



Basic Forms of Compensation for Immaterial (Moral) Damage with Special Emphasis for Fear, Physical, Spiritual Pain According to the Legislation of the Republic of Kosovo

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Abstract: Except the material damage, and regardless of it, the moral damage can also be caused, the forms of which are becoming more and more diverse. Monetary compensation for the immaterial (moral) damage is determined expressively in the positive law of the Republic of Kosovo. Injured party - the victim can get monetary compensation for the immaterial damage, for the physical and spiritual pain, for the reduction of life activity, disfigurement, violation of authority and honor, violation of freedom or personality rights, death of a close person, and fear, by what if the court states that the circumstances, especially the intensity of suffering and fear and their duration justify this, it will judge the right monetary compensation, regardless of the immaterial damage and the absence of material damage. The study on this paper is mainly focused on the national legislation, and as an object key has the immaterial (moral) damage compensation, but also presenting the court decisions of the competent courts in Kosovo. If the compensation will be determined or not, depends on the intensity and duration of the suffering, for each specific case. Upon the decision on the request for the compensation of immaterial damage, as well as for the amount of the compensation, the court shall evaluate the importance of the violation of goods and the purpose to which this compensation shall serve, also in order not to support the tendencies that are not compatible with the nature and the social purpose thereof.

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1. Introduction

Immaterial (moral) damage is a violation of the interest or personality rights of the injured party - the victim, which is not manifested in his property. The Law on

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obligational relationships of Kosovo, no. 04/L-077, 2012 (hereafter LOR), explicitly defines immaterial (moral) damage in Article 137, stating: "... causing physical pain to the other, mental suffering or fear". Moral damage is nothing but a violation of human moral wealth.

Except the material damage, and regardless of it, the moral damage can also be caused, the forms of which are becoming more and more diverse. The issue of compensation for moral damages represents a compound problem, considering that it is a violation of a person's personal goods. Monetary compensation for the immaterial damage is determined expressively in Article 183, paragraphs 1 and 2 of the LOR, Paragraph 1 of Article 183 of LOR provides monetary compensation for the immaterial damage suffered by the injured party: for the physical pain suffered, for the spiritual pain due to the reduction of vital activity, disfigurement, honor, freedom or or personality rights, the death of a relative, as well as fear, if the court finds that the circumstances of the case, especially the intensity of pain and fear and their duration justify this, will adjudicate the fair compensation in money, regardless of the compensation of material damage as well as the absence of material damage.

The injured party, no matter whether he is a physical or judicial person, has the right of immaterial damage reparation, caused by the violation of moral integrity, when this is possible, but he also has the right to fair compensation for the damage presented in the form of physical and spiritual pain, as well as in the case of violating the feelings of the injured party, regardless of the compensation of material damage, if it has existed, and this right exists even in cases where there is no material damage. Thus, cumulative repair of material damage and fair compensation in the name of immaterial damage may be claimed cumulatively. Even in cases when the injured party, due to the violation of personal rights (honor, prestige, freedom or other personal rights), has experienced mental pain, the court, in addition to the sanction provided by Article 182 of the LOR, may also judge the fair compensation, if, depending on the circumstances of the case, only in this way can the injured party be given full satisfaction in terms of the purpose for which the compensation of immaterial damage serves (Berisha, et.al., 2013, p. 252).

These forms of moral damage are compensated when special laws provide respective non-property rights, as well as compensation in case of damage as a result of violation of these rights (Muskaj, 2013, p. 73).

If we examine the different legal systems, we will notice significant differences in the right to compensation, and in particular in terms of immaterial (moral) damage (Baginska, E. & Rogers, H. W. V., 2001, p. 1).

Such differences do not stem from the law or court decisions, but from the activity of the parties involved. All legal systems we are talking about here have instruments for compensating immaterial damage (Pscheidl, 2006, pp. 9, 10). In general, in continental law, there is the possibility for cases of compensation for immaterial damage to have the possibility for the victim to be compensated (Koziol, 2012, p. 47).

Compensation of damage includes unforeseen damage at the moment of occurrence of the illegal fact. It is understood that this unpredictability belongs to the extent of the damage and not to the event causing the damage: if this is not predictable, we are not dealing with a causing link between it and the damage, and consequently there is no liability (Galgano, 1999, p. 371).

Kosovo, in the aspect of compensation is also quite progressive, defining special basic forms accepted by law, starting from the compensation of immaterial damage for fear, physical pain, and for spiritual pain in case of death or severe disability of the close person, which are not provided in other states. Judicial practice in Kosovo courts, for all forms of immaterial damage offers fair compensation for each form separately, determining the amount of money, in order to achieve full satisfaction for the victim.

In the continuation of this paper we will focus mainly on the three legal forms provided by the LOR for immaterial damage compensation: Fear, physical pain and spiritual pain.

1.1. Immaterial Damage Compensation Due to Causing of Fear

Fear, according to the LOR is a special form of immaterial damage, for which the court determines the fair monetary compensation in case of violation of personal rights, when it is reasonable based on the gravity of the violation of the law and the circumstances of the case. It is an expression of the mental state of the physical person. Given the fact that it is a subjective condition, in similar or the same situations, depending on the person, fear is expressed in different forms, so that one person may experience great fear while another a lighter one.

In the Judgment of the Municipal Court of Malisheva, it is stated that: “According to the forensic expert Dr. V.B., the court has proved that plaintiff F.K. suffered mainly minor bodily injuries, while as a result of these injuries, she suffered severe physical pain of 24 hours duration, moderate intensity physical pain of 7 weeks duration, and physical pain of low intensity, lasting 2 weeks. The same needed reinforced food for a period of 2 weeks. Whereas, in the opinion of the forensic expert Dr. N. M. psychiatrist at the UCCK, the court confirmed the fact that the plaintiff at the critical moment suffered primary fear in the form of fear of death, which lasted several seconds, secondary fear of weak intensity, had for two days passed into secondary fear of low intensity, which has lasted for a period of 30 days, which is manifested by frequent awakenings at night, as well as fear and insecurity in traffic”. Even with regard to this type of damage, in order to be entitled to fair monetary compensation (Adjudication C. of 129/2008, dt. 9.6.2010, of Municipal Court in Malisheva) the fear must be of high intensity and last for a long time.

Fear can be *primary, secondary, direct, indirect, fear for life and fear during recovery* (the fear experienced has left consequences on the mental balance of the injured, which is manifested by post-traumatic headache, dizziness, fear of traffic, disorder of sleep, fear of participation. These types (forms) of fear should be confirmed with the help of the relevant expert and should never be assumed, but the literature states that, according to experts in relation to the fear suffered, it is mostly divided into two main categories, in: *primary fear* and *secondary fear*.

In the Judgment of the Municipal Court of Lipjan, it is stated that: “As a result of these injuries, the plaintiff E., has suffered a high degree of fear, which has been expressed in fear of traffic, with sleep disorders, anxiety at night, with active neurosis, with non-ordinary reaction in common situations” (Adjudication C. of 264/2007, dt. 26.5.2009, of Municipal Court in Lipjan).

These two types of fear mostly dominate not only in the legal doctrine, but in all court decisions of the courts of Kosovo, which have judged certain amounts of money in the name of fair compensation of immaterial damage due to fear, depending on whether it is primary or secondary.

Analyzing the court decisions, we have come to the conclusion that the courts of the Republic of Kosovo not only on the basis of their free evaluation, but accurately respect the opinion of the relevant expert, which is usually mentioned in every court decision we have consulted with. It is also important to note that, based on the opinion of experts, the primary fear exists in the initial moment of the

occurrence of the damaging case, which makes it a disorder of the emotional life of the injured party, while the secondary one is the manifestation of the damaging case and lasts less in duration.

Monetary compensation can be set for the fear which has been *intense* and has lasted for *a long time*. If the intense fear has lasted briefly, the compensation may be set if the injured person's mental balance has been disturbed for a longer period of time (Berisha, et.al., 2013, p. 255).

1.1.1. Conditions of Immaterial Compensation Realization Due to Fear

In order for the immaterial damage due to fear compensation request to be realized, the following conditions must be met:

- a) *for the injured party has suffered fear;*
- b) *for the fear to be of high intensity;*
- c) *for the fear to have a definite duration;*
- ç) *for the fear to cause consequences to the injured and*
- d) *for the injured party to submit the request to the competent court for the realization of the compensation of such damage.*

These conditions must be met cumulatively. The degree of intensity, duration, consequences of the fear are ascertained by the forensic expert. The disorder of mental balance, which arises as a result of fear, depends on the circumstances of the specific case, depending on the bodily injury, the health condition of the injured party, age, gender, family status, etc. It is worth introducing Article 33 of the *Regulation on determining the criteria for the assessment of immaterial damage from motor third party liability* (Board of the CBK of the Republic of Kosovo, 2014):

1. Compensation for the consequences that fear leaves on the injured party is determined depending on the intensity and duration of the fear.

- a) *The primary fear* is the intense feeling of short duration (several seconds), which appears, is perceived and experienced by the injured person at the time of the accident,

b) *The secondary fear* is the feeling experienced by the injured person in the traffic accident and after the accident, the injuries received and related to the progress of the treatment, as well as the possible consequences;

2. *The intensity and duration of the fear* is determined by the competent doctor, based on the verified medical documentation for the treatment of the injured and the direct examination;

3. *Compensation for primary and secondary fears* is set at a proportion of 70% of the value dedicated to physical pain, except in special cases, especially in children and pregnant women involved in the accident, who even without suffering injuries and pain can experience fear;

4. *Primary and secondary fear* for persons with minor bodily injuries cannot be set above the amount of three hundred (300) euros;

5. *In cases where medical reports are without diagnosis*, without descriptions of injuries or only with a description of subjective complaints in proportion to the damage caused to the vehicle, the fear can be set up to the amount of one hundred and fifty (150) euros.

Compensation for immaterial damage with money due to fear is aimed to achieve satisfaction for the injured party, and not to achieve any lucrative goal, which is not in line with the social purpose of this compensation, because moral values cannot be commercialized. The right to claim compensation for immaterial damage due to fear is closely related to the personality of the subject who has suffered a certain fear (Dauti, 2016, p. 204).

Thus, in the Judgment of the Municipal Court of Prishtina, it is stated that: "On behalf of the fear suffered, the court set the compensation in the amount of 2000 euros, and assessed it as a fair compensation, based on the fact that based on the opinion of the psychiatric medical expert, the plaintiff suffered primary fear at the time of the accident, in the form of fear of death, which lasted for several seconds, secondary fear of high intensity for three days, which is manifested by anxiety, insomnia, acute manifestations of trauma to the stress experienced from the accident, which passed into secondary fear of lower intensity, which lasted for three months, which left consequences on the plaintiff's insecurity while participating in traffic, with a decrease in concentration at school, urination at night due to emotional distress from the accident. The expert has estimated that insecurity during participation in traffic and urination at night, still persist from time to time according to hetero-anamnestic data. The court has rejected the rest of

the adjudicated amount, considering his contribution to the accident caused” (Adjudication C. of 365/08, dt. 13.10.2011, of Municipal Court in Prishtina).

These circumstances affect the determination of the amount of compensation for the damage suffered. Such circumstances are assessed by the court at its own discretion

Compensation for immaterial damage with money due to fear is aimed to achieve satisfaction for the injured party, and not to achieve any lucrative goal, which is not in line with the social purpose of this compensation, because moral values cannot be commercialized (Vuković, 1967, p. 270).

The LOR has provided two terms for requesting the right to compensation for immaterial damage due to fear: *the subjective term* of 3 years, which is related to two circumstances with the notification of the injured party with the damage and with the subject causing the damage. *The objective (absolute) term* starts to run regardless of the notification of the injured party about the damage and the injurer, calculating objectively from the moment when the damage is caused.

2. Immaterial Damage Compensation Due to Physical Pain

One of the forms of immaterial damage expressly provided in Article 183, paragraph 1 of the LOR, is physical pain, for which the court, if the conditions provided by law are met, may determine the fair monetary compensation for immaterial damage, as satisfaction for the injured party.

The monetary compensation due to the physical pain suffered is presented as a kind of second-hand compensation in addition to the basic material compensation, on behalf of treatment, rehabilitation, and lost profit (Berisha, et.al., cited work, p. 253).

In case of health damage, the injured party suffers physical pain. Municipal Court in Prishtina, with Adjudication, has decided as follows: “Experts Dr. A.G. and Dr. NM, after the relevant examinations have come to the conclusion that the plaintiff as a result of the accident has suffered bodily injuries with eternal consequences, because the plaintiff has suffered fractures of the spinous processes, neck rings C3, C4 and C5, then subluxation C3 and C4, accompanied also with cervical spondylosis and left upper extremity monoparesis, as well as confusion of the shoulder region. Due to the nature of the injuries suffered by the plaintiff, the same has experienced physical pain of particularly high intensity for 5 (five) hours, high

intensity pain of 40 (forty) days, pain of medium intensity for a long time somewhere 1/2 of a day, which starts 40 (forty) days after the accident” (Adjudication C. of 581/12, dt. 25.9.2012, of Municipal Court in Prishtina). In deciding on fair monetary compensation for each particular case, the courts must take into account the *intensity* and *duration* of the physical pain caused by the injury, as expressly provided in Article 183 of the LOR.

Physical pain is a form of immaterial damage and the most common manifestation of the violation of the bodily integrity of the injured party. Various feelings of dissatisfaction appear as physical pain, e.g. in the case of physical disability, severe aesthetic deformity, loss of reproductive ability, which are manifested as suffering, worry, fear or any other feeling.

2.1. Essential Conditions for the Lawsuit of the Right Immaterial Damage Compensation with Money Due to Physical Pain

The essential conditions for adjudicating monetary compensation for immaterial damage due to physical pain are:

- a) *duration of physical pain* and
- b) *high intensity of pain experience by the injured party*.

These conditions must be met cumulatively. The above conditions are ascertained by the expert. In the Judgment of the Municipal Court of Malisheva, it is stated that:

In the Judgment of the Municipal Court of Prishtina, it is stated that: “Medical experts based on the medical documentation presented for the injured party E.D., have concluded that as a result of the accident he suffered serious bodily injury, with the following consequences: tearing lesions accompanied by lack of skin in the area of the left ankle and the back of the sole of the left foot, also accompanied by damage to the anterior tibial muscle, long extensor muscles, 2-V toes of the left foot, damage to the muscle and peroneal nerve, as well as damage to the left ankle joint. The experts found that the plaintiff, due to the injuries suffered, experienced physical pain of extremely severe intensity 1 (one) hour, with severe intensity 21 (twenty-one) days, medium 50 (fifty) days, and low 90 (ninety) days”. For short-term and low-intensity physical pain, the court compensates the injured party for the immaterial damage (Adjudication C. of 26/08, dt. 11.3.2011, of Municipal Court in Prishtina).

As for the judicial practice, the court decisions of Kosovo courts (which we have consulted with) are unique, because they categorize the intensities of physical pain in the same way, based on the legal provisions of the LOR, and establishing the circumstances of the case, given the damage caused, the physical pain experienced, their intensity and duration, the nature, extent and consequences of the injuries, and taking into account the other circumstances in determining the amount of compensation for each plaintiff separately and the judicial practice, decided as in the enacting clause of this judgment". This categorization is as follows:

- a) Physical pain of high intensity;
- b) Physical pain of moderate intensity and
- c) Physical pain of low intensity.

This categorization of physical pain is done depending on the *degree of intensity* and *duration of physical pain*, a categorization which is important to determine the amount of compensation for each type of pain mentioned above.

It is important to note that the amount of compensation for these physical pains is not determined by the LOR of Republic of Kosovo, but is explicitly defined by the *CBK Regulation on determining the criteria for estimating immaterial damage from motor third party liability*.

Article 32 points b) and c) of paragraph 1 of the Regulation provide: "b) For the physical pain caused by the injuries suffered as a result of the accident, which have left the injured person with permanent consequences, expressed in the reduction of vital activity below 30% and that: i. for pain of particularly severe intensity up to one hundred (100) euros per hour, but with a limit of up to five hundred (500) euros in total; ii. for severe pain, up to fifty (50) euros per day, but with a limit of up to two hundred and fifty (250) euros in total; iii. for pain of moderate intensity, up to thirty (30) euros per day, but with a limit of up to one thousand seven hundred and fifty (1,750) euros in total; iv. For all these forms of damage for physical pain, the maximum limit may not exceed the amount of over two thousand five hundred (2,500) euros in total; c) For injuries categorized as minor bodily injuries: i. For light bodily physical pain, the maximum limit may not exceed the amount of three hundred and fifty (350) euros in total.

This Regulation has greatly facilitated the work in judicial procedure. It has to be emphasized that the amount of compensation for physical pain suffered does not always depend only on the degree of intensity and duration of experiencing

physical pain, as defined by law. In addition to these two important elements or conditions, in determining the amount of fair compensation for immaterial damage, all other circumstances of the specific case must be taken into account, especially the various unpleasant experiences and possible complications during treatment.

This is better specified in Article 32 of the above-mentioned Regulation, which regulates the issue of compensation for bodily pain, which states: “1. Compensation for bodily-physical pain is accepted until the day when they are stopped, and at the latest until the end of the treatment; 2. Physical pain that occurs due to bodily injuries suffered in the accident is expressed in the form of feeling, which is experienced and endured by the person in a conscious state when bodily injuries are caused: a) for physical pain caused by injuries suffered by accident, which have left permanent consequences to the injured, expressed in the reduction of life activity over 30% and that: i. for pain of particularly severe intensity two hundred (200) euros per hour, but with a limit of up to one thousand (1,000) euros in total; ii. for severe pain, up to one hundred and fifty (150) euros, for one day, but with a limit of up to seven hundred and fifty (750) euros in total; iii. for pain of moderate intensity, from seventy-five (75) euros per day, but with a limit of up to three thousand seven hundred and fifty (3,750) euros in total; iv. For all these forms of damage for physical pain, the maximum limit cannot exceed the amount of five thousand five hundred (5,500) euros in total”.

The injured party is not entitled to compensation for immaterial damage caused by minor bodily injury and of short duration. We will illustrate these cases with decisions from judicial case.

At the fair compensation of immaterial damage with money for physical pain, it is important to present in this paper the *Balthazar Rule*, specifically its Article 2, which is included in the above-mentioned Regulation of the CBK. This Rule is a great help to determine, calculate the total percentage of bodily injuries, in EU member states, which use the list of injuries calculated in percentage (%). The following is the Balthazar Rule:

To calculate the percentage (%) of total bodily injuries in EU member states that use the list of injuries calculated in percentage (%) (Appendix 1), use the Balthazar rule or formula (La regle de Balthazar), which is formulated in a clear document, which is B.O.B.I. (Bareme Official Belge des Invalidities). Vade-mecum de levaluation medico-legal: Invalidite, lincapacite, lehendicap et el damage corporel (Pierre Feron) – Mode de calcul des invalidites multiples.

The overall percentage should not exceed 100% or a certain percentage, such as, for example, the loss of limbs, or the greatest damage to a particular system, if that system has a lot of damage:

X damage for the first time in%, Y damage for the second time in &, V% for loss of limbs or completely damaged parts of the body, and if it concerns the whole organization, then it is 100%.

$$x - y = \frac{v - x}{100}$$

Example 1.

Injuries: Injury of the ligament and meniscus of the same knee.

Proven consequences:

Percentages do not add up, 65%-foot loss is calculated

In this case $v=65$

$$15 - 7v (65 - 15/100) = 18.5\%$$

Example 2:

Injuries: Fracture of the right ankle and injury of the ligaments of the right knee.

Posttraumatic arthrosis of the scalp with limited mobility of high degree 25%

Knee instability at a severe grade level 10%

Proven consequences:

1. Calculated as a 65%-foot loss

$$25 - 10x (65 - 25/100) = 29\%$$

Example 3:

If it is a polytrauma, where different organs are injured, then different functional obstacles follow, $v = 100$.

Injuries: Dominant arm fracture, right knee fracture and rib fracture.

Proven consequences:

25% (first injury)

$$15x (100 - 25/100) = 15x0.75 = 11.25\% \text{ (for the second injury)}$$

$$5x (100 - 36.25/100) = 5x0.637 = 3.18\% \text{ (for the third)}$$

In total: $25\%+11.25\%+3.18\%=39.43\%$

Only the injured person has the right to claim compensation for damage, so this right is closely related to the personality of the injured person.

3. Immaterial Damage Compensation Due to Spiritual Pain

Spiritual pain is a special basis of immaterial damage compensation. Spiritual pain is an unpleasant feeling and experience as a result of factors of psychic nature, vital and social impulses, which is reflected as damage to the spiritual life, as a disorder of the emotional psychic life of a certain person (Dauti, 2016, p. 205). Spiritual pain is more difficult to ascertain, because it largely depends on the psychic constitution and moods of the injured party, his mentality and other circumstances.

Municipal Court in Prishtina, with Judgment, has decided: “In the name of non-pecuniary damage for spiritual pain experienced due to the death of the mother, the plaintiffs F.H., A.H., R.H., Z.H., and S.H., have been judged the amounts of 7000 euros. Since through the material evidence, the certificate of family union, the court has confirmed that the plaintiffs lived in family union with the deceased, in the sense of the provisions of the LOR, it has accepted the immaterial damage compensation as in the provision of this judgment (Adjudication C. of 2611/08, dt. 4.4.2011, of Municipal Court in Prishtina).

By approving the claim for this type of damage, the court took into account the circumstances that could and have influenced the intensity and duration of the spiritual pain experienced by the plaintiffs due to the loss of their mother. In this case, the court took into account especially the plaintiffs' relationship with the now deceased, taking into account the fact that the relationship between parents and children is very emotional and spiritual. In this sense, the court finds that the mental pain of the plaintiffs, due to the death of their mother, has been very high, therefore the approval of the claim in its entirety by the court is in accordance with the violated good and the purpose of which serves compensation.

In this specific case, according to the court, the amounts approved in the name of compensation for the plaintiffs represent a satisfaction. “LOR in article 183, paragraph 1 provides that “for the mental suffering suffered, the court if it finds that the circumstances of the case and especially the intensity, duration justify it, then there will be judged the fair monetary compensation regardless of the compensation of material damage or its absence”.

Damage compensation for mental pain, due to the death or severe disability of a relative, is expressly provided in Article 35 paragraphs 1, 2, 3 of the above-mentioned *Regulation of the CBK*. Spiritual pain due to the death or severe disability of a loved one is a subjective feeling, which manifests itself as a disorder of mental state, suffering, grief and pain, as well as in cases where it is known that the such feelings or disorders would occur in the future because it would be heard about the death, or the extremely serious disability of the close person who suffocates the psyche and the claimants (paragraph 1 of Article 35 of the Regulation). In minors, these spiritual pains are also manifested in the form of loss of parental love, care and support, which the parent would offer if he were alive, or if he was not seriously disabled, which the child, due to his age he could not experience it, but it is known that he will experience it while growing up (paragraph 2 of Article 35 of the Regulation).

According to the respective Regulation, the amounts in cash are provided for the values of the compensation for the death of a relative (family member), as follows:

- a) spouse, children and parents - three thousand five hundred (3,500) to six thousand (6,000) euros;
- b) parents for the loss of the fetus - the fetus from one thousand five hundred euros (1,500) to three thousand (3,000) euros, considering the age of the fetus and other relevant circumstances of each case separately;
- c) brothers and sisters of the deceased if there was a continuous community of one thousand five hundred (1,500) to three thousand (3,000) euros;
- d) Compensation in case of severe disability (over 60%) of the family member will be determined for the parents, children and cohabiting spouse in the amount of 50% of the compensation, which benefits for the spiritual pain in case of death of a close family member (paragraph 3 of Article 35).

While assessing that the relatives of the victim have experienced this type of immaterial damage, all circumstances are taken into account, in particular the relationship between the deceased and the one seeking compensation for immaterial damage. When it comes to the children of the deceased, who seek compensation for spiritual suffering due to the death of the parent, it must be assessed whether the child is in proportion to his psycho-emotional growth and development, as well as the ability to experience spiritual suffering.

4. Realization of the Right in Immaterial (Moral) Damage Compensation

Contested civil procedure is a general, regular and basic procedure for the protection of subjective civil rights of violated and violated rights (Šalahović, 2009, p. 142).

Therefore, the contentious procedure is characterized as a regular way of protection in the field of legal-civil, contentious relations (Law no.03 / L-006 on contested procedure of Kosovo, 2008).

The injured party has the right to file a direct claim based on compulsory insurance and a lawsuit in court. In the Republic of Kosovo, the most frequent cases are in practice when the injured party files a lawsuit directly in the competent court. Compensation for immaterial damage is realized in a special civil dispute before the competent court (Article 47 of the Law on Contested Procedure of Kosovo).

According to Article 170 of the Law on Obligational Relationships, the obligation to compensate shall be deemed to have fallen due at the moment the damage occurred.

The filing of a lawsuit for the realization of the compensation of damage is foreseen in articles 252, 253, 254 and 255 of the LCP (Law on Contested Procedure of Kosovo).

The protection of subjective civil rights is realized by the court, the basic court and the Court of Appeals, in certain cases the possibility of protection of subjective rights before the Supreme Court of the Republic of Kosovo is not excluded (Law on Kosovo courts, no. 06/L-054, Article 11, 18, 22).

The function of the court is to protect the subjective the rights of citizens (Aliu, 2013 p. 445).

The injured party has the right to file a lawsuit with the competent court, for compensation of immaterial damage. The procedure before the contentious court is conducted according to the legal provisions of the LCP of Kosovo. In the case of certification of immaterial damage and determination of compensation, the court is guided by the provisions of the LOR. In litigation, the injured party can exercise his rights through a lawyer, which is the most common case in judicial practice.

5. Lawsuit for Damage Compensation

A lawsuit is a legal means by which the right holder addresses the competent court to protect his subjective civil right. A lawsuit is a procedural action, which initiates a contentious procedure for the protection (Morina & Nikçi, 2012, p. 452) of any subjective civil right that is endangered or violated (Aliu, 2013, p. 445).

Law on Contested Procedure of Kosovo in Article 252 provides that the trial of the case in the court starts with the written claim charge (claim of obligation, certification or change).

In the contentious procedure it is a basic principle that without a lawsuit there is no dispute, a dispute cannot be initiated without a lawsuit (Aliu, cited work. p. 446). The lawsuit (Morina & Nikçi, cited work. p. 452) can be filed in writing or orally in the court record. The lawsuit in the material sense is defined as the right to legal protection, i.e. it is a request of the plaintiff that the court oblige the defendant to fulfill his request or to dispute whether or not there is a certain material-legal relationship. In the lawsuit in the material sense, the procedural-legal request authorizes the subject of the right to request legal protection for his subjective right (Brestovci, 2004, p. 145).

5.1. Criteria for Determining the Immaterial Damage Compensation Level

Compensation for the immaterial damage is determined, measured, according to established legal criteria and the circumstances of the specific case. In principle, compensation for immaterial (moral) damage is determined for each form of immaterial damage in particular, and in exceptionally severe cases, the full amount of immaterial damage may be determined. Such an exception has to do with the compensation for ungrounded trial, or for ungrounded deprivation of freedom, because, according to the judicial practice, it is considered that the compensation of immaterial damage according to these grounds is a unified form of damage which is tried in full amount of damage (Petrović, 2012, p. 219).

We can emphasize that the basic criteria for determining the amount of compensation for immaterial damage in positive law in republic of Kosovo are:

1. Intensity and duration of experienced physical, spiritual pain and fear;
2. The fault of the injurer;
3. Material condition of the injurer and the injured party and

4. Behavior of the injurer towards the injured party after causing the damage.

5.2. Inheritance of the Right to Compensation for Immaterial Damage

A claim for the compensation of immaterial damage shall pass to heirs only if it was recognized by a final legal ruling or a written agreement (Article 188 of the LOR). In this case (Article 184, paragraph 1, 2, 3, 4 of the LOR) the law is based on the function of compensating immaterial damage, which is manifested in the satisfaction that is realized in the personality of the injured party. While assessing the existence of this damage, the court takes is responsible for the duration and intensity of physical pain, mental suffering, is responsible for the importance of the damaged goods and the purpose to be achieved. It can be concluded from this that this right cannot be inherited or transferred, unless it has been accepted by a final legal ruling or a written agreement.

6. Conclusions

The injured party, no matter whether he is a physical or judicial person, has the right of immaterial damage reparation, caused by the violation of moral integrity, when this is possible, but he also has the right to fair compensation for the damage presented in the form of physical and spiritual pain, as well as in the case of violating the feelings of the injured party, regardless of the compensation of material damage, if it has existed, and this right exists even in cases where there is no material damage. Thus, cumulative repair of material damage and fair compensation in the name of immaterial damage may be claimed cumulatively. Even in cases when the injured party, due to the violation of personal rights (honor, prestige, freedom or other personal rights), has experienced mental pain, the court, in addition to the sanction provided by Article 182 of the LOR, may also judge the fair compensation, if, depending on the circumstances of the case, only in this way can the injured party be given full satisfaction in terms of the purpose for which the compensation of immaterial damage serves.

Fear is a form of immaterial damage and the most common manifestation of impairment of bodily integrity and damage to health. Fear can be primary, secondary, direct, indirect, fear for life and fear during recovery. One of the forms of immaterial damage expressly provided in Article 183, paragraph 1 of the LOR, is physical pain, for which the court, if the conditions provided by law are met,

may determine the fair monetary compensation for immaterial damage, as satisfaction for the injured party. The monetary compensation due to the physical pain suffered is presented as a kind of second-hand compensation in addition to the basic material compensation, on behalf of treatment, rehabilitation, and lost profit. Spiritual pain is a special basis of immaterial damage compensation.

The injured party has the right to file a direct claim based on compulsory insurance and a lawsuit in court. In the Republic of Kosovo, the most frequent cases are in practice when the injured party files a lawsuit directly in the competent court. Compensation for immaterial damage is realized in a special civil dispute before the competent court. A lawsuit is a legal means by which the right holder addresses the competent court to protect his subjective civil right. A lawsuit is a procedural action, which initiates a contentious procedure for the protection of any subjective civil right that is endangered or violated. A claim for the compensation of immaterial damage shall pass to heirs only if it was recognized by a final legal ruling or a written agreement.

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