

Aleksandra Partyk

## Relationship between a deceased person and their close one versus compensation amount<sup>1</sup>

### *Relacja między osobą zmarłą i jej osobą bliską a przyznawanie zadośćuczynienia*

#### Abstract

*The issue of deciding court cases basing on unconstrained evaluation by a judge is immanently connected to the matter of the motives and mechanisms utilised during a decision-making process. This problem fits into the object of interest of interdisciplinary cognitive studies. The issue presented in the text is based on the regulation in force in Polish tort law, which grants the closest relatives of the deceased the right to seek compensation after death of the deceased. The article presents an analysis conducted based on surveys filled out by 213 individuals including several groups of lawyers (also judges) as well as nonlawyers. The participants worked on one of two, partly diverse cases – differing in the figure of the person claiming benefits after the death of a loved one (husband or informal partner) and whether the couple had a child together. The survey results confirm it is hard to predict how the harm may be evaluated not only in the group of lawyers but also in the group of nonlawyers. In general, respondents see a basis for granting benefits to the relatives of the deceased. The outcomes of the research give reasons for formulating the suggestion that compensation cases ought to be adjudicated by courts which rule as collegial bodies (comprising lay judges and professional judges).*

**Keywords:** *decision making, discretionary power of a judge, formalised relationship, social factor, adjudication*

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### Streszczenie

*Problematyka rozstrzygnięcia spraw sądowych na podstawie nieskrepowanej oceny sędziego jest immanentnie związana z kwestią motywów i mechanizmów wykorzystywanych w procesie decyzyjnym. Problem ten wpisuje się w przedmiot zainteresowania interdyscyplinarnych studiów kognitywnych. Ukazane w tekście zagadnienie oparte jest na regulacji obowiązującej w polskim prawie deliktów, która przyznaje najbliższym członkom rodziny zmarłego prawo do dochodzenia zadośćuczynienia po śmierci osoby zmarłej. W artykule przedstawiono analizę przeprowadzoną na podstawie ankiet wypełnionych przez 213 osób, w tym kilka grup prawników (także sędziów) oraz osób niebędących prawnikami. Uczestnicy pracowali nad jedną z dwóch, częściowo odmiennych, spraw – różniących się m.in. postacią osoby ubiegającej się o świadczenia po śmierci osoby bliskiej (męża lub nieformalnego partnera) oraz tym, czy para miała wspólne dziecko. Wyniki badania potwierdzają, że trudno jest przewidzieć, jak krzywda może być oceniana nie tylko w grupie prawników, ale także w grupie osób niebędących prawnikami. Generalnie respondenci widzą podstawy do przyznania świadczeń bliskim zmarłym. Wyniki badań umożliwiają sformułowanie sugestii, że sprawy o zadośćuczynienie powinny być rozstrzygane przez sądy orzekające kolejalnie (składające się z ławników i sędziów zawodowych).*

**Słowa kluczowe:** *podejmowanie decyzji, dyskrecjonalna swoboda orzecznicza, sformalizowany związek, czynnik społeczny, orzekanie*

## 1. Introduction

One of the crucial issues connected with deciding court disputes is the problem of the motives which guide judges while making decisions. The decision-making process is multifaceted, determined by an array of factors of various origin and weight. Judges – equipped with the competence to adjudicate in accordance with their conscience – are burdened with making decisions while they ought to take into account the entirety of circumstances regarding a legal case. The weight and legal meaning they give to specific facts established in the proceedings depends on their sensitivity and perception of a particular case. The issue of the motives affecting a judge's decision-making process gains in importance the broader the range of discretionary freedom accompanying adjudication is.

Among the cases for which the Polish legislator left a significant margin of discretionary freedom to judging panels are those regarding compensation. Under Polish law, compensation is granted of a so-called “appropriate amount” as determined by the court. Effectively, in such cases, payments are awarded not based on legally determined mathematical calculations, but rather on a decision taken freely by a judging panel that conducts a “valuation” of the harm suffered by a plaintiff. The problem is not only of a local character, as the difficulty to evaluate harm does not show up under Polish law or not only concerns Polish lawyers and psychologists. Emotional harm, as Lisa Feldman Barrett claims, is much more variable from the perspective of economical predictability than physical one<sup>2</sup>. As the Supreme Court of Poland clarified in the judgment of 18 July 2014 in the case IV CSK 631/13<sup>3</sup>, the complexity of the problem of compensating for harm within the non-financial realm, difficult to determine and assess, caused the legislator to introduce a unique solution providing adjudicating courts with certain decision-related freedom (so-called “judges’ law”, Polish: “*prawo sędziowskie*”). Since a claim for compensation is evaluated by the court according to vague criteria, it often happens that in relatively similar conditions various courts issue judgments that differ to a large extent – not only concerning the amounts of money awarded, but also regarding the decision whether to award any compensation at all. As such, it is justifiable to ask the question about the rationales which determine the direction of decisions taken by judges in such court cases.

The discussed issue is part of a supranational problem of the arbitrariness of decisions pronounced by judges. Suffice to say that this problem is analysed from numerous perspectives by researchers coming from various legal systems. One can read in the literature in particular about the “noise” in decision making<sup>4</sup>. As it appears from the research conducted by D. Kahneman, O. Sibony and C.R. Sunstein, this issue is apparent in court decisions – regarding similar court cases, different judges may pronounce judgments which differ significantly<sup>5</sup>.

<sup>2</sup> L.F. Barrett, *Jak powstają emocje. Sekretne życie mózgu*, Warszawa 2020, p. 323.

<sup>3</sup> LEX No. 1511144.

<sup>4</sup> D. Kahneman, O. Sibony, C.R. Sunstein, *Szum. Czyli skąd się biorą błędy w naszych decyzjach*, Poznań 2022.

<sup>5</sup> D. Kahneman, O. Sibony, C.R. Sunstein, *Szum...*, p. 23 et seq.

And in so far, as it is impossible to determine with certainty all the factors which played an important role in making the decision by the court, it is worth conducting analyses in this regard. This is because this issue is connected with the problem of the unpredictability of court judgments and uncertainty surrounding the law. Therefore, the problem of variability of judgments needs to be analysed taking into account court cases heard by Polish courts.

## 2. Legal context

Pursuant to Article 446 § 4 of the Polish Civil Code<sup>6</sup>, courts may award an appropriate amount to the closest family members of a deceased person, on the grounds of pecuniary compensation for the harm caused to them. Subjects entitled to filing claims under the cited regulation are the closest family members of the deceased. The legislator, however, does not define this term, leaving this matter to be interpreted by participants of the legal domain, in particular by the court adjudicating a given court case<sup>7</sup>. An observation has been pronounced in the literature, according to which the party entitled to demand compensation is a person who belongs to the family of the deceased, provided there is an actual bond between this person and the deceased, a bond of such a nature that it speaks for acknowledging that this person is the closest one<sup>8</sup>.

There is an unquestionable difficulty in formulating an exhaustive list of the deceased's closest persons. The legislator does not even clarify whether they mean family *sensu largo* or *sensu stricto*. As a consequence of the aforementioned, in court practice, determining who should be counted as a family member entitled to a financial benefit is left to the discretionary decision taken by the judging panel. Such a determination should be based on the entirety of circumstances connected with the adjudicated case<sup>9</sup>. Nevertheless, it is based on such fuzzy premises that the risk of delivering contrary interpretations by various judging panels is unavoidable. It is also suggested in the literature and in judicial decisions that the concept of a close person of the deceased should be subject to a broadening interpretation<sup>10</sup>.

It does not create any major controversies within judicature and legal science that the spouse of the deceased is the person closest to them, unless in the particular realities of a given case there are circumstances disqualifying such an assessment (e.g. an actual long-term separation, ongoing divorce proceedings, etc.). On the other hand, the problem with the deceased's unmarried partner is even more ambiguous.

<sup>6</sup> The Act of 23 April 1964 - The Civil Code (consolidated text: Journal of Laws of 2023 r. item 1610, as amended), hereinafter: "C.C."

<sup>7</sup> J. Haberko, *Pojęcie osoby bliskiej w prawie cywilnym*, "Przegląd Sądowy" 2011, No. 3, p. 66.

<sup>8</sup> K. Kryła, *Zadośćuczynienie pieniężne dla najbliższych członków rodziny zmarłego - uwagi na tle art. 446 § 4 k.c.*, "Przegląd Sądowy" 2013, No. 2, pp. 75-76.

<sup>9</sup> J. Haberko, *Pojęcie...*, p. 69.

<sup>10</sup> M. Karolak, *Zadośćuczynienie za śmierć osoby bliskiej*, "Forum Prawnicze" 2019, No. 5, p. 30, available at: <https://doi.org/10.32082/fp.v5i55.244> [accessed on: 5 January 2023].

The issue of how to treat a divorced spouse after the former partner dies is considered disputable (see e.g. Supreme Court judgment of 22 February 2018, I CSK 377/17<sup>11</sup>). Under Polish law, informal relationships are not subject to registration. Moreover, Polish legislator does not clearly regulate the issue of cohabitation (concubinage) or mutual rights and obligations of cohabiters. Cohabitors cannot effectively assert legal protection equal to that granted to married couples once the informal relationship comes to an end. They are not included in the circle of statutory heirs either<sup>12</sup>. Under Polish law, only marriage is legally authorised<sup>13</sup>. It needs to be pointed out, however, that nowadays cohabitation as a form of having a family is no longer a marginal occurrence as it was only a few decades ago. A shift in society's attitude towards informal relationships has been noted in the literature<sup>14</sup>. On the other hand, a considerable part of the Polish public, holding conservative views, is not well-disposed to support such relationships. This sociological discrepancy results in a dichotomy of directions of legal reasoning – in the literature one can find standpoints which recognise an unmarried life partner of the deceased as the person closest to them<sup>15</sup>, as well as opposite viewpoints, according to which a cohabiting partner can be recognised as the deceased's closest person, provided that the ties between them were strong enough<sup>16</sup>.

Determining whether the party filing a claim belongs to the circle of people referred to in Article 446 § 4 C.C. or not is of fundamental importance regarding the result of the court case. Should the court state that the claim is raised by a person who is not one of the closest family members of the deceased, the decision will be issued to dismiss the claim. This is due to the fact that such a situation means that there is no justification for the claim in principle. In such instance, the plaintiff will not be awarded any payout. Whereas, if the court deciding the dispute regarding compensation recognises the demand as justified in principle, the value of the compensation awarded to the plaintiff should be assessed.

The legislator stipulated that the amount of the awarded compensation should be appropriate. At the same time the lawmaker does not point out the criteria for this "appropriateness"<sup>17</sup>. This task instead has been placed on the shoulders of courts and representatives of legal literature. The aim of such compensation, in the form

<sup>11</sup> LEX No. 2484752.

<sup>12</sup> M. Cieślukowska, *Współczesna kohabitacja – charakterystyka zjawiska* [in:] *Współczesna rodzina. Szanse – zagrożenia – kierunki przemian*, K. Pujer (ed.), Wrocław 2016, p. 20.

<sup>13</sup> M. Jadcak-Żebrowska, *Prawa i obowiązki małżonków*, Warszawa 2017, p. 21.

<sup>14</sup> A. Partyk, *Uprawnienia konkubenta spadkodawcy w prawie szkockim*, "Kwartalnik Prawa Prywatnego" 2018, No. 1, p. 120; A. Partyk, *Optymalność zachowku wobec przemian rodzinno-społecznych*, "Studia Prawnicze. Rozprawy i Materiały" 2020, No. 1(26), p. 121, available at: <https://doi.org/10.34697/2451-0807-sp-2020-1-009> [accessed on: 15 December 2022]; J. Pawliczak, *Zarejestrowany związek partnerski a małżeństwo*, Warszawa 2014, p. 61.

<sup>15</sup> M. Karolak, *Zadośćuczynienie...*, p. 30.

<sup>16</sup> M. Łolik, *Nowelizacja kodeksu cywilnego w zakresie możliwości przyznania zadośćuczynienia za śmierć osoby bliskiej*, "Przegląd Prawa Handlowego" 2008, No. 9, p. 14.

<sup>17</sup> M. Romatowska, *Zadośćuczynienie za krzywdę na gruncie kodeksu cywilnego – aspekty praktyczne*, "Temidium" 2013, No. 4, p. 37, available at: [www.temidium.pl/artykul/zadosuczynienie\\_za\\_krzywde\\_na\\_gruncie\\_kodeksu\\_cywilnego\\_aspekty\\_praktyczne-287.html](http://www.temidium.pl/artykul/zadosuczynienie_za_krzywde_na_gruncie_kodeksu_cywilnego_aspekty_praktyczne-287.html) [accessed on: 5 January 2022].

of a monetary payout, is to relieve suffering of the harmed party<sup>18</sup>. It should not be nominal since its aim is to compensate for psychological damages suffered<sup>19</sup>. On the other hand, it is not acceptable for the awarded compensation to become the source of unjustified enrichment of the plaintiff.

The compensation is supposed to be an equivalent of the harm suffered, which implicitly is extraordinarily difficult to put a monetary value on. Each individual case of this kind must be evaluated separately, taking all various circumstances of the case into consideration. It is assumed within jurisprudence that the assessment of the harm and the compensation due ought to be conducted while taking into consideration the objective criteria and not the plaintiff's subjective ones (Supreme Court decision of 27 February 2018, I CSK 634/17<sup>20</sup>). As the Supreme Court emphasised in the judgment of 27 June 2014 in the case V CSK 445/13<sup>21</sup>, determining the amount of the compensation for harm (Article 446 § 4 C.C.) should be performed taking all the occurring circumstances into consideration. Both the circumstances affecting the amount of the compensation and the criteria for their assessment must be adjudicated on a case by case basis regarding the particular injured person. And so, the amount of the compensation directly depends on the judging panel's assessment, whose criteria are of a vague character and are linked to the circumstances of the particular case. That offers a very broad margin of judicial manoeuvre where a crucial role can be played by individual sensitivities and judges' beliefs. Admittedly, the Supreme Court in the judgment of 7 February 2019, II CSK 1/18<sup>22</sup> stated that in cases regarding pecuniary compensation stipulated in Article 446 § 4 C.C. individualisation of assessment regarding the extend of the harm ought not to be conducted without taking into account the amounts of compensation that have been awarded by courts in situations characterised by similar circumstances. Nevertheless, at the same time the Supreme Court pointed out that the amounts awarded as compensation in similar court cases can only provide rough guidelines, preventing gross disproportions, while they do not constitute an additional criterion of measuring out of the payment.

As the Supreme Court emphasised in the judgment of 7 March 2014 in the case IV CSK 374/13<sup>23</sup>, the size of the wrong undergoing redress by compensation discussed in Article 446 § 4 C.C., is primarily influenced by the psychological shock and moral suffering caused by the death of a close one, the feeling of loneliness and emptiness after their death, the nature and intensity of the bond between the plaintiff and the deceased, the role that the deceased person played in their family, occurrence of disorders resulting from the close one's death, the extent to which the wronged person will be able to find their feet in the new reality and their ability to come to terms with it, the age – not only of the deceased, but also of the wronged party.

<sup>18</sup> The judgment of Supreme Court of 20 December 2012, IV CSK 192/12, LEX No. 1288712; M. Łolik, *Nowelizacja...*, p. 14.

<sup>19</sup> The judgment of Supreme Court of 11 April 2006, I CSK 159/05, LEX No. 371773.

<sup>20</sup> LEX No. 2483691.

<sup>21</sup> LEX No. 1504588.

<sup>22</sup> LEX No. 2618012.

<sup>23</sup> LEX No. 1438653.

At the same time, it is pointed out in the jurisprudence that individual physical and mental characteristics of the wronged person, including the ones resulting from a health condition, are able to augment the size of the injury and should not be overlooked when the amount of the compensation is decided on<sup>24</sup>. Whereas the extent of the injury is not affected by the wronged person's wealth<sup>25</sup>. If, in connection with the death of the person closest to them, the plaintiff experienced a significant deterioration of their financial situation, they can demand a separate claim i.e. ask for a redress to be awarded to them. A redress, contrary to a compensation, undergoes valuation as a typical financial benefit<sup>26</sup>.

The above indicated, significant discretion of criteria for deciding on awarding compensation and its amount directly impacts adjudication in the context of the two-instance court proceeding rule. Compensation cases – similarly to any other case decided by courts – undergo adjudication during proceedings which involve at least two instances<sup>27</sup>. The second instance court adjudicates on the case if the party dissatisfied with the issued decision files an appeal. As regards court cases for compensation, a judicial view ought to be regarded as well-established, according to which a court of appeal is empowered to correct the appropriate amount awarded to the plaintiff only if the awarded payment is grossly inappropriate; both strikingly lowered and grossly augmented amounts are regarded as such. Therefore, the appellate court should not interfere with the level of the awarded payment unless the awarded compensation is strikingly inappropriate. The Supreme Court, in the decision of 8 January 2019 in the case IV CSK 245/18<sup>28</sup>, stressed that appropriateness of the compensation as stipulated in Article 446 § 4 C.C. belongs to the evaluative realm, left to judges' discretion in a particular adjudicated case, and only if the amounts of compensation awarded were completely incoherent with the amounts that are awarded by courts as financial compensation for damage pursuant to Article 446 § 4 C.C. may one talk about a need to adjudicate the case again in this regard.

In compensation cases where the value of the object of litigation exceeds PLN 50,000, it is possible to file a cassation appeal regarding a valid court judgment. The cassation appeal is adjudicated by the Supreme Court, to which – regarding the compensation cases – the above-mentioned rule applies, stating that a decision not afflicted with a striking inappropriateness is not to be interfered with. In the decision of 19 June 2020 in the case III PK 165/19<sup>29</sup>, the Supreme Court emphasised that it has the authority to interfere with the value of the awarded compensation only in exceptional situations when obvious and glaring violations occur. The Supreme Court reminded that questioning the value of the compensation awarded by a court by means of a cassation appeal

<sup>24</sup> The judgment of Supreme Court of 14 December 2018, I CSK 702/17, LEX No. 2618569.

<sup>25</sup> The judgment of Supreme Court of 18 June 2014, V CSK 418/13, LEX No. 1504854.

<sup>26</sup> The judgment of Supreme Court of 28 May 2014, I CSK 332/13, LEX No. 1532766; the decision of Supreme Court of 23 November 2010, II CSK 357/10, LEX No. 1615900.

<sup>27</sup> Compare: Article 78 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997 No. 78, item 483, as amended).

<sup>28</sup> LEX No. 2603564.

<sup>29</sup> LEX No. 3033225.



requires demonstrating that the compensation awarded in the appealed judgment is glaringly inappropriate and an obvious violation of the criteria for its determination occurred<sup>30</sup>.

### 3. Method

The empirical research which constitutes the starting point for further deliberations, conducted on a group of lawyers (including judges) and non-lawyers, aimed at establishing how particular real-life situations are perceived and justified. The research purpose was to recognise the motives accompanying decision-making among various groups – judges, lawyers, law students, as well as individuals who did not choose this education path.

The data constituting the base of this study was acquired via anonymous surveys. The surveys were made available to the participants in electronic form. The survey respondents were to complete the survey by clicking on a provided link which took them to the relevant form. In a few cases, the questionnaires were printed out and presented to the interviewees in paper form and the responses given in this form were then transferred to the electronic forms.

The research was conducted using descriptions of two, to some extent similar cases, related to the issue of claims regarding payment of an amount of money on account of compensation for the death of a close one as a result of a medical error.

The surveys were presented to the groups listed above – judges, representatives of other legal professions, law students and legal trainees, as well as individuals who were neither lawyers nor law students. Each respondent was given one of the two surveys to fill out. The individuals to whom the surveys were sent were informed that their participation in the research is voluntary, the survey is anonymous and that they can withdraw from filling it out at any given moment. It was pointed out as well that the research is conducted as part of a National Science Centre research grant, while the results will be used solely for research purposes. Invitations to fill out the surveys were sent to multiple courts (of various levels and in different parts of Poland). Invitations were also sent to academic and administrative staff of the Andrzej Frycz Modrzewski Krakow University, lawyers representing various legal professions (in particular to attorneys/advocates, legal counsels and notaries), as well as to law, criminology, and resocialisation students of the Andrzej Frycz Modrzewski Krakow University.

In total, 213 individuals took part in the study, among whom there were 48 judges, 55 representatives of various other legal professions, 49 law students and legal trainees and, finally, 61 people who were neither lawyers nor law students. The surveyed individuals were randomly divided into two groups. The first one was given the task of evaluating a claim for compensation for the spouse of a patient who died because of a medical error. The factual circumstances were described, and the

<sup>30</sup> See also the decision of Supreme Court of 4 July 2019, V CSK 78/19, LEX No. 2696841.



respondents were informed that the married couple did not have any children, neither did they plan to have any, and that the duration of their marriage was relatively short. The second group were presented with a situation in which the compensation was to be awarded to the concubine of the deceased patient, whereas their relationship had lasted for a few years and they had a small child together. Apart from these circumstances the cases did not differ from one another. Neither did they include information regarding the value of the compensation claimed by the plaintiffs – the amount was to be proposed by the respondents themselves. The surveyed participants of the research were supposed to indicate whether they regard the claim as well-grounded or unjustified and, once they recognised the claim to be justified in principle, they were to propose the amount of money they would award to the female beneficiary.

The respondents were also asked to indicate the reasons for the stance they had taken. The individuals surveyed using the case of the childless wife of the deceased had the possibility to choose at least one out of a few proposed circumstances as reasons justifying their stance. Regarding this survey it was possible for them to choose from the following list of responses:

- 1) the female plaintiff's age;
- 2) the fact that the plaintiff and the deceased were married;
- 3) the fact that the plaintiff and the deceased did not have children;
- 4) the fact that the plaintiff and the deceased did not try for a child;
- 5) the suffering that the plaintiff experienced in connection with her husband's death;
- 6) the lack of infringement of personal interests of the female plaintiff.

There was also an option for every respondent to indicate additional motives. As regards the survey based on the case of the informal life partner of the deceased, the respondents had the possibility to choose at least one out of several proposed circumstances as the reason or reasons justifying their stance. Regarding that survey, the respondents could choose at least one circumstance from the list of proposals as the reason justifying their stance. In the case of this survey, they had a chance to choose from the following list of responses:

- 1) the age of the female plaintiff and the deceased;
- 2) the fact that the plaintiff and the deceased were not married;
- 3) the fact that the plaintiff and the deceased had a child;
- 4) the suffering that the plaintiff had undergone in connection with the death of her life partner;
- 5) the lack of infringement of personal interests.

Furthermore, every respondent was given the opportunity to indicate any additional motives.

From the perspective of the conducted research, it was crucial to make an attempt to learn what motives guided the respondents from particular groups while they were taking decisions regarding the possibility for a compensation to be awarded and concerning its value. The most significant factor for this research was to search for the answer to the question of how particular actual situations are evaluated by judges, lawyers, law students and legal trainees of various types, as well as by individuals

who do not deal with the law – whether their proposals to decide on a given case are similar or not and, furthermore, which circumstances played a key role regarding the decision they made. As it has already been pointed out, the fundamental difference between the two cases presented to the respondents was that while with regard to one of them the person pursuing the claim was the wife of the patient who died and this married couple did not have children, in the second case it was the informal life partner of the deceased, being also the mother of his child, who was claiming the compensation.

Given the previously mentioned circumstances of a legal nature connected with the issue of compensation awarded on the basis of Article 446 § 4 C.C., in particular the ambiguity of the subjective criterion (who the members of the closest family are) and the discretionary character of the actual circumstances affecting the value of the awarded payments, the following research hypotheses were formulated:

- 1) it will be widespread among the respondents to acknowledge the existence of grounds for awarding compensation to the spouse of the deceased patient;
- 2) the percentage of the surveyed individuals who decide that the compensation should be awarded to the unmarried life partner of the deceased will be much lower than that regarding the spouse;
- 3) the individuals who decide that the spouse ought to be awarded the compensation will regard as appropriate an amount significantly larger than the amounts proposed by those respondents who analysed the case of the deceased's unmarried life partner;
- 4) the average amount of compensation proposed by the judges will not differ strikingly from the average amounts proposed by the remaining groups of respondents.

The data collected in the course of the survey conducted among the respective groups comprising judges, legal practitioners, law students and legal trainees, individuals being neither lawyers nor law students was subject to a statistical analysis. The statistical analysis was performed using PSPP (software). Statistical significance (p-value) was set at 0.05.

## 4. Results

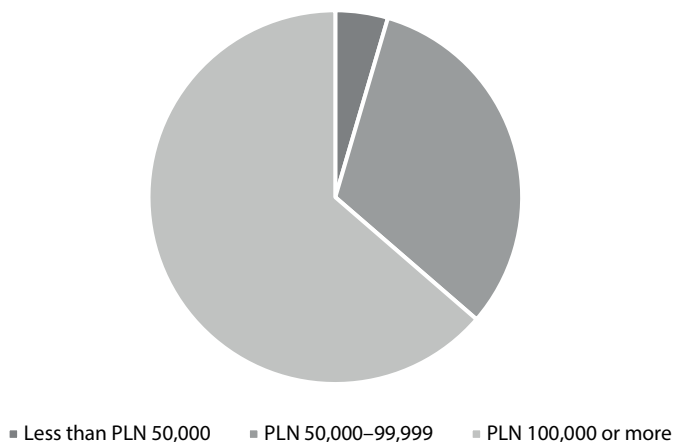
**Regarding the first scenario presented to respondents, where they were to decide on compensation to be paid out to the spouse of the deceased patient:**

**1) among judges:**

- a) all respondents recognised that the compensation is justified in principle;
- b) regarding the value of the compensation:
  - 3.85% of respondents proposed compensation amounting to a figure below PLN 50,000;
  - 26.9% of respondents proposed compensation amounting to somewhere between PLN 50,000 and PLN 99,999;
  - 53.85% of respondents proposed compensation amounting to PLN 100,000 or more;

- 15.4% of the surveyed individuals did not indicate any amount regarding the compensation;
  - the smallest amount of the proposed compensation was PLN 30,000, while the largest reached the level of PLN 300,000;
  - the average value of the compensation proposed by this group equalled to PLN 100,227.30, with the standard error of the mean at PLN 12,169.78;
  - the mode for the compensation proposed by the respondents from this group was PLN 100,000 (such a figure regarding the compensation was chosen by 36.4% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
  - the median value of the compensation proposed by this group stood at PLN 100,000;
- c) as to the motives supporting the decision to award the compensation and to pronounce its value, among the respondents who opted for awarding the compensation in principle:
- 96.2% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her husband;
  - 76.9% indicated the fact that the plaintiff and the deceased were a married couple;
  - 57.7% indicated the age of the plaintiff and the deceased;
  - 7.7% indicated the fact that the plaintiff and the deceased did not have children;
  - nobody indicated the fact that the plaintiff and the deceased were not trying for a child;

**Chart 1.** Compensation amounts for the spouse of the deceased patient proposed by judges

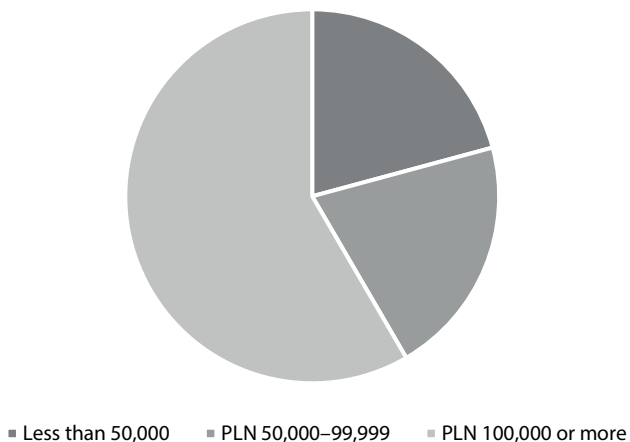


Source: own analysis.

## 2) among lawyers representing other legal professions:

- a) all respondents recognised that the compensation is justified in principle;
- b) regarding the value of the compensation:
  - 19.2% of respondents proposed an amount below PLN 50,000;
  - 19.2% of respondents proposed compensation reaching somewhere between PLN 50,000 and PLN 99,999;
  - 53.9% of respondents proposed compensation amounting to PLN 100,000 or more;
  - 7.7% of the surveyed individuals did not indicate any particular amount of the compensation;
  - the smallest amount of the proposed compensation was PLN 10,000, while the largest reached PLN 300,000;
  - the average value of the compensation proposed by this group equalled to PLN 102,916.70, with the standard error of the mean at PLN 15,996.25;
  - the mode for the compensation proposed by the respondents from this group amounted to PLN 100,000 (such a figure regarding the compensation was chosen by 29.2% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
  - the median value of the compensation proposed by this group stood at PLN 100,000;
- c) as to the motives standing behind the decision to award the compensation and to pronounce its value, among the respondents who opted for awarding the compensation in principle:
  - 84.6% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her husband;

**Chart 2.** Compensation amounts for the spouse of the deceased patient proposed by lawyers



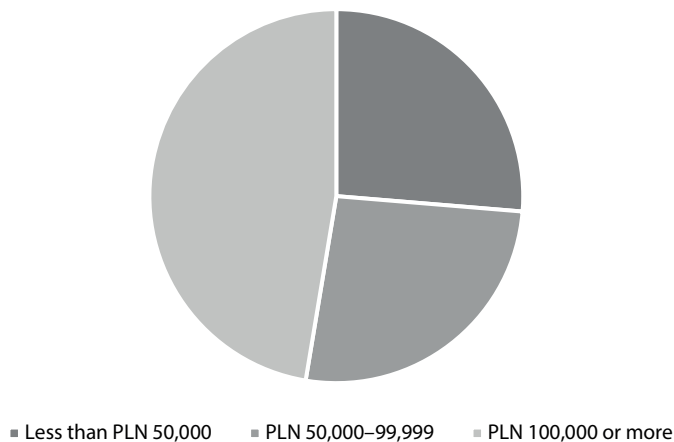
Source: own analysis.

- 73.1% indicated the fact that the plaintiff and the deceased were a married couple;
- 38.5% indicated the age of the plaintiff and the deceased;
- 3.8% indicated the fact that the plaintiff and the deceased did not have children;
- nobody indicated the fact that the plaintiff and the deceased were not trying for a child;

**3) among law students and legal trainees:**

- a) 85.7% respondents recognised that a payout is justified in principle and compensation for the death of the closest one should be awarded, whereas 14.3% of respondents formed an opposing opinion;
- b) among the individuals who recognised that, in principle, compensation ought to be awarded:
  - 20.83% of respondents proposed an amount below PLN 50,000;
  - 20.83% of respondents proposed compensation amounting to a figure of somewhere between PLN 50,000 and PLN 99,999;
  - 37.5% of respondents proposed compensation amounting to PLN 100,000 or more;
  - 20.83% of the surveyed individuals did not indicate any amount of the compensation;
  - the smallest amount of the proposed compensation was PLN 5,000, while the largest reached PLN 500,000;
  - the average value of the compensation proposed by this group equalled to PLN 113,157.90, with the standard error of the mean at PLN 27,029.36;
  - the mode for the compensation proposed by the respondents from this group amounted to PLN 100,000 (such a figure regarding compensation was chosen by 26.3% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
  - the median value of the compensation proposed by this group stood at PLN 100,000;
- c) as to the motives standing behind the decision to award compensation and to pronounce its value, among the respondents who in principle opted for awarding the compensation:
  - 95.8% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her husband;
  - 79.2% indicated the fact that the plaintiff and the deceased were a married couple;
  - 25.0% indicated the age of the plaintiff and the deceased;
  - 12.5% indicated the fact that the plaintiff and the deceased did not have children;
  - 8.3% indicated the fact that the plaintiff and the deceased were not trying for a child;

**Chart 3.** Compensation amounts for the spouse of the deceased patient proposed by students and legal trainees



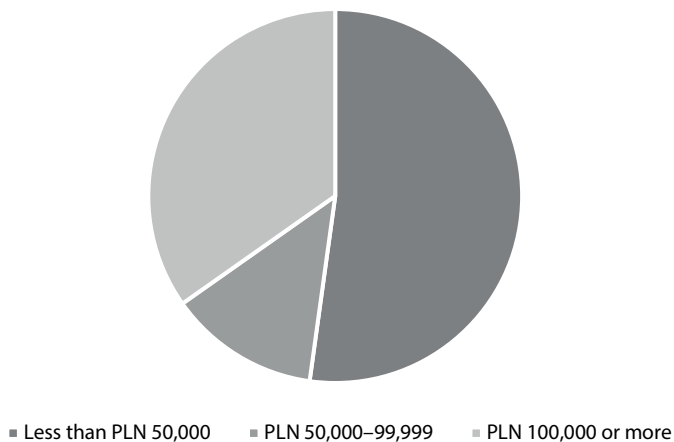
Source: own analysis.

**4) among individuals who were neither lawyers nor legal students:**

- a) 85.7% respondents recognised that a payout is in principle justified and compensation for the death of the closest one should be awarded, whereas 14.3% of respondents formed the opposing opinion;
- b) among the individuals who recognised that, in principle, compensation ought to be awarded:
  - 50.0% of respondents proposed a figure below PLN 50,000;
  - 12.5% of respondents proposed a sum between PLN 50,000 and PLN 99,999;
  - 33.3% of respondents proposed compensation amounting to PLN 100,000 or more;
  - 4.2% of the surveyed individuals did not indicate any amount of the compensation;
  - the smallest amount of the proposed compensation was PLN 2,000, while the largest amounted to PLN 400,000;
  - the average value of the compensation proposed by this group equalled to PLN 71,934.78, with the standard error of the mean at PLN 19,601.72;
  - there is no single mode for the compensation proposed by the respondents from this group (both the PLN 10,000 figure and the PLN 100,000 figure regarding compensation were respectively chosen by 17.4% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
  - the median value of the compensation proposed by this group stood at the level of PLN 40,000;
- c) as to the motives standing behind the decision to award compensation and to pronounce its value, among the respondents who in principle opted for awarding the compensation:

- 79.2% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her husband;
- 75.0% indicated the fact that the plaintiff and the deceased were a married couple;
- 12.5% indicated the age of the plaintiff and the deceased;
- 4.2% indicated the fact that the plaintiff and the deceased did not have children;
- 4.2% indicated the fact that the plaintiff and the deceased were not trying for a child.

**Chart 4.** Compensation amounts for the spouse of the deceased patient proposed by nonlawyers



Source: own analysis.

**Regarding the second scenario presented to respondents, where they were to decide on the compensation to which the unmarried life partner of the deceased patient would be entitled:**

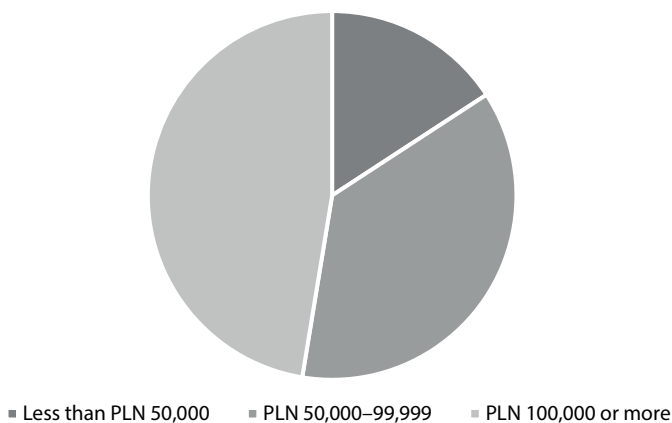
**1) among judges:**

- 95.5% of respondents recognised that a payout is justified in principle and compensation for the death of the closest one should be awarded, whereas 4.5% of respondents held an opposing view;
- among the individuals who recognised that, in principle, compensation ought to be awarded:
  - 14.3% of respondents proposed compensation amounting to less than PLN 50,000;
  - 33.3% of respondents proposed amounts between PLN 50,000 and PLN 99,999;
  - 42.9% of respondents proposed compensation amounting to PLN 100,000 or more;
  - 9.5% of the surveyed individuals did not indicate any amount of the pecuniary compensation;



- the lowest value of the proposed compensation stood at PLN 20,000, while the highest reached PLN 200,000;
  - the average value of the compensation proposed by this group equalled to PLN 105,789.58, with the standard error of the mean at PLN 24,951.01;
  - there is no single mode for the compensation proposed by the respondents from this group (both the PLN 50,000 figure and the PLN 100,000 figure regarding compensation were respectively chosen by 26.3% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
  - the median value of the compensation proposed by this group stood at PLN 75,000;
- c) as to the motives standing behind the decision to award the compensation and to pronounce its value, among the respondents who in principle opted for awarding the compensation:
- 90.5% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her life partner;
  - 81.0% indicated the fact that the plaintiff and the deceased had a child;
  - 66.7% indicated the age of the plaintiff and the deceased;
  - 19.0% indicated the fact that the plaintiff and the deceased were not a married couple;

**Chart 5.** Compensation amounts for the unmarried life partner of the deceased patient proposed by judges



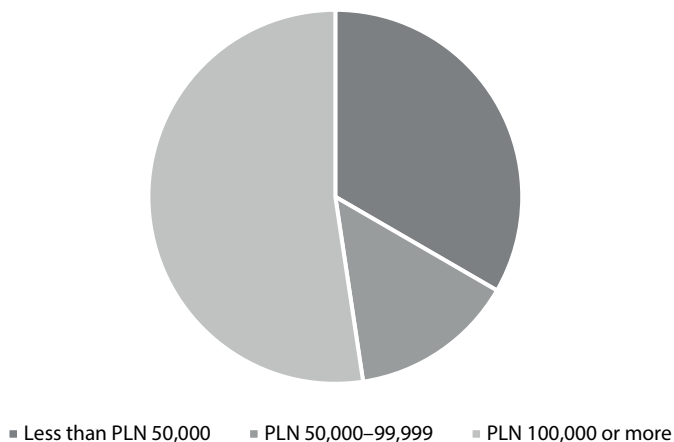
Source: own analysis.

**2) among legal practitioners representing other professions:**

- a) 93.1% of respondents recognised that a payout is in principle justified and compensation for the death of the closest one should be awarded, whereas 6.9% of respondents were of an opposing opinion;
- b) among the individuals who recognised that, in principle, the payout ought to be awarded, regarding the value of the pecuniary compensation:

- 25.95% of respondents proposed an amount lower than PLN 50,000;
  - 11.1% of respondents proposed an amount reaching somewhere between PLN 50,000 and PLN 99,999;
  - 40.75% of respondents proposed compensation amounting to PLN 100,000 or more;
  - 22.2% of the surveyed individuals did not indicate any amount of the compensation;
  - the smallest amount of the proposed compensation was PLN 10,000, while the largest was PLN 800,000;
  - the average value of the compensation proposed by this group equalled to PLN 119,500.00 with the standard error of the mean at PLN 38,235.59;
  - the mode for the compensation proposed by the respondents from this group amounted to PLN 100,000 (such a figure regarding compensation was chosen by 35.0% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
  - the median value of the compensation proposed by this group stood at the level of PLN 100,000;
- c) as to the motives standing behind the decision to award the compensation and to pronounce its value, among the respondents who opted in principle for awarding the compensation:
- 100% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her life partner;
  - 88.9% indicated the fact that the plaintiff and the deceased had a child;
  - 44.4% indicated the age of the plaintiff and the deceased;
  - nobody indicated the fact that the plaintiff and the deceased were not a married couple;

**Chart 6.** Compensation amounts for the unmarried life partner of the deceased patient proposed by lawyers

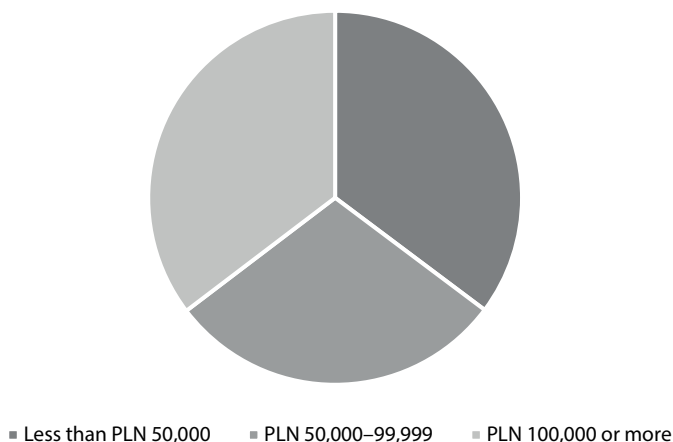


Source: own analysis.

### 3) among law students and legal trainees:

- a) 81.0% of respondents recognised that a payout is in principle justified and compensation for the death of the closest one should be awarded, whereas 19.0% of respondents were of an opposing opinion;
- b) among the individuals who recognised that, in principle, the payout ought to be awarded, regarding the value of the pecuniary compensation:
  - 35.3% of respondents proposed an amount below PLN 50,000;
  - 29.4% of respondents proposed compensation amounting to a figure between PLN 50,000 and PLN 99,999;
  - 35.3% of respondents proposed compensation amounting to PLN 100,000 or more;
  - the smallest amount proposed was PLN 5,000, while the largest reached PLN 500,000;
  - the average value of the compensation proposed by this group equalled to PLN 116,562.50, with the standard error of the mean at PLN 39,337.53;
  - the mode for the compensation proposed by the respondents from this group amounted to PLN 20,000 (such a figure regarding compensation was chosen by 18.8% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
  - the median value of the compensation proposed by this group stood at PLN 75,000;
- c) as to the motives standing behind the decision to award the compensation and to pronounce its value, among the respondents who in principle opted for awarding the compensation:

**Chart 7.** Compensation amounts for the unmarried life partner of the deceased patient proposed by students and legal trainees



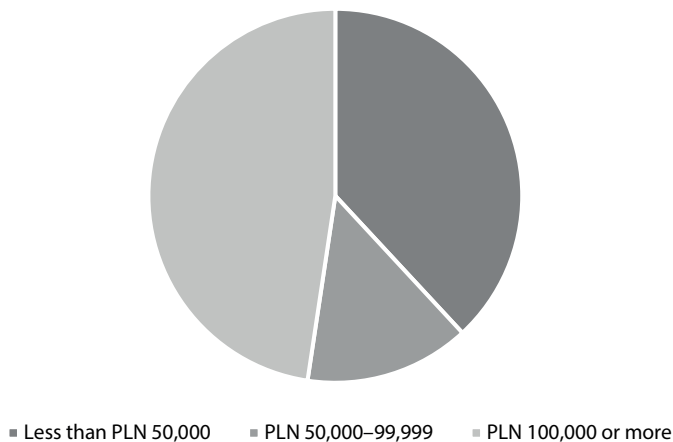
Source: own analysis.

- 94.1% indicated the fact that the plaintiff and the deceased had a child;
- 88.2% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her life partner;
- 29.4% indicated the fact that the plaintiff and the deceased were not a married couple;
- 17.7% indicated the age of the plaintiff and the deceased;

**4) among individuals being neither lawyers nor law students:**

- a) 75.75% of respondents recognised that a payout is in principle justified and compensation for the death of the closest one should be awarded, whereas 24.25% of respondents were of an opposing opinion;
- b) among the individuals who recognised that, in principle, compensation ought to be awarded, regarding the value of the pecuniary compensation:
  - 32.0% of respondents proposed a figure below PLN 50,000;
  - 12.0% of respondents proposed an amount reaching somewhere between PLN 50,000 and PLN 99,999;
  - 40.0% of respondents proposed compensation amounting to PLN 100,000 or more;
  - 16.0% of the surveyed individuals did not indicate any amount of the compensation;
  - the smallest amount of the proposed compensation was PLN 5,000, while the largest reached PLN 1,000,000;
  - the average value of the compensation proposed by this group equalled to PLN 130,190.50, with the standard error of the mean at PLN 47,270.13;
  - the mode for the compensation proposed by the respondents from this group amounted to PLN 100,000 (such a figure regarding compensation

**Chart 8.** Compensation amounts for the unmarried life partner of the deceased patient proposed by nonlawyers



Source: own analysis.

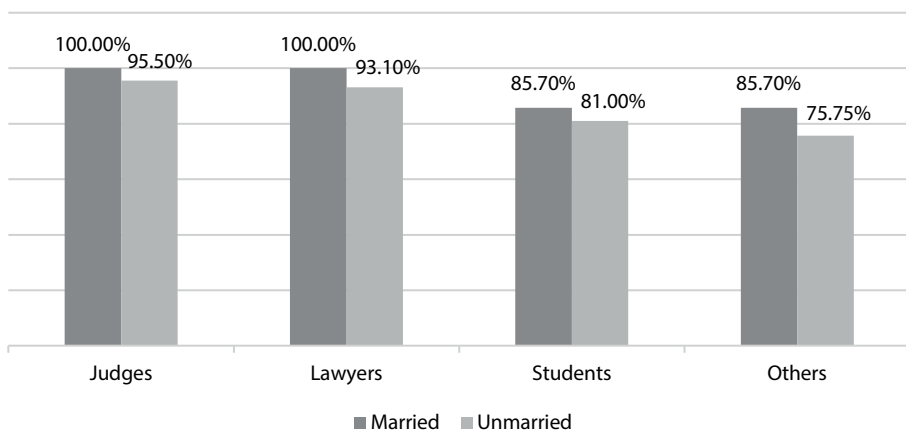
- was chosen by 28.6% of those respondents from this group who proposed a particular amount of money to be paid as compensation);
- the median value of the compensation proposed by this group stood at the level of PLN 50,000;
- c) as to the motives standing behind the decision to award the compensation and to pronounce its value, among the respondents who in principle opted for awarding the compensation:
- 92.0% indicated the fact that the plaintiff and the deceased had a child;
  - 64.0% indicated the problem of suffering that the female plaintiff experienced in connection with the death of her life partner;
  - 24.0% indicated the fact that the plaintiff and the deceased were not a married couple;
  - 4.0% indicated the age of the plaintiff and the deceased.

## 5. Conclusions

The research confirmed the hypothesis predicting that acknowledgement of the existence of the grounds for awarding compensation to the spouse of the deceased patient was widespread among the respondents. Such response was given by 100% of both judges and legal practitioners and by 85.7% of representatives of the remaining groups.

The hypothesis predicting that the proportion of respondents deciding that compensation should be awarded to the unmarried life partner of the deceased would be much lower than that regarding the spouse ought to be deemed partially confirmed. Among the groups of both judges and legal practitioners the percentage of individuals willing to award compensation to the concubine of the deceased patient amounted to 95.5% and 93.1%, respectively. Regarding the other groups, the percentage of

**Chart 9.** Acknowledgement of the grounds for awarding compensation in principle

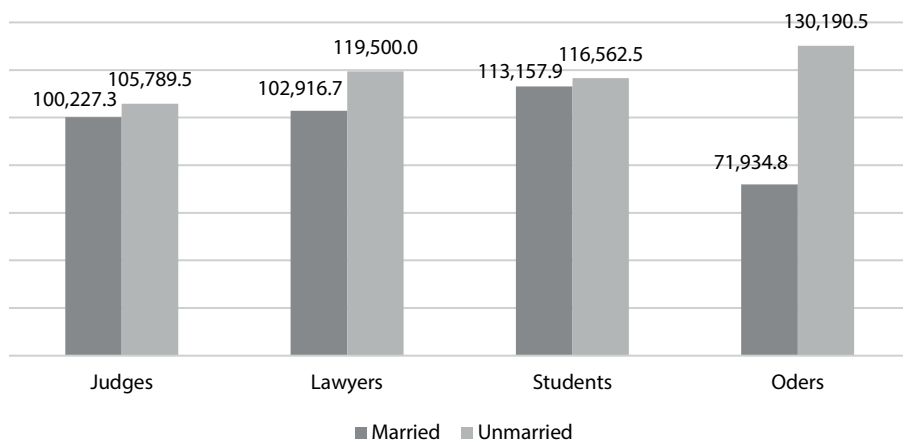


Source: own analysis.

individuals opting for allowing the claim was lower, with 81.0% of law students and legal trainees, followed by 75.75% of the remaining respondents. As such, while in the groups of judges and legal practitioners alike the proportion – concerning the case of the unmarried partner – was slightly lower that regarding the case of the deceased's spouse, for the groups of both law students/legal trainees and non-lawyers the discrepancy is much more apparent, yet still not very large.

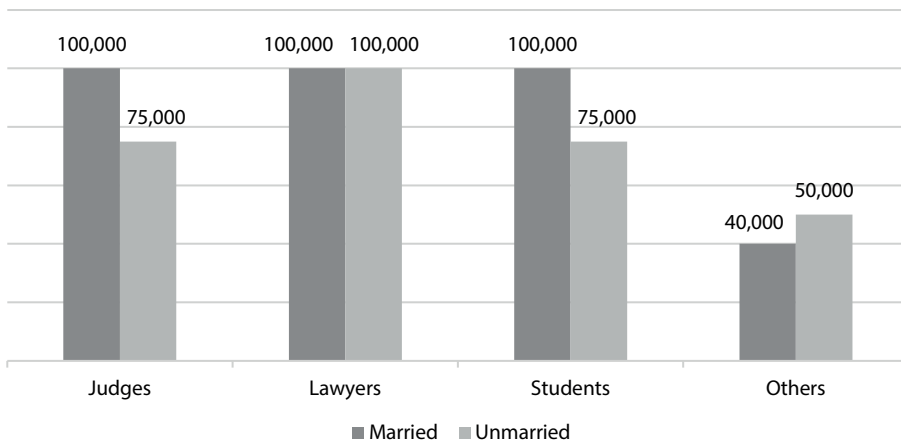
The comparison of the average values of proposed compensation (offered by those respondents who recognised that in principle there were grounds for awarding compensation and pronounced a particular monetary value of the compensation to be paid) are presented in the following charts.

**Chart 10.** Average value of proposed compensation in PLN



Source: own analysis.

**Chart 11.** Median value of proposed compensation



Source: own analysis.

The hypothesis according to which the compensation proposed for the deceased's spouse would be of a significantly higher value than that proposed to be awarded to the informal life partner of the deceased was not confirmed. Among judges, the average amount of the proposed compensation for the spouse of the deceased amounted to PLN 100,227.30, while in case of the unmarried partner of the deceased it amounted to PLN 105,789.50. Among lawyers representing various non-judicial legal professions, the average value of the proposed compensation for the spouse of the deceased amounted to PLN 102,916.70, while in case of the unmarried life partner it amounted to PLN 119,500.00. In the group comprising of individuals studying law and legal trainees, the average amount of the proposed compensation for the spouse of the deceased amounted to 113,157.90, while in case of the informal life partner it amounted to PLN 116,562.50. While among those individuals who were neither lawyers nor law students, the average amount of the proposed compensation for the spouse of the deceased amounted to PLN 71,934.78, in case of the unmarried partner of the deceased it amounted to PLN 130,190.50. Therefore, the results of the survey research allow us to formulate a thesis that the average value of the compensation to be paid to the informal life partner was similar to that to be paid to the deceased's spouse.

It is worth pointing out that among the groups of judges, legal practitioners representing other legal professions, law students and legal trainees, the differences between the average amounts of compensation to be awarded to the deceased's spouse and the compensation to be awarded to the deceased's informal life partner are not striking, whereas regarding the group of respondents comprising individuals who were neither lawyers nor law students, a considerable difference between the average amount of compensation to the informal life partner of the deceased and the average amount of compensation proposed regarding the deceased's spouse is apparent. One needs to keep in mind, however, that in that group of respondents the median values of proposed compensation were not that much different, reaching PLN 40,000 and PLN 50,000 respectively. The discrepancies regarding the average value of compensation proposed by this group should not therefore be overrated and treated as the basis for the thesis pronouncing the existence of a clear and evident trend among this group to award to the informal partners of the deceased a significantly higher compensation than to the deceased's spouse. It is also worth emphasising that the mode of the financial value of the proposed compensation regarding both cases equalled PLN 100,000 across all the respondent groups. The above results evaluated globally lead to the conclusion that there is no clear preference impacting the value of the awarded compensation in case of death of a close one referring to either the formal or informal character of the relationship which the person entitled to compensation and the deceased were in.

Concerning the research hypothesis according to which all individuals with any connection to law (judges, lawyers, law students and legal trainees) and the majority of the remaining respondents would rightly diagnose the essential statutory prerequisite which determines the decision on awarding compensation – namely the scale of the suffered injury – it needs to be pointed out that the hypothesis was not fully proven as a small proportion of judges and lawyers did not indicate this circumstance.



Moreover, in the two remaining groups the proportion of individuals who chose this motive for the decision they had taken was significantly lower.

Upon analysing the proposals concerning compensation submitted by respondents it can be observed that there was a tendency to round up the amounts to tens of thousands of Polish zlotys. The analysis of the survey results leads also to another conclusion: that the average amounts of compensation proposed by judges do not significantly differ from the average amounts of compensation proposed by the respondents in other groups. Nevertheless, the results of the research lead also to an unequivocal conclusion that in all the research groups there were considerable differences regarding the amounts of compensation proposed. At the same time, it is worth stressing that although the responses given by the judges were characterised by remarkable diversity there were not any proposals of compensation of an extremely low or extremely high value in comparison with the responses submitted by respondents from the other groups (particularly of those individuals who were not lawyers). At the same time, among the groups of judges and lawyers, the amounts indicated by them were not nominal; neither were they of a value that would be completely unrealistic to accept. Even the smallest amounts proposed by the judges and lawyers represented considerable economic value. In the two remaining groups, especially among the group of people who are not lawyers, such proposals of exceptionally small or large compensation occurred, although not commonly.

Significant differences between the proposals of amounts of compensation proposed by the respondents based on each actual situation presented to them show undoubtedly that pricing of a non-financial harm generates very serious practical difficulties. Excluding the extreme responses (exceptionally low or exceptionally high values of proposed compensation), the majority of respondents proposed payouts ranging from PLN 50,000 to PLN 200,000. Since in the same factual situation there is a considerable group of people who regard the sum of PLN 50,000 as appropriate and there is a comparable group who regard the sum of PLN 200,000 as appropriate, and in addition there is the most numerous circle opting for the payout amounting to PLN 100,000, undoubtedly the magnitude of compensation payouts awarded by the courts is significantly dependant on the personal views of the members of judging panels and their discretionary evaluation.

It is also worth noting that the study of the motives behind the justifications of respondents' standpoints shows a prominent tendency among the group of individuals with a degree in law to indicate as significant the circumstance which within legal regulation is indeed the most significant one regarding deciding the case. Whereas for the group of individuals without legal education, the proportion was significantly lower. The above-mentioned finding leads to the conclusion that in individuals without legal education intuitive identification of mechanisms functioning in law does not commonly occur. This might explain the notion existing among a considerable part of society that court rulings are incomprehensible.

With regards to the motives which guided the respondents who decided that there were grounds for awarding compensation, it needs to be noted that concerning

the case of the spouse of the deceased, the existence of the grounds for awarding the payout was recognised by 100% of the surveyed judges and lawyers representing various non-judicial legal professions, as well as by 85.7% of the surveyed students, legal trainees and non-lawyers. Whereas regarding the case where the compensation claim was pursued by the informal life partner of the deceased 95.5% of judges, 93.1% of other legal professionals, 81.0% of legal trainees and law students, and 75.75% of nonlawyers were willing to award compensation in principle. A conclusion from the above-mentioned data is that the sheer fact of remaining in a marriage constitutes a sufficient argument advocating for awarding compensation once a spouse dies. It is worth pointing out that a very high proportion of respondents, as a circumstance significant from the perspective of deciding on compensation, indicated exactly this factor i.e. that the female claimant and the deceased were married (76.9% of judges, 73.1% of lawyers, 79.2% of law students plus legal trainees, and 75.0% of non-lawyers, respectively). Whereas regarding concubinage there is a risk, although a slight one, that the claim would not be allowed in principle.

At the same time the results of the research conducted on the group of students, legal trainees, and nonlawyers confirm the belief held by a section of society referring to a lack of legal equality of married couples and informal life partners, also regarding claims that one of the couple are entitled to make once the other one dies. At the same time, as many as 81.0% of the surveyed judges, 88.89% of lawyers, 94.1% of students and legal trainees, along with 92% of non-lawyers indicated that the existence of a child that the informal couple had was a significant circumstance. What is symptomatic among both groups – law students/legal trainees and nonlawyers – is the fact that the female claimant and the deceased had a child together was the most frequently indicated circumstance impacting the matter of compensation, ahead of the suffering that the claimant experienced. Whereas in the case when the decision on awarding compensation was made regarding the married couple, only 7.69% of judges, 3.84% of lawyers, 12.5% of students and 4.2% of non-lawyers claimed that the fact that the married couple did not have children was important for their decision. None of the surveyed judges and lawyers linked the issue of evaluating the claim to the lack of attempts by the married couple to have a child, while this circumstance was important for as few as 8.3% of students/legal trainees and 4.2% of nonlawyers. From the above listed data, a general conclusion arises that insofar as in the case of an individual remaining in marriage it is primarily the formal-familiar character of the bond linking them that decides on the right to compensation after one of the couple dies; in the case of informal life partners their actual relations – manifested in particular by having children together – are of crucial importance.

## 6. *De lege ferenda* postulates

In the face of the research results, it became necessary to begin deliberations on whether the model of proceeding in compensation cases by courts adjudicating as a court comprising a single judge is the right one. For the results of the research show irrefutably

that in such court cases the decision relies on a discretionary evaluation, which is to a large extent dependant on personal beliefs held by the judge adjudicating the case. Pursuant to the Code of Civil Procedure<sup>31</sup>, in the courts of first instance compensation cases are adjudicated by a single judge; such cases are not adjudicated by lay judges.

In the era of the COVID-19 pandemic the Polish legislator introduced a number of modifications to procedural rules, justifying them on the grounds that it was necessary to adjust court procedures to sanitary regimes. New legal regulations were introduced by right of the Act of the 2 of March 2020 on special solutions related to prevention, counteracting and combatting COVID-19<sup>32</sup>, other infectious diseases, and crisis situations arising therefrom. One of the changes which were implemented was such that both in the courts of first and second instance cases are adjudicated by a court comprising a single judge (Article 15zzs<sup>1</sup> sec. 1 point 4 of the Act). And while it is true that a deviation from this rule was permitted, it is, however, dependant on the occurrence of particular circumstances; the legislator stipulated that the president of the court may order that the case is adjudicated by a judging panel composed of three judges, should he or she regard it as advisable due to an exceptional complexity or a precedential character of the court case<sup>33</sup>. Currently, after the end of the pandemic, the appellate courts continue to adjudicate as a rule in the single judge panel (Article 367 (1) of the C.C.P.).

And so, within the current legal environment, compensation cases are as a rule adjudicated by single judges in both instances. Undoubtedly, adjudicating cases by courts comprising single judges has the advantage that it generates costs lower than those incurred by collegial adjudication, and can also have some influence on quicker completion of a court proceeding. Moreover, the organisational problems are lesser<sup>34</sup>. It could also be regarded as an option enabling social distancing in the era of the COVID-19 pandemic. Nevertheless, taking into account that – in the light of the conclusions stemming from the research discussed in this article – in compensation cases the court's decisions are of a strong discretionary character, it is worth considering whether a one-judge court is optimal for issuing a fully balanced judgment which will be universally regarded as fair. It is noted in the literature – and rightly so – that adjudicating civil cases by one-judge courts is perceived as a limitation of the parties' legal protection<sup>35</sup>. Once more, it needs to be reminded that the scatter of amounts of

<sup>31</sup> The Act of 17 November 1964 – The Code of Civil Procedure (consolidated text: Journal of Laws of 2023 item 1550, as amended), hereinafter: "C.C.P.".

<sup>32</sup> The Act of the 2 March 2020 on special solutions related to prevention, counteracting and combating COVID-19, other infectious diseases, and crisis situations arising therefrom (consolidated text: Journal of Laws of 2024 item 340, as amended).

<sup>33</sup> The regulations in question are not currently in force, the analysed provision had also been modified.

<sup>34</sup> R. Bass, L. de Groot-van-Leeuwen, M. Laemers, *One or More Judges in the Courtroom? Adjudication by Single Judges or Collegial Courts*, "Nijmegen Sociology of Law Working Papers Series" 2013, No. 3, p. 13, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2270809](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2270809) [accessed on: 5 January 2023]; A. Ołaś, *Kolegialność a jednoosobowość – skład sądu I instancji w procesie cywilnym: doświadczenia i perspektywy*, "Polski Proces Cywilny" 2020, No. 3, p. 504.

<sup>35</sup> K. Markiewicz, *Słowo wstępne Prezesa SSP Iustitia* [in:] A. Begier, A. Wypych-Knieć, Ł. Małecki-Tepicht, *Sądowictwo w czasie COVID-19 – raport z badania oceny wpływu pandemii COVID-19 na wymiar sprawiedliwości w Polsce*, Warszawa 2021, p. 5; K. Markiewicz, *Właściwość sądu, skład sądu i wyłączenie sędziego w pracach Komisji Kodyfikacyjnej Prawa Cywilnego*, "Polski Proces Cywilny" 2015, No. 2, p. 296.

compensation proposed by individuals surveyed in the course of this research was very wide (even after eliminating the proposals of extremely high or extremely low value). Obviously, judges can initiate conversations with other judges regarding the cases they are adjudicating, or tackle the issues of the scale of compensation during departmental councils, when various current issues are discussed, including those related to standardising jurisprudence<sup>36</sup>. By no means, however, could such conversations be recognised as an actual substitute of adjudicating particular cases as a collegial court.

In those court cases where the court decides a dispute and decoding not clearly defined terms rests upon the court's shoulders, it is particularly important that the decision be issued taking the whole array of circumstances into consideration. It is this goal that a judging panel should strive for, shaped up in such a way that the judge adjudicating the case would not be there alone with their decision, that there would be other people sitting on the panel who would together pronounce a judgment. Then, as a result of a council, the judges opting for different stances (for example, holding opposing beliefs regarding whether a given person is a close one to the deceased) would be able to jointly work out their stance which would translate to the contents of a particular judgment. The court's decision would not then be dependent on the personal beliefs of only one judge. To the contrary, the decision would be issued jointly by people who have different life experiences and are able to offer various arguments in the course of presenting their standpoints<sup>37</sup>. In the literature this phenomenon was named "limiting a detrimental effect of negative characteristics of each judge"<sup>38</sup>. It could be connected with adjudicating the case in an appropriately comprehensive manner<sup>39</sup>. It is argued that: "It is collegiality that allows judges to disagree freely and to use their disagreements to improve and refine the opinions of the court"<sup>40</sup>. It should be stressed that "Collegiality of the court is a guarantor of deliberative justice, without whom nowadays there is no honest – and therefore nonarbitrary – judgment"<sup>41</sup>.

Others explain that: "Collegiality is important because it promotes judicial efficiency and a better judicial work product"<sup>42</sup> and: "Collegiality is a process that helps to create the conditions for principled agreement, by allowing all points of view to be aired and considered"<sup>43</sup>. Within the specificity of compensation cases, the benefits

<sup>36</sup> M. Wojciechowski, *O dwóch strukturalnych czynnikach sędziowskiej refleksyjności*, "Gdańskie Studia Prawnicze" 2017, Vol. XXXVII, pp. 623–624, available at: [https://prawo.ug.edu.pl/sites/prawo.ug.edu.pl/files/\\_nodes/strona/33461/files/38wojciechowski.pdf](https://prawo.ug.edu.pl/sites/prawo.ug.edu.pl/files/_nodes/strona/33461/files/38wojciechowski.pdf) [accessed on: 5 March 2023].

<sup>37</sup> R. Bass, L. de Groot-van-Leeuwen, M. Laemers, *One...*, p. 13.

<sup>38</sup> A. Olaś, *Kolegialność...*, p. 503.

<sup>39</sup> A. Olaś, *Kolegialność...*, p. 504, cf. K. Markiewicz, *Właściwość...*, p. 296; A. Łazarska, *Niezawisłość sędziowska i jej gwarancje w procesie cywilnym*, Warszawa 2018, p. 546.

<sup>40</sup> H.T. Edwards, *The Effects on Collegiality On Judicial Decision Making*, "University of Pennsylvania Law Review" 2003, Vol. 151, No. 5, p. 1646, available at: [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3222&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3222&context=penn_law_review) [accessed on: 5 March 2023].

<sup>41</sup> E. Łętowska, K. Pawłowski, *Od boskiego indywidualizmu do sądowego kolektywizmu, czyli o wyższości sądenia „w składzie”*, "Europejski Przegląd Sądowy" 2009, No. 9, p. 62.

<sup>42</sup> J.M. Cohen, *Inside Appellate Courts*, Ann Arbor 2002, p. 13.

<sup>43</sup> H.T. Edwards, *The Effects...*, p. 1645.

of collegial adjudication seem to by far outweigh its drawbacks, such as the risk of diffusion of responsibility<sup>44</sup>, the lack of possibility to get to know the detailed positions of particular members of the judging panel<sup>45</sup>, or the possibility for the so-called doctrinal paradox to occur<sup>46</sup>. This paradox is connected with the fact that a decision can be justified in various ways on the basis of different beliefs, which can result in the situation when the way particular judges make decisions impacts the shape of the final decision, regardless of the kinds of preferences each judge has. Since it has been pointed out in literature that: “the majority opinion does not necessarily state the author’s view of what legal regime would be best, all things considered. The author of the majority opinion may hold personal views that differ in some respect from the views articulated in the majority opinion”<sup>47</sup>.

In the context of the completed research, it needs to be pointed out that deciding disputes by single judges on their own does not seem to be an optimal solution. As it was demonstrated by the surveyed respondents, including judges themselves, significant discrepancies occurred regarding the value of proposed compensation; moreover, those proposals were justified in various ways.

In the author’s opinion it would be legitimate that in compensation cases the court adjudicating in first instance were a panel with a professional judge as its chairperson, supported by two lay judges. The participation of lay judges, of the societal component, in adjudication may be especially valuable during those proceedings in which – as it is regarding compensation cases – the judgment should be shaped up in the most thoughtful manner, while taking the whole spectrum of circumstances into account. As the survey research discussed in this article showed, involving the human factor in adjudicating compensation cases can enable the issues which are perceived as significant by the public to be noted. Admittedly, the sheer fairness of the court proceedings does not depend on whether lay judges adjudicate the case<sup>48</sup>, nevertheless, viewing the problem of the awarded compensations sums from the perspective of a “common citizen” may enable the working out of such a judgment which will appear to be more comprehensible by the public. Whereas in the appellate instance, compensation cases should always be adjudicated by a collegial court comprising three judges. A dissimilar organisation of civil procedure, even of a temporary character related to the COVID-19 pandemic, appears to be non-optimal. Regarding court cases in which the discretionary power of the court plays a crucial role and the individual sense of justice of the judge does not necessarily reflect the sentiment

<sup>44</sup> T. Romer, M. Najda, *Etyka dla sędziów. Rozważania*, Warszawa 2007, p. 108.

<sup>45</sup> K. Filipek, *Gwarancje niezawisłości sędziowskiej sędziów sądów powszechnych*, “Studenckie Zeszyty Naukowe” 2006, Vol. 9, No. 13, p. 20, available at: [https://bazhum.muzhp.pl/media/files/Studenckie\\_Zeszyty\\_Naukowe/Studenckie\\_Zeszyty\\_Naukowe-r2006-t9-n13/Studenckie\\_Zeszyty\\_Naukowe-r2006-t9-n13-s7-25/Studenckie\\_Zeszyty\\_Naukowe-r2006-t9-n13-s7-25.pdf](https://bazhum.muzhp.pl/media/files/Studenckie_Zeszyty_Naukowe/Studenckie_Zeszyty_Naukowe-r2006-t9-n13/Studenckie_Zeszyty_Naukowe-r2006-t9-n13-s7-25/Studenckie_Zeszyty_Naukowe-r2006-t9-n13-s7-25.pdf) [accessed on: 5 March 2023].

<sup>46</sup> M.J. Golecki, *Między pewnością a efektywnością. Marginalizm instytucjonalny wobec prawotwórczego stosowania prawa*, Warszawa 2011, p. 213.

<sup>47</sup> L.A. Kornhauser, L.G. Sager, *The One and the Many: Adjudication in Collegial Courts*, “California Law Review” 1993, Vol. 81, No. 1, p. 7, available at: <https://doi.org/10.15779/Z38C43K> [accessed on: 5 March 2023].

<sup>48</sup> European Court of Human Rights decision of 28 May 2013, 67318/09 and 22226/12, *Twomey, Cameron and Guthrie v. The United Kingdom*.



widespread among the public, collegiality of adjudication appears to be a downright indispensable aspect of a fair trial.

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