the above, it seems that one should recognise the accuracy of those opinions expressed in the doctrine that associate “success in the future” exclusively with work (in its broad sense), and more precisely with economic (financial) benefits that this work provides.³⁶

At this point, it is necessary to return to the issue of the difference between the damage indemnified by a compensatory pension due to the reduction of prospects for success in the future and the harm that is indemnified by redress. In a series of statements in the doctrine, one can find suggestions that the third disability pension condition should cover harm. It can be clearly noticed when the legal relevance (pursuant to Article 444 § 2 CC) is attributed not to the economic or financial consequences of the reduction of prospects for success but to the reduction of prospects for success treated, so to speak, as all the life chances of the aggrieved. In this context, we first of all speak about “general worsening of life opportunities”.³⁷ Sometimes, categories or types of actual states are indicated in a more detailed way. We mean, for example, the inability to acquire education (possible to acquire or desired by the aggrieved)³⁸; however, it is one of the circumstances leading to the reduction of prospects for success rather than the reduction of prospects for success itself. The same can be said about the recognition of inability to do a job requiring particularly high level of trust as detriment³⁹ (provided that this trust is not associated with financial benefits) in case of a job that was earlier chosen⁴⁰ or dreamed of⁴¹ (with the same proviso).

p. 206 and next Szpunar, A., ‘Renta dla okaleczonego dziecka’, op. cit., p. 1136; Kaliński, M., *Szkoda na osobie...*, op. cit., p. 270 et seq.; Sobolewski, P., op. cit., Ref. No. 74. A different approach suggests that the actual state is only relevant on the basis of Article 445 § 1 CC, Rezler, J., *Naprawienie szkody...*, op. cit., p. 97.

³⁶ See in particular Rezler, J., *Naprawienie szkody...*, op. cit., p. 97 et seq.

³⁷ See Szpunar, A., ‘Renta dla okaleczonego dziecka’, op. cit., p. 1136; Szpunar, A., ‘Glosa do uchwały...’, op. cit., p. 415; Szpunar, A., ‘Czyny niedozwolone...’, op. cit., p. 97; Szpunar, A., ‘Uwagi o rencie...’, op. cit., p. 354; Matys, J., op. cit., p. 459. Ambiguously: Szpunar, A., ‘Roszczenie małoletniego...’, op. cit., p. 533; Burian, B., ‘Roszczenie małoletniego...’, op. cit., p. 25 et seq. Unambiguously differently, rightly, inter alia, Rezler, J., *Naprawienie szkody...*, op. cit., p. 97; Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 142. In case law see in particular the Supreme Court resolution (7) of 17.06.1963, III CO 38/62.

³⁸ See inter alia Matys, J., op. cit., p. 461; Śmieja, A., op. cit., p. 750; Safjan, M., op. cit., Article 444, Ref. No. 29; Jantowski, L., in: Balwicka-Szczyrba, M., Sylwestrzak, A. (eds), *Kodeks cywilny. Komentarz*, Warszawa, 2022, Article 444, Ref. No. 11. Also see, similarly, Wałachowska, M., op. cit., Article 444, Ref. No. 58.

³⁹ See in particular Kaliński, M., *Szkoda na osobie...*, op. cit., p. 268 et seq.

⁴⁰ See in particular Szpunar, A., ‘Uwagi o rencie...’, op. cit., p. 344; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 152 et seq.; Matys, J., op. cit., p. 459.

⁴¹ See in particular Wałachowska, M., in: Fras, M., Habdas, M. (eds), *Kodeks cywilny...*, op. cit., Article 444, Nb 32; similarly, earlier: Szpunar, A., *Renta dla okaleczonego dziecka...*, op. cit., p. 1136.

Determination of the meaning of the term “prospects for success [in the future]” allows for returning to the issue of probability of success in the future the moment a person suffers an injury. As it was stated above, the probability may oscillate between the values from 0 up to 1 (probability bordering on certainty) depending on the actual state. Elementary legal intuition embedded in, generally speaking, the principles of civil liability to pay compensation suggests that the adoption of the requirement of probability bordering on certainty (or at least a very high one) will deprive the claim discussed of whatever practical significance. Extremely rarely, if ever, achieving success within the meaning adopted is almost certain. On the other hand, the acceptance of the result of the interpretation allowing for taking into account claims for indemnifying an injury, which almost certainly would never have occurred, would make the considered disability pension condition a kind of a pleasant extra allowance added to the compensation (redress) that the injured would be always entitled to regardless of other circumstances.

Finding a balance between the above-outlined extremes, which might be recognised as the appropriate result of the interpretation of Article 444 § 2 CC within the scope analysed in the present paper, seems to be a matter that is not legitimised by the linguistic directives of interpretation or the systemic reasoning. In fact, it should be pointed out that in the discussion on this issue (conceptualised in a little different way), on the one hand, arguments from Article 361 § 2 CC are quoted (as a disability pension is a form of compensation for damage to property, and damage to property covers, inter alia, the loss of benefits, thus, the lost benefits that a disability pension indemnifies should be understood in the same way as in case of Article 361 § 2 CC, which would require a very high, if not bordering on certainty, probability of their occurrence in the future)⁴² on the other hand, arguments from the meta-linguistic classification of an injury indemnified by a disability pension due to the third condition as the so-called remote damage or lost prospects⁴³ are referred to; however, the reasoning is burdened at least with the *petitio principii* error. It is so because before the interpretation of Article 444 § 2 CC with regard to “the

⁴² A considerable part of the doctrine recognises Article 444 § 2 CC as the implementation, specification, application etc. of Article 361 § 2 CC and repeatedly emphasises that the provision neither extends nor limits the concept of damage under Article 361 § 2 CC. See, clearly, Szpunar, A., ‘Renta dla okaleczonego dziecka’, op. cit., p. 1131; Rezler, J., *Naprawienie szkody...*, op. cit., pp. 65 et seq., and 69; Szpunar, A., ‘Roszczenie małoletniego...’, op. cit., p. 529; Szpunar, A., ‘Czyny niedozwolone...’, op. cit., p. 93; Szpunar, A., ‘Uwagi o rencie...’, op. cit., p. 343 et seq.; Burian, B., ‘Roszczenie małoletniego...’, op. cit., pp. 9 et seq., 20, and 23; Dreła, M., ‘Renta deliktowa’, op. cit., pp. 30 et seq., and 33. Also see Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., pp. 140 et seq., and 143; Bagińska, E., ‘Kompensacja utraconej szansy – problem związku przyczynowego czy szkody?’, in: Olejniczak, A., Haberko, J., Pyrzyńska, A., Sokółowska, D. (eds), *Współczesne problemy prawa zobowiązań*, Warszawa, 2015, p. 51. In case law see in particular the Supreme Court resolution (7) of 17.06.1963, III CO 38/62.

⁴³ For different interpretation of damage indemnified by a disability pension analysed in the paper within the meaning of Article 361 § 2 CC, see Kaliński, M., *Szkoda na osobie...*, op. cit., p. 267, 273; Strugała, R., op. cit., Article 444, Ref. No. 11, 16. Thus, as it seems, recognising the relevance of the term “remote damage”, Banaszczyk, Z., Kaliński, M., op. cit., p. 157. Also see, against the background of the opinion about the relevance of the loss of prospects: Bagińska, E., ‘Kompensacja utraconej szansy...’, op. cit., p. 48; Bagińska, E. (ed.), *System Prawa Medycznego...*, op. cit., p. 711.

reduction of prospects for success [in the future]" is conducted, it is not possible to state whether the damage indemnified by a disability pension is a "standard" damage (in the form of *lucrum cessans*) at least because Article 444 § 2 CC may constitute a special provision (content modifier) of Article 361 § 1 CC; moreover, the requirement for "standard" lost benefits to meet a probability bordering on certainty does not result from the text of the statute but is accepted by the legal culture, which happens to differentiate the required level of probability depending on the class or type of actual states.⁴⁴ Accordingly, the classification of the injury indemnified by a disability pension due to the third condition for the specific meta-linguistic category (remote damage, lost prospects) also requires that the result of the interpretation of Article 444 § 2 CC (apart from attributing the strictest possible meaning to these categories) should be obtained earlier.

In view of the inadequacy of linguistic and systemic reasoning, the resolution of the issue can only be based on functional assumptions attributed to the rational legislator from the axiological point of view; thus, in fact, it is moral in nature. Without going into the extremely extensive literature on the subject, it can be said without any risk that the legislator not only establishes norms that ensure special (in comparison with the universe of other legally relevant injuries) protection of one who suffered damage to the person but also (at least) an interpretative directive ordering to resolve interpretative doubts as to the scope of indemnity in favour of the injured. As a result, it can be assumed with strong conviction that the rational from the axiological point of view legislator who recognises human health as the interest deserving special protection, prefers the interest of the injured to the interest of other entities (obliged to redress the damage). This leads to the conclusion that the probability of achieving success by the aggrieved does not have to be so high that it borders on certainty. On the other hand, the relationship between the preferences is not absolute in nature (otherwise, the only condition for claims concerning damage to the person would be the fact of suffering it and their amount would not be limited in any way). It contradicts the recognition of not only the probability close to 0 (minimal, inconsiderable), but also low, small, not big one. Within the framework adopted herein, which, as it must be admitted, is still quite wide, where the probability higher than low, small or not big seems to be sufficient, a court seems to have a adjudication discretion, the more narrowing, the closer the probability of achieving success in a given actual state is getting to certainty.

What facilitates the movement within the scope of the above-mentioned adjudication discretion is the *acquis* of the doctrine, which comes to conclusions that are actually very similar (unfortunately, probably identical) to the above-adopted ones; however, they are justified differently (or not justified at all). An assumption that should be adopted as a starting point is that the overwhelming majority of people start work (within the broad meaning of the word) at a certain moment of their lives, thus, the probability of starting it (or continuing it) by the injured person can be determined without the risk of an error as very high, if not bordering on certainty. Only particular psychological characteristics of the injured person

⁴⁴ Cf. Kaliński, M., *Szkoda na osobie...*, op. cit., p. 268.

might lead to a different conclusion (e.g. disability or mental retardation of such a kind or degree that would make work impossible, provided that the matter is looked at reasonably). Then, if no circumstances support the adoption of different conclusions, a court's possibilities end on drawing a conclusion that the injured person would start work in the future (or probably continue it). It will primarily happen in case of minors, and in particular small children.⁴⁵ However, if the injured person had characteristic features that allow for foreseeing with higher than small, small, low or very low probability what sort of work the injured person would start, a court would be able to recognise financial consequences of the inability to start or continue this work as damage. With regard to minors who will soon be adults, the chosen education will mainly constitute this circumstance; one cannot exclude a minor's career plans if the efforts he made gave them the quality of seriousness.⁴⁶ For example, it is difficult to recognise a minor's declaration that he would like to be a nuclear physicist as a basis for determining the nature of his future job if he is studying in the class specialising in humanities and his marks in sciences in former years were barely sufficient to pass. It is necessary to look differently at a winner of physics competitions who, still being a secondary school student, won an international award of an internship in the MARIA reactor research programme in the nuclear power plant in Świerk. The same can be said about the injured people who have already worked about the course of their future work and probable promotions.⁴⁷ In general, it concerns such features or properties (talents, skills, aptitudes etc.) of the injured persons that make it possible to assume that the probability that they would achieve success in the future in the job corresponding to those features or properties is higher than statistical.⁴⁸

On the other hand, one should be very sceptical about the opinion that those predictions should take into account the nature of the social environment of the injured minor, especially if it could negate the possibility of working at all, and

⁴⁵ See, similarly, Rezler, J., *Naprawienie szkody...*, op. cit., p. 89; Burian, B., 'Roszczenie małoletniego...', op. cit., pp. 34 et seq., and 39 et seq.; Bagińska, E., 'Kompensacja utraconej szansy...', op. cit., p. 60. In the context of the first disability pension premise, see e.g. Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 142.

⁴⁶ See, similarly and in fact in some cases identically, Szpunar, A., 'Renta dla okaleczonego dziecka', op. cit., p. 1135; Szpunar, A., 'Glosa do wyroku...', op. cit., p. 418; Szpunar, A., 'Glosa do uchwały ...', op. cit., p. 416; Matys, J., op. cit., p. 459; Rzetecka-Gil, A., *Kodeks cywilny. Komentarz. Zobowiązania – część ogólna*, Article 444, Ref. No. 23; Burian, B., 'Roszczenie małoletniego...', op. cit., pp. 25 et seq., and 39 et seq.; Olejniczak, A., in: Kidyba, A. (ed.), op. cit., Article 444, Ref. No. 22; Wałachowska, M., op. cit., Article 444, Ref. No. 60; Banaszczyk, Z., Kaliński, M., op. cit., 2.1.1.6 *Szkoda ewentualna*. In case law see the Supreme Court judgement of 6.03.1963, ISNCP 1964, item 37; the Supreme Court judgement of 11.08.1977, I CR 380/77.

⁴⁷ See, inter alia, Szpunar, A., 'Renta dla okaleczonego dziecka', op. cit., p. 1135; Rezler, J., *Naprawienie szkody...*, op. cit., p. 81; Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 142; Bieniek, G., Gudowski, J., in: Gudowski, J. (ed.), *Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część ogólna*, Warszawa, 2018, Article 444, Ref. No. 30. In case law see e.g. the Supreme Court judgement of 29 October 1962, *Nowe Prawo*, 1963, No. 7, p. 76; the Supreme Court judgement of 31 October 1966, II CR 372/66.

⁴⁸ See Burian, B., 'Roszczenie małoletniego...', op. cit., p. 34 et seq. (indicating the social environment only as one of many circumstances influencing determination of a job that would probably be done in the future by a minor).

doing a job corresponding to his particular features or properties in particular. To put it simply, such an approach would flagrantly contradict the axiology attributed to the legislator.⁴⁹

CONTENT OF THE CLAIM FOR A DISABILITY PENSION DUE TO THE REDUCTION OF PROSPECTS FOR SUCCESS IN THE FUTURE

1. Determining conditions for a claim for a disability pension due to the reduction of prospects for success in the future allows for determining its content. To make the analysis clearer, it is necessary to recall that in the predicate "X has prospects for Z", the variable X runs through the set of natural persons (including conceived children, Article 446¹ CC), and the variable Z runs through the set of states of affairs or phenomena, the occurrence of which was possible in relation to a particular natural person. Work (within its meaning), including doing household chores, provided it is long-term or even life-long one, is by far the most important, if not the only, state of affairs (phenomenon). In order to establish whether the damage caused the reduction of prospects for success understood in this way, it is necessary to determine with probability higher than low, small, little or not big that the injured person would work; the circumstance of the actual state can allow for more detailed specification of the type of work that would be possible in the future. On this basis, it is possible to determine the most important parameters of the claim content, i.e. its amount and period for which an injured person is entitled to it.

2. It seems there are no doubts that the amount of a disability pension should as precisely as possible correspond to the size of damage it is to compensate.⁵⁰ This general statement is filled with content mainly in the abundant literature and case law concerning the first condition for a disability pension, i.e. a full or partial loss of working and earning capacity. At this point, it is of course not possible to quote the rich *acquis* of the Polish civil law. Limiting references to the literature to the third condition for a disability pension, it seems sufficient to state that, in relation to the injured persons who suffered harm consisting in the inability to obtain financial benefits from work, one cannot say about this work anything more detailed than that the injured person would most probably do the job, and the disability pension should correspond to an average remuneration in the country (possibly in a particular region), established based on commonly available data published by authorised

⁴⁹ See Mularski, K., in: Gutowski, M. (ed.), *Kodeks cywilny. Tom II. Komentarz. Articles 353–626*, Warszawa, 2022, Article 444, Ref. No. 10, p. 972 et seq. In the context of a financial status of the injured person as a supposed condition for establishing the size of harm, and as a result the amount of pecuniary compensation, also see idem, Article 445, Ref. No. 17, p. 992 et seq.

⁵⁰ In the context of the third condition for a disability pension, see, identically or very similarly, Szpunar, A., 'Uwagi o rencie...', op. cit., pp. 345 and 348; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 146.

entities (e.g. the Central Statistical Office).⁵¹ It also seems that there are no doubts that due to the exemption of a compensatory pension from income tax, its amount should correspond to the average net salary.⁵² However, in case of such actual states in which it is possible to establish with sufficient probability that the injured person would do a particular job, it would be necessary to determine an average pay for people doing this job; with the exception of extraordinary circumstances that may indicate that the injured person would be involved in professional activities deserving especially high income.⁵³ With regard to such activities specified in more detail, it is necessary to consider whether the financial benefits obtained as a result of performing them do or do not include elements that are to compensate broadly understood costs incurred by the person involved in a particular activity, which should not be compensated by a disability pension (because the injured person is not going to incur them).⁵⁴ Moreover, it cannot be excluded that the nature of such a detailed activity will speak in favour of granting a disability pension that will differ in terms of the amount of individual instalments not only in comparison with a yearly payment (or several years' one) but also in relation to shorter periods.⁵⁵

If doing household chores were distinguished from work within its broad meaning, and there were grounds for recognising that as the job the injured person would start or continue, it would be necessary to determine (which, taking into account the progress in the contemporary demographic studies, seems to cause no difficulties) how wealthy an average household/homestead, in which the injured would most probably work (continue to work), is; and on the basis of that establish the amount of an adequate pension. Extraordinary circumstances of a given actual state may of course lead to different conclusions and the adoption of a higher level of the wealth of a household/homestead.⁵⁶

⁵¹ Identically or in a very similar way Rezler, J., *Naprawienie szkody...*, op. cit., p. 80; Szpunar, A., 'Czyny niedozwolone...', op. cit., p. 93; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 155; Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., pp. 143, 148, and 252. Also see, emphasising the necessity for adopting equal chances of minors Mularski, K., in: Gutowski, M. (ed.), *Kodeks cywilny...*, op. cit., Article 444, Ref. No. 10 (p. 972). Expressed differently, against calculating an average pension corresponding to the average remuneration, the Supreme Court resolution (7) of 17.06.1963, III CO 38/62.

⁵² One can note at this point that the adopted result of the interpretation means the elimination of the way of calculating compensation for the so-called loss of chances that is adopted in some other legal systems (see the broadest approach in: Bagińska, E., 'Kompensacja utraconej szansy...', op. cit., pp. 44, 47, 52, 56, and 62).

⁵³ See, inter alia, Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 148; Burian, B., 'Roszczenie małoletniego...', op. cit., p. 34 et seq. In case law see the Supreme Court judgement of 8 November 1977, I CR 380/77.

⁵⁴ See, against the background of the cost of overnight accommodation, the so-called catering and expatriation allowance, Rezler, J., *Naprawienie szkody...*, op. cit., p. 75; also see Burian, B., 'Roszczenie małoletniego...', op. cit., p. 34 et seq.

⁵⁵ Thus, accurately, Dreła, M., 'Renta deliktowa', op. cit., p. 45.

⁵⁶ For example, the injured was planning to get married to a very rich man who died in the same accident in which she incurred damage to the person and the nature of injuries practically excludes the possibility of marrying someone with the same financial status.

3. With regard to the duration of the obligation relationship under which a debtor is obliged to provide disability benefits, the only thing that can be said is that it should correspond to the probable period when the given activity would be performed. The issue was given a lot of attention in the context of the first condition for a disability pension and was primarily connected with a thought about the probable end of professional activeness (retirement). Consolidating the comments only within the views of the doctrine concerning the reduction of prospects for success in the future, one can state that a disability pension should also take into account the time of probable cessation of the injured person's activeness. Being unable to pursue a particular activity, a person was not able to acquire the right to retirement benefits; the loss of them also has a nature of legally relevant harm.⁵⁷ However, it must be noted that some activities that constitute work within its broad meaning do not result in the acquisition of the right to retirement benefits; then, it would be possible to determine the moment of the obligation relationship expiry.⁵⁸

RELATIONSHIP BETWEEN A DISABILITY PENSION DUE TO THE REDUCTION OF PROSPECTS FOR SUCCESS IN THE FUTURE AND A DISABILITY PENSION DUE TO FULL OR PARTIAL LOSS OF CAPABILITY TO HAVE GAINFUL EMPLOYMENT

The interpretation of the "reduction of prospects for success in the future" makes it possible to determine the relationship between the content and scope of this phrase and the content and scope of Article 444 § 2 *in principio* CC, which constructs the so-called first condition for a disability pension. In order to use this opportunity, it is also necessary to determine the content and scope of "full or partial loss of capability to have gainful work", or at least the choice of a particular result of the interpretation of this term from the different (at least in details) interpretation results proposed in the doctrine. However, it is not possible to oversee that, in case of the adoption of sufficiently broad, identical to the adopted in the present paper, interpretation of the term "work" under Article 444 § 2 CC as any kind of sufficiently permanent lawful human activity bringing specific financial benefits, the scopes of both conditions are convergent. In view of the dominant but not uniform (and, by the way, not resulting from the linguistic interpretation of the term "loss") stance in the contemporary Polish civil law studies, according to which the condition of the loss of capability to have gainful work cannot, at least as a rule, be applied to minors, in fact, the only difference between the two conditions for a disability pension would consist in the fact that a disability pension due to the third condition would indemnify damage suffered by minors.⁵⁹ It cannot be overlooked that such

⁵⁷ Thus, accurately, inter alia, Rezler, J., *Naprawienie szkody...*, op. cit., p. 94.

⁵⁸ See Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 141.

⁵⁹ Very similarly, on [only] "theoretically independent" nature of the condition, Rezler, J., *Naprawienie szkody...*, op. cit., p. 65; Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 148 et seq.;

conclusions, in line with J. Rezler's opinions expressed a long time ago, undermine at least the assumption of the linguistic and legislative rationality of the legislator, who would construct a claim that, as a rule, has no prospect for success in finding application of its conditions in practice.⁶⁰

The defence of the assumption of the legislator's rationality might look as follows. Firstly, it might force us to modify the interpretation result adopted in this paper and significantly broaden the content (and as a result the scope) of the term "reduction of prospects for success in the future". Secondly, it would not be impossible to introduce changes to the most commonly accepted interpretation of the term "loss of capability to have gainful work" so that it included, for example, only such lost benefits that the injured person might almost certainly (or at least very probably) obtain; and other lost benefits of lesser (but still higher than low, small or not big) probability of obtaining them would be compensated by means of meeting the third condition for a disability pension.⁶¹ Then, maybe, a disability pension meeting the third condition, in accordance with the stance expressed many times, would indemnify the benefits, the obtaining of which would depend on special talents or aptitudes of the injured person (however, these benefits can still be recognised as being within the scope of a typical, standard course of the injured person's professional career; therefore, the first condition for a disability pension would still constitute adequate legal grounds). It would also be able to limit the scope of "gainful work" to the employment relationship and, possibly, business activity;

Bieniek, G., Gudowski, J., in: Gudowski, J. (ed.), *Kodeks cywilny...*, op. cit., Article 444, Ref. No. 59; Kaliński, M., *Szkoda na osobie...*, op. cit., pp. 267, 269, 273 et seq. It is pointed out (although whatever verification of the thesis would require examination of abundant case law pursuant to Article 444 § 2 CC), that in practice the third condition for a disability pension does never constitute independent grounds for granting a compensatory pension; see Rezler, J., *Naprawienie szkody...*, op. cit., pp. 97 and 99, and recently Kaliński, M., *Szkoda na osobie...*, op. cit., pp. 267, 273 et seq. In case law, against the independence of the third condition for a disability pension: the Supreme Court judgement of 3 December 1970, I PR 427/70; clearly differently: the Supreme Court resolution (7) of 17.06.1963, III CO 38/62. Less unambiguously, indicating that the analysed condition is independent in nature, although "most often" is related to the first condition for granting a pension: Matys, J., op. cit., p. 459; Olejniczak, A., in: Kidyba, A. (ed.), op. cit., Article 444, Ref. No. 21. In a different direction, clearly trying to limit the scope of application of the first and third conditions for granting a disability pension, see, in particular, Bagińska, E. (ed.), *System Prawa Medycznego...*, op. cit., p. 711. As regards opinions unambiguously indicating independence of the analysed condition for a disability pension, see Szpunar, A., 'Renta dla okaleczonego dziecka', op. cit., p. 1133; Szpunar, A., 'Glosa do uchwały...', op. cit., p. 415; Szpunar, A., 'Roszczenie małoletniego...', op. cit., p. 532; Szpunar, A., 'Czyny niedozwolone...', op. cit., pp. 94 and 97; Szpunar, A., 'Uwagi o rencie...', op. cit., pp. 344 and 353; Szpunar, A., *Odszkodowanie za szkodę...*, op. cit., p. 147; Bieniek, G., *Odpowiedzialność cywilna...*, op. cit., p. 140 et seq.; Burian, B., 'Roszczenie małoletniego...', op. cit., p. 11; Dreła, M., 'Renta deliktowa', op. cit., pp. 30, 37; Śmieja, A., op. cit., p. 749; Safjan, M., op. cit., Article 444, Ref. No. 27; Strugała, R., op. cit., Article 444 CC, Ref. No. 11; Sobolewski, P., op. cit., Ref. No. 75; Długoszewska-Kruk, L., op. cit., Article 444, Ref. No. 8.

⁶⁰ With a strong conviction, it can be assumed that if the third condition for granting a disability pension were waived, the dominant result of the interpretation of the first condition for a pension would change and its scope would also cover minors.

⁶¹ Cf., in relation to an example of a young footballer at the beginning of his career, Kaliński, M., *Szkoda na osobie...*, op. cit., p. 272 (in a slightly polemic reference to Mularski, K., in: Gutowski, M. (ed.), *Kodeks cywilny...*, op. cit., Article 444, Ref. No. 10 (p. 972); cf. also Rezler, J., *Naprawienie szkody...*, op. cit., p. 97 et seq.

it would exclude obtaining financial benefits from sports, artistic etc. activity from the scope of the term.⁶² Thirdly, an attempt to look at a disability pension due to the reduction of prospects for success in the future in a different way is probably not excluded. It seems that the role of a disability pension granted for this reason should not (and at least does not have to) be limited to the grounds for minors' claims and, in situations difficult to imagine, persons' whose success in the future would not be associated with work within its broad meaning. The legislator seems to decide that, at least in relation to a certain category of damage causing bodily injuries or health disorders, a lower than standard level of probability of their occurrence is required for the purpose of constituting grounds for their indemnification. In addition, the fragment of the provision analysed in the present paper quite clearly expresses the specific axiology that prefers, to a greater than standard extent, interests of the person who suffered personal injury to the interests of other entities (obliged to redress harm).

CONCLUSIONS

The analysis carried out in the present paper lets us state that every natural person (including a conceived child) is eligible to claim a disability pension due to the reduction of prospects for success in the future, provided that they suffered bodily injuries or health disorders, which deprived them of the capability to work within the broad meaning of the word, including doing household chores, and as a result they lost financial benefits that this work would bring. In order to determine the causal relationship between the harm to the person (an event causing that harm) and financial consequences of inability to stat work, it is sufficient to determine the level of probability that is higher than low, small or not big that the injured person would start work. In a set of actual states in which there are no grounds for predicting what type of work the injured person would start in the future, which concerns primarily minors in general, and small children in particular, a court shall determine a disability pension amount corresponding to the average (net) remuneration in the country. However, if the circumstances of the case indicated a specific type of work, a disability pension should correspond to an average remuneration paid for the job that would probably be done by the injured person. The injured person's special skills or talents (or the lack of them) might justify granting a disability pension lower or higher than the average remuneration within the given type of work. Work should be understood broadly as any sufficiently permanent activity that is in compliance with the norms of the system and brings financial benefits, doing household chores. The "reduction of prospects for success in the future" understood in this way, as a rule, with the exception of situations when a minor is injured, matches the meaning and scope of the "loss of capability to have gainful work" commonly (although not uniformly) accepted in the doctrine. The role of the provision seems to be to resolve interpretation doubts concerning financial benefits

⁶² Clearly in this direction, recently, Strugała, R., *op. cit.*, Article 444, Ref. No. 11.

that an injured person would obtain in the future with its probability higher than low, small or not big, but lower than probability bordering on certainty (or at least very high), which is usually required in relation to lost benefits in case of a disability pension due to the loss of capability to have gainful work. The role also seems to consist in clear indication of values cherished by the legislator and determination of preferences in the set of values that are in conflict with each other. The legislator, to a certain extent, prefers the interests of a person who suffered personal injury to the interests of an entity liable for damage.

BIBLIOGRAPHY

- Bagińska, E., 'Kompensacja utraconej szansy – problem związku przyczynowego czy szkody?', in: Olejniczak, A., Haberko, J., Pyrzyńska, A., Sokołowska, D. (eds), *Współczesne problemy prawa zobowiązań*, Warszawa, 2015.
- Bagińska, E., in: Bagińska, E. (ed.), *System Prawa Medycznego. Odpowiedzialność prywatnoprawna. T. 5*, Warszawa, 2021.
- Banaszczyk, Z., Kaliński, M., in: Dukiet-Nagórska, T., Liszewska, A. (eds), *System Prawa medycznego. Tom III. Odpowiedzialność prawna w związku z czynnościami medycznymi*, Warszawa, 2021.
- Bieniek, G., *Odpowiedzialność cywilna za wypadki drogowe*, Warszawa, 2007.
- Bieniek, G., Gudowski, J., in: Gudowski, J. (ed.), *Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część ogólna*, Warszawa, 2018.
- Bładowski, B., Gola, A., *Szkoda i odszkodowanie*, Warszawa, 1984.
- Burian, B., 'Roszczenie małoletniego o rentę z tytułu uszkodzenia ciała lub rozstroju zdrowia', in: Marszałkowska-Krześ, E. (ed.), *Aktualne zagadnienia prawa prywatnego*, Wrocław, 2012.
- Długoszewska-Kruk, I., in: Załucki, M. (ed.), *Kodeks cywilny. Komentarz*, Warszawa, 2023.
- Drela, M., 'Renta deliktowa', in: Drela, M. (ed.), *Renta w prawie polskim*, Wrocław, 2016.
- Jantowski, L., in: Balwicka-Szczyrba, M., Sylwestrzak, A. (eds), *Kodeks cywilny. Komentarz*, Warszawa, 2022.
- Kaliński, M., *Szkoda na osobie i jej naprawienie*, Warszawa, 2021.
- Karoń, K., *Historia antykultury*, Warszawa, 2018.
- Longchamps de Berier, R., *Uzasadnienie projektu Kodeksu zobowiązań z uwzględnieniem ostatecznego tekstu Kodeksu*, Warszawa, 1934, p. 206.
- Matys, J., 'Szkoda na osobie – uwagi na tle art. 444 KC', *Monitor Prawniczy*, 2004, No. 10.
- Mularski, K., 'Kilka uwag o zbędnych fragmentach aktów normatywnych', in: *Prawo wobec wyzwań współczesności*, Vol. V, Poznań, 2008.
- Mularski, K., 'Kilka uwag o granicach prawa i dyskusji nad tymi granicami', in: Szczepaniak, R. (ed.), *Problemy pogranicza prawa cywilnego*, Warszawa, 2022.
- Mularski, K., in: Gutowski, M. (ed.), *Kodeks cywilny. Tom II. Komentarz. Art. 353–626*, Warszawa, 2022.
- Olejniczak, A., in: Kidyba, A. (ed.), *Kodeks cywilny. Komentarz. Zobowiązania. Część ogólna. Tom III*, Warszawa, 2014.
- Radwański, Z., Olejniczak, A., Grykiel, J., *Zobowiązania – część ogólna*, Warszawa, 2022.
- Rezler, J., *Naprawienie szkody wynikłej ze spowodowania uszczerbku na ciele lub zdrowiu (według prawa cywilnego)*, Warszawa, 1968.
- Rzetecka-Gil, A., *Kodeks cywilny. Komentarz. Zobowiązania – część ogólna*, Lex/el., 2010.
- Safjan, M., in: Pietrzykowski, K. (ed.), *Komentarz KC. T. I*, Warszawa, 2020.

- Słownik języka polskiego PWN*: <https://sjp.pwn.pl/sjp/widoki;2535769.html>.
- Sobolewski, P., in: Osajda, K. (ed.), *Kodeks cywilny. Komentarz. Zobowiązania. Część ogólna*, Warszawa, 2022.
- Strugała, R., in: Gniewek, E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa, 2021.
- Szpunar, A., 'Czyny niedozwolone w Kodeksie cywilnym', *Studia Cywilistyczne*, 1970, Vol. XV.
- Szpunar, A., 'Głosa do uchwały siedmiu sędziów Sądu Najwyższego z dnia 17 czerwca 1963 r., III CO 38/62', *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych*, 1965, No. 9, item 196.
- Szpunar, A., 'Głosa do wyroku SN z 28 stycznia 1963 r., 2 CR 193/62', *Nowe Prawo*, 1964, No. 4.
- Szpunar, A., *Odszkodowanie za szkodę majątkową. Szkodą na mieniu i osobie*, Bydgoszcz, 1998.
- Szpunar, A., 'Renta dla okaleczonego dziecka', *Nowe Prawo*, 1962, No. 9.
- Szpunar, A., 'Roszczenie małoletniego o rentę wypadkową', *Nowe Prawo*, 1968, No. 4.
- Szpunar, A., 'Uwagi o rencie na rzecz poszkodowanego', in: *Studia z prawa prywatnego. Księga pamiątkowa ku czci Profesora Biruty Lewaszkiewicz-Petrykowskiej*, Łódź, 1997.
- Szpunar, A., 'W sprawie ustalenia renty z tytułu uszkodzenia ciała', *Nowe Prawo*, 1979, No. 3.
- Szpunar, A., in: *Materiały dyskusyjne do Projektu Kodeksu Cywilnego Polskiej Rzeczypospolitej Ludowej. Materiały Sesji Naukowej 8–10 grudnia 1954 r.*, Warszawa, 1955.
- Śmieja, A., in: Olejniczak, A. (ed.), *System Prawa Prywatnego, Prawo zobowiązań – część ogólna*, Vol. 6, Warszawa, 2018.
- Uniwersalny słownik języka polskiego*, Vol. 4, T-Ż, Dubisz, S. (ed.), Warszawa, 2003.
- Wałachowska, M., in: Frasz, M., Habdas, M. (eds), *Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część ogólna (art. 353–534)*, Warszawa, 2018.
- Wielki słownik języka polskiego PAN*: <https://wsjp.pl/haslo/podglad/40384/widoki>.
- Zieliński, M., *Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa, 2017.

Cite as:

Mularski K., Grzesiowski K. (2023) 'Disability pension granted due to the reduction of prospects for success in the future', *Ius Novum* (Vol. 17) 2, 86–107. DOI 10.2478/in-2023-0014