

Second Study Commission: Questionnaire for the 2008 Meeting

Second Study Commission Civil Law and Procedure

QUESTIONNAIRE

DAMAGES FOR PERSONAL INJURY

Part I – General questions

- 1a. Does your system of law have any rules governing damages for personal injury? If so, what do they provide?
- 1b. Is non-patrimonial (non-pecuniary) compensation limited to cases provided by law?
2. Which are the criteria to distinguish patrimonial and non-patrimonial damage? What are the consequences of the distinction if it exists?
- 3a. What are the primary aim and the general principle of the law of damages for personal injury (e.g. prevention, sanction, distributive function, adequate compensation)?
- 3b. Do different forms of damages for personal injuries exist (e.g. compensatory, exemplary, punitive damages)?
4. Does your system of law recognize different categories of damages for personal injury, particularly:
- physical pain
 - mental suffering due to permanent loss of abilities
 - mental suffering due to false imprisonment
 - mental suffering due to damage to intangible rights of personality
 - sentiments of fear (e.g. the worry caused by the fear of developing cancer)
 - mental suffering caused by the death of a close relative
- 5a. What methods are used to assess the non-patrimonial damage? Are there any statutory rules on sums to be awarded (e.g. minimum, maximum sums)? Are there any judicial tariffs?
- 5b. According to your system of law, which circumstances should be taken into consideration in assessing non-patrimonial loss (e.g. nature, intensity and duration of the injury and/or suffering; individual circumstances of the victim; social position; financial situation)?
- 5c. What is the role of an expert appointed by the court in assessing non-patrimonial loss?

II - Cases

6. A defective product harms V, a 25-year-old woman. Her right eye is severely injured (the sight is reduced to 50 %). What kind of non-patrimonial (non-pecuniary) damages is she entitled to?
7. A, a 20-year-old student, suffers severe brain injuries. He is reduced to a living dead. Are his parents who take care of him entitled to a compensation for their mental suffering?

8.A, a publisher publishes an article, which contains many untrue and offending statements of B's life. B sues for compensation. When assessing the non-patrimonial loss does it make any difference if B is a rock star, a politician or an unknown citizen?

9.A who is slightly injured in a car accident misses a trip to Australia he had booked recently. Is he entitled to a compensation because he was prevented from enjoying his holiday (non-pecuniary damages)?

10. A's house is burgled and he cannot sleep for months after the event. Is he entitled to monetary compensation of his distress?

III

11. Are there any proposals for reform of the legislation governing damages for personal injury?

12. What points would you wish to discuss in greater detail?

13. What subject do you suggest for the next meeting?

Nina Betetto