

# **Duty of a governing body member to provide performance to the debtor's estate and its relation to the liability for damage arising from breach of the duty to file insolvency petition**

## **Abstract**

The main topic of the thesis is the relationship between the action for supplementation of liabilities pursuant to Section 66(1)(b) of the Act on Business Corporations and the action for compensation for damages caused by breach of the obligation to file an insolvency petition pursuant to Section 99 of the Insolvency Act. Considering the relative novelty of the institute of the action to supplement liabilities, I consider the topic to be up to date. The action to supplement liabilities was introduced into the Czech legal system on the basis of the amendment to the Act on Business Corporations, which came into force on 1 January 2021. The regulation, based on the inspiration of the French *Code de Commerce*, thus replaced the original concept of sanctions for insolvency offences under the Act on Business Corporations, which, according to the legislator, had its roots in the English *wrongful trading*, which is applied in the law of England and Wales.

The above-mentioned change in the concept of liability of a member of the statutory body thus had an impact on the second mentioned institute of damages under the provisions of Section 99 of the Insolvency Act. This raised the question of the relationship between the two proceedings and whether or not their simultaneous application violated the *ne bis in idem* principle. The thesis also provides an interpretation of the action for supplementing liabilities and compensation for damages caused by the breach of the obligation to file an insolvency petition, which provides a theoretical basis for answering the question of the relationship between them. The thesis also reflects on *de lege ferenda* ideas that could help creditors to decide whether and how to pursue claims to protect their interests.

The thesis is divided into four chapters. The first chapter deals with the basic terms, which are bankruptcy, insolvency proceedings and the insolvency estate and statutory body. These form the basis for the other chapters of the thesis. The second chapter contains an interpretation of the action for the addition of liabilities pursuant to section 66(1)(b) of the Act on Business Corporations, including a interpretation of the previous regulation of liability for insolvency offences under the Act on Business Corporations. The third chapter provides an interpretation of the compensation for damages caused by the breach of the obligation to file an insolvency petition under Section 99 of the Insolvency Act. The last, fourth chapter is the key chapter and examines the relationship between the two institutes.

**Key words: action to supplement liabilities; compensation for damage caused by breach of the obligation to file an insolvency petition; ne bis in idem**