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?

We have rules governing damages for personal injury. The basic rule is Article 709 of the Civil Code, which stipulates as follows: A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

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

We do not have such limitation.

<Reference> Article 710 of the Civil Code: Persons liable for damages under the provisions of the preceding Article must also compensate for damages other than those to property, regardless of whether the body, liberty or reputation of others have been infringed, or property rights of others have been infringed.

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

We do not have any legal criteria to distinguish patrimonial and non-patrimonial damage.

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)?

The primary purpose is construed as compensation for a victim's damage (which may have the same meaning as the term adequate compensation.)

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

We have no laws or regulations providing for 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
We do not categorize damages for personal injury, except the following legal provisions.

The Criminal Compensation Act provides for the method for calculation of the amount of damages for compensation for false imprisonment.

Article 711 of the Civil Code provides for compensation for non-pecuniary damage caused by the death of a close relative, but there is no provision on the amount of compensation payable therefor.

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?

Judges, while taking into consideration various circumstances concerned, determine the amount of compensation for non-patrimonial damage necessary for relieving the victim's suffering. We have no laws or regulations providing for a specific method or criteria for calculation of the amount of damage.

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)?

Judges, while taking into consideration various circumstances concerned, determine the amount of compensation for non-patrimonial damage necessary for relieving the victim's suffering.

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

In general, courts do not appoint an expert for 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?

It depends on the case. However, in most cases, the victim may be entitled to receive non-patrimonial damages for her injury and for her disability resulting therefrom.

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?

It depends on the case. However, in most cases, the parents of the victim may be entitled to receive non-patrimonial damages for their mental suffering.

8. 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?

Judges determine the amount of damages for relieving the victim's suffering on a case-by-case basis. The victim's position in society may be taken into consideration when determining the degree of his/her suffering.

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)?

It depends on the case. However, if the victim is found to have suffered any loss that should be pecuniarily compensated, he may be entitled to receive non-patrimonial 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?
It depends on the case. However, if the victim is found to have suffered any loss that should be pecuniarily compensated, he may be entitled to receive non-patrimonial damages.

III

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

There are no such proposals.

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

We do not have any particular point we wish to discuss.

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

We do not have any particular subject to suggest.

(JAPAN)