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Abstract of Ph.D. dissertation

COMPENSATION FOR HARM SUFFERED
AS A RESULT OF THE INCOMPATIBILITY OF THE
TOURIST SERVICE
WITH THE CONTRACT

Ph.D. dissertation prepared under
supervision of
professor Mariusz Załucki Ph.D.

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This thesis comprises an introduction, four chapters, and final conclusions and postulates *de lege ferenda*. The introduction provides a substantive justification for the chosen topic, the aim of the thesis, the main research problem, the specific problem, and the methods adopted in the research. The main research problem is summarized in the question: **how do legal regulations regarding compensation for wasted leave function in Poland?** The specific problem is formulated as follows: what is the state of the theory, current doctrine, and jurisprudence regarding compensation for non-pecuniary damage in the form of wasted leave in Poland? **The author's goal** was to attempt a comprehensive analysis of the discussed issue in the Polish law, including systematizing the views of the doctrine and scientific output of judicial decisions regarding the concept and nature of damage in the form of wasted leave, the legal basis and legal regime for its compensation, the grounds for pursuing this claim and the method for determining the amount of compensation, and related terminology. Moreover, the author's aim was to solve the problem of the legal basis for compensation for wasted leave and, if necessary, to formulate appropriate *de lege ferenda* postulates.

The main argument of this thesis is that **it is justified to modify the current legal regulations regarding compensation for wasted leave in order to strengthen the legal protection of consumers**. The research problem outlined above allowed him to formulate the following hypotheses:

1. **H1:** The provisions regarding compensation for the wasted leave have been controversial for many years among both legal scholars and jurisprudence.
2. **H2:** The current legal regulations regarding compensation for the wasted leave require legislative intervention, as the new legal structure (Article 50 of the Labor Code) is burdened with numerous flaws.

The author specified thirteen research questions, which he answered in the body of the thesis. Furthermore, he employed three research methods: a formal-dogmatic approach, a historical-legal approach, and a case study.

The first chapter examines the basic concepts of damage, harm, damage in the tourism law, damage in the form of wasted vacation, monetary compensation for harm suffered, and compensation for the wasted leave. From these concepts, the author distinguishes the concepts of damage in the form of the wasted leave and compensation. Furthermore, he presents his own definition of compensation for the wasted leave. This chapter also analyses the functions and legal basis of monetary compensation for harm suffered in the Civil Code and specific

provisions.

The second chapter presents the evolution of monetary compensation for harm suffered in tort and contractual liability, as well as the evolution of compensation for the wasted leave. **The third chapter** is devoted to the legal basis for compensation for the wasted leave (including Articles 471, 322, 56, 445, and 448 of the Civil Code, Articles 11a and 16 of the Travel and Tourism Act, and mixed contractual and delict claims). **The fourth chapter** discusses the Directive No. EU 2015/2302 and the 2017 Package Travel Act regarding the organizer's liability, type of claims, and issues related to compensation for the wasted leave. Furthermore, the author also considers the legal regulations concerning compensation for non-material damage arising from contractual liability in international model law, PECL – *Principles of European Contract Law*, DCFR – *Draft Common Frame of Reference*, ACQP – *Principles of the Existing European Contract Law*, and draft amendments to legal regulations concerning monetary compensation in contractual liability prepared by academics. Researching the legal regulations in EU model law was crucial to the analysed issue. The claim for compensation for the wasted leave concerned contractual liability for non-performance or improper performance of a contract.

The argument and two research hypotheses were verified in this thesis, and the research questions were answered. Based on the research results, the author formulated *de lege ferenda* postulates. **The first one** concerns modifying the Article 50, item 2 of the Travel Insurance Act by removing the phrases of reimbursement for non-material damage and compensation and replacing them with non-material damage in the form of the wasted leave compensation for the wasted leave. After modification, the above provision should read as follows: "Under Article 50, item 2 of the Travel Insurance Act, a traveller is entitled to compensation for material damage or non-material damage in the form of wasted leave, suffered as a result of non-compliance." Furthermore, the Polish legislator should modify Article 50, item 1, points 1 and 2, and Article 50, item 5 of the Package Travel Act, as the incorrect implementation of the EU Directive 2015/2302 should be corrected. **The second one** is to regulate the package travel contract and the tourism operator's liability in the Civil Code by removing the provisions concerning the package travel contract (Articles 42 to 49 of the Act) and the provisions concerning the tourism operator's liability (Article 50 of the Act) and constructing their equivalents. In the Author's opinion, the Article 860 of the Civil Code should read as follows (Traveler's Claims):

1. *The traveller is entitled to a price reduction for each period during which a discrepancy was detected, unless it was caused solely by the traveller's action or omission.*

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2. *The traveller is entitled to compensation for material or non-material damage in the form of wasted leave. The organizer will immediately pay the compensation for damages.*
3. *The traveller is not entitled to compensation for damages if the performance or improper performance is caused by the action or omission of the traveller or third parties not involved in the performance of the services covered by the contract, if such an action or omission could not have been avoided or was a result of force majeure.*

The third one is to prepare the normative tables specifying the compensation framework for wasted leave (minimum and maximum amounts). A desirable solution would be to develop an IT tool for determining the compensation amounts. Such tables should take into account the criteria such as the plaintiff's age, the number of wasted leave days, and the number of hours of flight delay. Furthermore, such tables should allow for the amount to be increased in exceptional cases. Databases should be regularly updated. The inflation rate should also be taken into account.

In the author's opinion, the aim of thesis was achieved and the scientific problem solved.