

In today's social reality, the likelihood of damage is high. One example is the numerous traffic accidents, which lead to various types of damage. Only in 2022, more than 21,000 car accidents were recorded. At the same time, as much as PLN 7.3 billion was paid out to the injured as compensation and benefits as part of the compensation and benefits of compulsory third-party liability insurance.

Polish law provides for two universal ways of repairing damages (Article 363 § 1 of the Civil Code). The first of them is the so-called restoration of the previous condition, which in practice usually consists in making repairs to the damaged object. The second way of repairing the damage is the payment of compensation in money amounting to the loss of value of the damaged object in relation to the undamaged object. The injured party has the right to choose one of the two ways of repairing the damage. However, the choice is not unlimited since the possibility to demand the restitution of the previous condition is excluded when it is impossible (e.g. the injured party sold the damaged object) or excessively difficult or too expensive (e.g. repair costs are disproportionately high). The indicated ways of repairing the damage are at the same time alternative. Therefore, it is extremely important that the specific manner of repairing the damage be assignable either as compensation in money or as restitution of the previous condition.

This does not mean, however, that in the practice of applying the law (i.e. most often in court proceedings), there are no cases that are difficult to classify as one of the two ways of repairing damages. Such a case is the court practice of awarding compensation in the number of costs necessary to carry out the repair (the so-called monetary restitution), applied mainly - although not only - in cases related to repairs of motor vehicle damage. The indicated method of repairing damages appears to be a hybrid solution, combining features of both forms of repairing damages from Article 363 § 1, sentence 1 of the Civil Code. On the one hand, the pecuniary nature of compensation, in this case, supports the acceptance that it is compensation in money. On the other hand, however, calculating its amount as the costs necessary to make the repair could lead to the conclusion that it is a special case of restitution of the previous condition.

The aim of the project is to determine whether it is permissible in the Polish legal system to award monetary restitution and, possibly, what should be the limits of this method of repairing damages. This is a solution that - contrary to German or Italian law - has not been directly provided for in the Polish legal system. However, this does not prejudice the inadmissibility of adjudicating compensation of this kind under Polish law. Some foreign legal systems (French, Belgian, Dutch) - despite the lack of a clear legal provision - allow awarding damages in the amount of the costs necessary to restore the previous condition. On the other hand, in some legal systems (Austrian, Switzerland, Spanish), where this type of claim is not explicitly provided for, this method of repairing damages is disputed, and sometimes even rejected. Therefore, it is necessary to determine whether it is permissible to apply monetary restitution in Polish law.

Despite attempts made in the Polish legal sciences to classify monetary restitution as one of the two ways of repairing damage, a position that would not give rise to dogmatic doubts has still not been developed. Moreover, in Polish literature, there is a lack of reflections on the limits of monetary restitution. So far the research has been limited to the analysis of monetary restitution as it operates in Polish jurisprudence. The judiciary tended to hold that a claim for compensation in the amount of the costs of restoring the previous condition does not depend on whether the injured party has carried out repairs or whether it intends to do so at all. For example, it is possible even if the victim has sold the damaged vehicle without carrying out repairs. The institution of monetary restitution is therefore a very convenient way for the injured party to compensate for damages. At the same time, it is a way that leads to numerous cases of abuse and allows victims to make money from the damage. These arguments have been noted in foreign jurisdictions - such as the Austrian or German jurisdictions. Nevertheless, for some reason, the Polish Supreme Court ignored them for a long time. The situation changed in 2021. This year, the Supreme Court's line of jurisprudence began to change, opposing such a broad application of monetary restitution. The issues surrounding the application of monetary restitution are therefore very dynamic in nature. This justifies a deeper analysis of the permissibility of this method of reparation in Polish law and its borders.