Second Study Commission: ANSWERS for the Questionnaire for the 2008 Meeting

Second Study Commission
Civil Law and Procedure

MACEDONIA

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?

1. a) Macedonian law system has rules that govern damages for personal injury. The Law of Obligation anticipates compensation for non-patrimonial and patrimonial damages. In case of death, in case of a health injury, according the articles 182, 183 and 184, the Law anticipates the right to claim compensation of the usual cost of funeral, compensation of lost earnings. The persons, who are on alimony, have right of money rent, which is paid periodically or as a one-time fee/compensation.

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

1. b) Non-patrimonial compensation is not limited by the Law of Obligation. There is only a limitation when there is an insurance policy in a case of traffic accident according the law of Reinsurance.

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

2. The distinction between patrimonial and non-patrimonial damage is based on the criteria which are part of the Law of Obligation. According this law, the general principle for patrimonial damages is to bring back the original state. If the restitution in the original state is not possible, the damaged person has right to claim money compensation.

The General principle for non-patrimonial damage is fair (adequate) compensation

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)?

3. a) The prime aim and the general principle in the Law of Obligation in case of damages for personal injury is:
- adequate compensation;
- prevention;

3b. Do different forms of damages for personal injuries exist (e.g. compensatory, exemplary, punitive damages)?
3. b) There are different forms of damages for personal injury, which are in generally mentioned in 1. a).

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

4. All the 6 examples that are mentioned in point 4 are included in Macedonian law system

5a. What methods are used to assess the non-patrimonial damage? Are there any statutory rules on sums to be awarded?

5. a) The parameters which are used in accessing non-patrimonial damages are, according the circumstances of each case, the power of the pain from the injury, the level of sentiments of fear, the importance of the injury and the aim for which the compensation will be used. There is only a limitation when there is an insurance policy in a case of traffic accident according the law of Reinsurance. There are no judicial tariffs for non-patrimonial damages.

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)?

5. b) All of the circumstances which are mentioned in point 5b are taken into consideration in assessing non-patrimonial loss in Macedonian law system.

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

5. c) The expert appointed by the court (medical expert) submits an expertise to the court for the nature, intensity and duration of injury and suffering, individual circumstances on the injury, the level of sentiment of fear and mental suffering and physical pain

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?

6. In this case the injured person is entitled to claim:
   - material compensation for loss of ability to see which reduces the level of work ability
   - non-patrimonial compensation for mental suffering

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?
7. The parents are entitled to claim compensation for 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?

8. There is a difference based on the level of public position of the damaged person which is indirect connection with his work and reputation

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)?

9. In generally the person is entitled to compensation (non-patrimonial) but it depends on each case individually.

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

10. In generally the person is entitled to compensation (non-patrimonial) but it depends on each case individually

III

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

11. There are no proposals for reform of the legislation governing damages at the moment.

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

12. The point of the non-patrimonial damages for publishing untrue and offending statements of personal life.

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

13. The point of the non-patrimonial damages for publishing untrue and offending statements of personal life.

Macedonian Association of judges