Second Study Commission: Questionnaire for the 2008 Meeting

Second Study Commission
Civil Law and Procedure

ESTONIA

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?

*The defamation of a person, inter alia by passing undue judgement, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person is unlawful unless otherwise provided by law.*

1b. Is non-patrimonial (non-pecuniary) compensation limited to cases provided by law?

*No, its not limited.*

2. Which are the criteria to distinguish patrimonial and non-patrimonial damage? What are the consequences of the distinction if it exists?

*There is no distinction.*

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)?

*Distributive function and adequate compensation.*

3b. Do different forms of damages for personal injuries exist (e.g. compensatory, exemplary, punitive damages)?

*No.*

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

*These kind of categories are not excluded.*

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?
There are no statutory rules on sums to be awarded neither any judicial tariffs. There are some guidelines from the Supreme Court.

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)?

Upon the establishment of unlawfulness, the type of violation, the reason and motive for the violation and the gravity of the violation relative to the aim pursued thereby shall be taken into consideration.

5c. What is the role of an expert appointed by the court in assessing non-patrimonial loss?

There is no such a practice yet.

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?

She is entitled to adequate compensation determined by the court.

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?

Yes, they are.

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?

No-one shall tolerate untrue or offending statements. However, there are some rulings of the Supreme Court which point out that a public figure should tolerate more public attention to his performance than 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)?

There are no such a court practice yet.

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

Yes.

III

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

No

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

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