LITHUANIA

Regarding the questionnaire „Damages for personal injury“

Part I - General questions

la. Does your system of law have any rules governing damages for personal injury? If so, what do they provide?

Article 6.283 of the Civil Code regulates compensation of damages, caused by personal injury.

Following the Part 1 of Article 6.283 (The Civil Code), in case, a natural person is mutilated or his health is damaged in any other way, a person, who is responsible for the damage, must compensate for the injured all his losses and non-pecuniary damage.

Damages mean missed income, which the injured could get if his health was not damaged, also expenses related to recovery of health (Part 2 of Article 6.283 of The Civil Code).

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

Non-pecuniary compensation is limited to cases provided by law (Part 2 of Article 6.263 of Civil Code). Compensation of non-pecuniary damage in case of a personal injury is foreseen in Part 1 Article 6.283 (The Civil Code). Please, also see the answer to the question Nr. 1.

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

Constitution of the Republic of Lithuania and Civil Code foresee two categories of damage: pecuniary and non-pecuniary.

Compensation of non-pecuniary damage is limited to cases provided by law (Part 2 of Article 6.263 of Civil Code). Compensation of pecuniary damage is not limited to particular cases.

The principle of complete compensation is not fully applied when non-monetary damage is compensated, because exact assessment of non-pecuniary damage into money is not possible. However, the nature and aim of compensation of non-monetary damage remains the same – fear compensation.

The existence of two categories of damage (pecuniary and non-pecuniary) does not always necessary mean different subjects (for example, only a person, who suffered or successors as well), who can claim the compensation. (It was as well stressed by The Constitutional Court of Republic of Lithuania in a decision on a related subject).
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)?

Compensation in case of a personal injury as well as compensation in any other cases, when damage is done, has a nature and aim of complete compensation of losses. The aim of compensation is to put the injured person back to a position where he was before the injury was done. The principle of complete compensation is not applied when non-monetary compensation is calculated as exact calculation (to assess damage into money) is not possible in this case. However, the nature and aim of compensation of non-monetary damage remains the same – compensation of losses, putting the injured person back to a position where he was before the damage was done.

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

Please, see the answer to the question Nr. 3a.

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

Damages for personal injury can be divided into compensation of lost income, expenses, which the injured person had to experience as a result of the suffered damage (injury), non-pecuniary damage.

Following Part 2 of Article 6.250 of the Civil Code, non-pecuniary damages are compensated in all cases, when the damage is done by committing a crime, when the health is damaged or the damage is done by taking somebody’s life and in other cases, foreseen by laws.

Following Part 1 of Article 6.250 of the Civil Code, non-pecuniary damage is physical pain, mental suffering, discomfort, mental shock, emotional depression, indignity, worsened reputation, decrement of abilities to socialize and other, what is assessed by court into money.

All the categories of damage, which are listed in question 4, are considered as non-pecuniary damage and as possible factual bases for compensation in judicial practice.

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?

The Civil Code does not provide minimum or maximum sums or judicial tariffs for compensation of non-patrimonial damage. The sum is decided by a court after hearing a case and taking into consideration all facts and circumstances, which are important in calculating the non-patrimonial damage in this particular case as well as judicial practice in identical cases.

It can be added that Constitutional Court of The Republic of Lithuania declared
unconstitutional provision of law, which stated a maximum sum, which could be awarded as compensation of non-pecuniary damage caused by illegal acts of state officials.

The laws do not provide with methods of assessing non-pecuniary damage, other than guidance on what is to be taken into consideration. Additionally, please, see the answer to question No. 5b.

The judicial practice is as follows:

The High Court of Lithuanian has noted, that the principle of full compensation (restitutio in integrum) objectively can not be fully applied in case non-pecuniary damage is assessed as it is impossible to assess into money non-pecuniary damage precisely. At the same time, the court has an obligation to determine fair compensation for non-pecuniary sufferings and losses. While assessing a fair compensation, the court must apply as much as possible criteria for determining the amount of non-pecuniary damage and monetary compensation. It is not sufficient to name all these criteria in a court decision. Application of every criteria in a particular case must be explained and reasoned by evidence in this particular case. The importance of this criteria for determining a fair compensation must be explained. Besides, every court decision, where non-pecuniary damage was assessed, must contain evaluation of both: circumstances, which increase non-pecuniary damage and circumstances which diminish non-pecuniary 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)?

Following Part 2 of Article 6.250 of the Civil Code, the court, while assessing the amount of non-pecuniary (non-patrimonial) damage, shall consider the consequences, caused by non-pecuniary damage, the fault of a person, who has caused non-pecuniary damage, financial situation, the amount of a non-pecuniary damage and other circumstances, which are important in a particular case, as well as into the criteria of honesty, fairness and rationality.

The laws do not provide with methods of assessing the non-pecuniary damage, other than the guidance on what is to be taken into consideration (the fore-mentioned Part 2 of Article 6.250 of the Civil Code). Part 2 of Article 6.250 of the Civil Code is further developed through judicial practice.

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

Non-patrimonial loss is assessed by a judge after hearing the case. If a judge, while assessing a non-patrimonial loss needs special knowledge, for example, in medicine and this judge does not have necessary knowledge, the court may appoint an expertise to be conducted by an expert or competent expertise authority. Common procedural rules of appointing experts, providing an expert opinion and considering this expert opinion are applied.
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 damage as it is described in Part 2 of Article 6.283 of The Civil Code, (additionally, please see the answer to question 1a) and also to non-pecuniary damage (additionally, please, see the answers to question 4).

While assessing non-pecuniary damage both: circumstances, which increase non-pecuniary damage and circumstances which diminish non-pecuniary damage are important and must be considered in a court decision. For example, courts in cases, which are very similar to a given example, have taken into account such circumstances: discomfort at home and in professional activity, impossibility (decreased possibility) to continue professional career and full-rate life, the loss of income, the continuous, long lasting manner of consequences of damage, impossibility to eliminate these consequences, depression, severe and intensive mental suffering because of disfigurement of a face, the feeling of inferiority, other circumstances relevant to a particular case.

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?

According to Lithuanian laws and judicial practice, non-pecuniary damage is personal damage. It is directly connected to a person and inherent from the personality, it depends on personal sufferings, experienced emotions. As non-pecuniary damage is connected with personality, persons, other then the one, who has suffered non-pecuniary damage (was injured) has the right to compensation only in exceptional cases.

The Civil Code does not provide general grounds for the right to compensation of non-pecuniary damage for persons, other then the injured. Thus courts, while deciding upon the right to compensation of non-pecuniary damages for persons, other then for the injured himself, consider exceptional grounds, foreseen in Resolution No. (75)7 of Council of Europe, adopted by the Committee of Ministers on 14 March 14 of 1975. If in a particular case, mental suffering of parents can be recognised “extremely high” and connected with the injury of their child, following the fore-mentioned Resolution (point 13) parents can be regarded as entitled to compensation of non-pecuniary damage, caused by 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?

Following Part 6 of Article 2.24 of The Civil Code, a person, who has familiarized untrue information, is not considered responsible, if this information is familiarized about a public person and his state or public activity, and the person, who familiarized the information proves, that he acted honestly with a purpose to inform society about the activity of a public person. It means, that public persons do not enjoy an equal protection as ordinary people.

The judicial practice on the subject do not consider compensation of a non-pecuniary damage as fundamental mean of protection of rights. The fundamental mean is denial of familiarized untrue information. Therefore, compensation of non-pecuniary damage in case untrue information about the public person was familiarized, is reduced to a minimum in judicial practice.
Public person, for example, is a state politician, a judge, state or municipality official, the leader of apolitical party or association, who because of his functions is permanently involved into state and/or public activities. Rock stars and other artists are not considered public persons by judicial practice. Subsequently, they enjoy equal protection as ordinary people.

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)?

The fact, that a person, who was injured in a car accident and because of that missed a trip to Australia can be considered as “other circumstances, which are important in a particular case” and taken into consideration while assessing non-pecuniary damage.

We can not find judicial practice in identical situation in Lithuania. But there is judicial practice, when lost possibility to enjoy planed holiday was considered as non-pecuniary damage (in this case a person could not leave because of illegal actions of state officials, not because of personal injury).

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

The fact, that a person cannot sleep for months after his/her house is burgled can be considered as “consequences” or “other circumstances, which are important in a particular case” and taken into consideration while assessing non-pecuniary damage. Additionally, please see the answer to the question No. 5b.

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

Recently, such proposals are not foreseen.

12. What points would you wish to discuss in greater detail?
13. What subject do you suggest for the next meeting?