The Compensation of Non-contractual Damages Caused by Administrative Bodies in Albania

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Abstract: The responsibility of extra organs in the public administration (which includes state administration and public entities) regulates the area where the damage, resulting not for an existing contract between Albanian citizens or foreign legal person domestically or internationally but due to the lack of a relationship earlier. If a decision or action or inaction of state/public either faulty or not, his own or its employee material entails a non-pecuniary damage to people, the state is responsible and fully rewards the damage. Compensation and understanding of these lawsuits regulated by Law no. 8510/1999 "On liability of organs of state administration." The article 1 of this law provides that: "*The state administration bodies are responsible for property and damage, caused to natural or legal people, private, domestic or foreign. Extra-responsibility of state administrative bodies governed by the provisions of this law and the Civil Code of the Republic of Albania."* In this paper will be analyzed the criteria of responsibility provided by the upper law but also specific criteria determined in the Civil Code for tort liability under Article 608 to 652. This research aims to help citizens of the types that require damages and rewards extent expected by the public administration.

Keywords: state liability; public administrative bodies; remedies; judgments

1 Introduction

In the Republic of Albania in the early existence of the state in 1912, the state administration has taken responsibility for the damage caused to citizens. More than civil liability, the state is trying to punish or prosecute against its employee for damages caused by the fault of the third. While, genuine legal regulation of this institution encountered in Albania after the change from the communist regime after 1991 in pluralist.

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The principle of responsibility of the state administration against citizens or foreigners in Albania is provided in Article 44 of the Constitution, in Article 14 of the Administrative Procedure Code 1999 (hereinafter KPRA of 1999) and Article 15 of the Administrative Procedure Code that is expected to enter into force on 29 May 2016 (hereinafter KPRA Jr.). In their summary of the provisions they are listed the cases when the state takes administrative responsibility. However, it should be noted that this list is not exhaustive and there are cases when any special law to add new variants of liability under the scope of its activity.

2. Cases of Responsibility of Organs of Public Administration towards Citizens

Starting from the hierarchy of norms under Article 116 of the Constitution, were initially treats that kind of damages that has been provided in the KPRA 1999. Article 14 of this Code provides that: "*The public administration bodies and their employees are responsible for the damages that they cause to private people through:*

- *Illegal decisions;*
- *Unlawful refusal to take decisions;*
- *Issuing inaccurate written information to private people, or due to any other case provided by law.* "

In the law no. 8510/1999 extra-contractual liability of State Administration Bodies (hereinafter OAP) to private individuals and legal entities, is provided in Article 3 where the quote:

- *When performing unlawful actions or failures.*
- *When carrying out legal actions or omissions, but giving rise to damage legitimate interests of private natural or legal people.*
- *Where, although the conduct of legal actions or omissions, causing a disproportionate detriment of subjects who directed the action or inaction.*
- *When, due to technical failure of the means by which state administration bodies operate their private natural or legal people affected in their legitimate interests.*
- *When causing a constant risk of private natural or legal people.*
- *When performing a corrupt act in the exercise of their functions.*

Article 1 of Law no. 8510/1999 provides that state responsibility is regulated by the provisions of this law and the provisions made by Civil Code (hereinafter CC) on tort. We can say that the interpretation of the norms of the CC distinguishes these types of extra responsibilities:

1. Given the subject causing damage distinguish (Mataj, 2015, p. 99):

- Responsibility pollute causer as responsibility for non-pecuniary damage (Article 625), responsibility for the environment (Article 623) etc.;

- The responsibility of not causing the damage as legal tutor etc. of minors and people unable to act for people under surveillance responsibility etc., like parent to child, the representative's liability, the employer for the employee, intern instructor for the master to apprentice, etc. or responsibility of owner for animals. When it comes to closely supervise should not be understood as to have direct sight on them but in every case when the animal, child etc. loses under the care of the animal's owner or legal tutor. The latter shall be liable for the damage caused. (Légier, 2009, p. 142)

2. Starting from the nature of the fault we share the non-contractual responsibility:

- Responsibility for direct or immediate fault as environmental responsibility, etc. responsibility for non-pecuniary damage, published misleading, unfair competition;

- Liability without fault or for indirectly fault. Presumption of fault theory blames any person who has a duty to supervise an object, animal or a minor person. For example, the extra non-contractual damage caused by a student, charges the teacher as responsible because of the presumed faulty. If he cared enough the student would not commit the illegal fact. This theory has existed as late as in France and in Germany (Nuni, 2012, p. 648) until industrial development, brought new types of responsibilities.

According to Prof. Légier, who in the late nineteenth century created the theory of risk supported by the famous lawyers in France like: Raymond Saleilles (Saleilles, 1947) and Louis Josserand. They proclaimed that the person who exercises a dangerous activity or economic benefits may be responsible for the damage that this activity will cause to the thirds. This entails a broad interpretation of these two theorists, made to Article 1384§1 of the French CC.

- Strict liability or because of the law, where the responsible person is not the person causing the arrival of the consequence but the law obliges him as a result of

dangerous activities or constructions that bring constant risk. Such responsibilities are objective because the defendant is not discharge even though there was no fault in the coming consequences but because of the tools that he uses or if the activity poses a risk to third parties. This kind of responsibility includes:

1. The responsibility of the person who performs a dangerous activity by its nature or the nature of the items used (Article 622). Given the nature of the means include: vehicles, machinery, electrical energy, poisons, explosives etc. Given the dangerous activity considered: production of electricity from nuclear power plants, the use of explosives or toxic substances for the production of fuels (Fromont, 2009, 131), drilling oil wells, transporting explosive fuels like gas etc.

2. The responsibility of producers for defective products and faulty trades.

3. Liability for damage caused to the environment and to third parties affected by it, otherwise referred to as the responsibility for environmental damage.

After analysis of the existence of damage, the second task of the court or the superior administrative body is to assess, how it should be rewarded and rehabilitate the directly or indirectly injured person. This is considered a constitutional right according to Article 44 of the Constitution provides that: "*Everyone has the right to be rehabilitated and/or indemnified in accordance with the law ...".* In fact, the aim of the legislator is returning to the previous condition of the injured through rehabilitation, if is not possible to convert this, in a lump of money and able to be compensated.

The main principle which operates in tort is that of restitution *in integrum*, thus its aimed the complete return of the situation as if the injured party suffered no damage and no less anymore. This principle aims to injured, not to lose nor extra profiting unfairly.

However, Article 9 of Law no. 8510/1999 stipulates that the administrative bodies are not responsible, if the damage was not possible to be avoided even with normal care of the employees. The public administration body is responsible even when the damage is caused, as a result of dysfunction of technical means as: traffic lights, road signs, traffic lights to regulate air, sea, etc.

The dominant theory in awarding damages in Albania is the same as in contractual obligations, so exists the alternative of accomplishing the contractual obligation or to pay the same compensation of the loss. It is intended that the injured party to recover with all the actions the rehabilitation of the injured as the same state before

it. While the cash reward is an additional alternative if outdoor compensation is not possible.

2.1. Compensation of Property Damage and the Criteria to be Considered

According to Law no. 8510/1999 damages that citizens suffer from the unfair actions of the state administration are two types: pecuniary and non-pecuniary. In connection with the latter can be allocated given the interpretation that the United Chambers of the Supreme Court on article 625 of the Civil Code to the detriment of moral, existential damage and biological damage.

Compensation of property damage under Article 640 of the Civil Code consists of: the loss suffered and the missed profit and expenses incurred in a reasonable way to avoid or reduce the damages, that have been necessary to determine the responsibility and the extent of damage, as well as the reasonable costs incurred to obtain compensation in extra-judicial way.

Law no. 5810/1999 on the way of compensation for property damaged suffer from the actions of the administration are two:

- Return of the previous situation by actively performing administration actions is realized in two ways:
    - Eliminating the causes that led post-avoiding the consequences, through previous restoration or condition that, if such a thing is impossible, by establishing a similar situation.
    - And / or physical return of an item or restore the right of disabled due to acts or omissions of public administration (Article 5).
- Monetary reward in cash or means to pay an amount of money to balance the loss, which cannot be corrected directly (Article 6). It is a subsidiary manner of monetary reward outdoor property damage when the disappearance of the causes and the return of the previous situation are not possible (Article 8). This kind of reward is typical for 1) non-property damages such as moral damage and other non-property and 2) in cases where the disappearance of the causes, and the restoration of the previous situation or a similar situation, is impossible 3) the existing situation is caused by an administrative act which is unchallenged for the injured party.

In the case of material (property) damage, the injured party has the right to seek lost profits (Article 10) which means profit to be drawn in terms of the common market by a diminishing wealth lost. Compensation for property damage is calculated by the bailiff, from the moment when the damage was caused till the execution of the decision.

2.1.1 Principles of Pecuniary Damage Compensation

Property damage as well as those run by some non-material base rate at which a judge must consider in assessing the damage and his reward. In fact, the measurement of property damage is very easy and math is his reward, however, since pecuniary damage can be variable or may affect the conduct of the injured and the court nevertheless I need principles.

2.1.1.1 The Principle of Initial Compensation in Kind (Nature)

In the non-pecuniary damage to OAP, the main principle is that of compensation in kind (in its nature) which means to perform an action or inaction, to disappear consequences which have resulted in damage to the people concerned. If this is not possible with the aim of compensation, the final remuneration is money. The nature sense of compensation is found in the way of the execution of duties, the overall aim of CC where the creditor against the debtor require accomplishing his duty as delivery of the thing or the execution of works, etc.

As mentioned above, the legislator to Article 8 of Law no. 8510/1999, regulates relations between awards. It also states that in case of causing property damage, monetary compensation remains the only chance of the administrative body towards the injured after trying to diminished the effect and /or return the injured in the same previous state. Moral damage and other non-pecuniary damage basing on the nature of the damage that affects personality, health, mood, etc. knows as the only rehabilitation of the individual: the cash. In kind compensation is impossible to be realized such as: to turn of limb loss, to dissipate a state of anxiety and insomnia, to return previous personality etc.

2.1.1.2 Full compensation of damage

The principle of full compensation of the damage is the most classic principle for damage whatever it is, contractual, tort liability damage, pecuniary or non-pecuniary damage. This principle aims at an equivalence between the damage and the benefit that the polluter should pay. In this way, this principle is recognized in

France where the damage is equated to compensation. According to the French author Viney "*You have to pay all the damage but nothing more besides damage."* (Viney, 1988, p. 80).

According to this principle the injured party takes the rewards that intend to return it to the previous condition before the damage, as it is has not been ever occurred. This is the main principle of the law no. 8510/1999 in compensation for damages that administrative bodies should reward. The main intention is to eliminate the wrongful consequences. If it is not enough to recuperate the losses or to release the paint to the injured person, the latter will be given a reward that tends to measure the entirely damage.

2.2.1.3 The principle of Variability of Compensation

The pecuniary damage, at first glance seems to be unchangeable, as far as the injured party rewarded the lost in objective and mathematical way. However, for the pecuniary damages that comes from the health loss, foreseen by Article 642 CC are known for variability of the compensation depending on the improvement or deterioration of health in the future, or increase or decrease of the ability of the injured to work.

The pecuniary loss for health damage is measured on the monthly or annual income losses since when the direct or indirect harm happens. This kind of property damage due to loss of ability to work should be distinguished from biological damage as a non-pecuniary damage that elaborated the United Chambers of the Supreme Court of Republic of Albania, with the decision no. 12/2007.

The same thing happens when the injured party is a person under the age of 14 until 16, whom the compensation is calculated in the national minimal wage. While the one who fills the age of 18 has the right to seek growth rewards the average wage, under Article 647 of CC.

2.2.1.4 The Principle of Fragmentation of Compensation (Payment in Trances)

This principle occurs when the judge has the right to choose for the defendant to pay the reward once altogether or in trances (parts). Depending on the type of property damage for example, if that comes as a result of loss of a fixed asset, the damage is measured, usually once altogether. If the loss of property results from loss of wage due to disability in health and work, the payment will be in trances to bring to the injured party the same situation as if the damage is not occurred. So the reward will be given a monthly salary like that take the injured before and now not

take because of the damage occurred. This principle is clearly stated in Article 643 of CC that provides for compensation to victim's family property of the victim, as a result of his death:

- Costs for food and living children of his children, wife and parents unable to work who were dependents of the deceased, fully or partially, as well as the people who lived in the family of the deceased and to enjoy the right to food.
- Costs required for the burial of the dead, to the extent that they respond to personal and family it.

It is predicted in this section, that the court takes into account all circumstances of the case, may decide that the award be given in nature or in cash, at once or in parts. In this case, the compensation of pecuniary damage appears as a monthly annuity. However, these are two different concepts. A life annuity is a contract which means the awarding of an item sold, donated or bequeathed by will in the form of monthly or annual installments on a temporary or permanent. The criteria to be taken into account for the monthly amount are the same with those of the annuity contract criteria for monthly rent. This kind of analogy is well known from the theory (Mataj, 2011, p. 54).

3. The Compensation of Non-pecuniary Damage and the Criteria to be considered

Definition of non-pecuniary damage and their configuration are defined as Article 625 of the Civil Code and Article 12 of Law no. 8510/1999. The summary of both, can succeed to the non-pecuniary damage as the inviolability of psycho-physical integrity of human (that stands for the body and health), a person's racial freedom, human dignity, good name (reputation) personality of each person, the right to enjoy privacy and not break it (damage mood current and reflect on the future losing motivation for life, to enjoy the pleasures of life, etc.).

In the case of compensation of non-pecuniary damage was criticized if one can achieve the full" spiritually after he has suffered loss of moral and spiritual damage that an administrative body can cause the injured. Authors such as Prof. Mehdi Hetemi (Hetemi, 1998, p.16),) Italian authors Manteliet (1907) or Pacchioni (1922) acknowledge that non-pecuniary damage and was rewarded utopia assuming a full reward after damage in mood, personality, etc. is unrecoverable (Cricenti, 2006, p.14).

3.1. Principles of Compensation of Non-Pecuniary Damage

Ways in different countries handling is different non-pecuniary damage created a number of theories being considered at the moment of measurement and compensation of non-pecuniary damage. Given it is a highly subjective harm these theories help in court. In determination of a value that will satisfy really claimant party but will be aware, that it is more fair reward.

3.1.1 The Principle of Full Reward (restitution in integrium)

In the case of a non-pecuniary damage as stated above, the monetary reward unless its nature is impossible to handle the mood and put in place the injured as before the injury, or the personality of the victim, reputation of legal person etc. In this condition the only way is to give monetary compensation to the injured party the opportunity to revels in another form or build some reputation reformatories, a better name etc. Through this principle it is intended that victims are given what is due and nothing more without excess and unjust enrichment.

3.1.2 The Principle of Fair Compensation

Measurement of non-pecuniary damage and his reward is rare to valuate accurately. Surely, the risk of having "expected losses" can exist even for the injured. In order to eliminate maximally (as a reward hundred percent would be utopia claimed) such resentment or even claims of the defendant, the injured party is enriched aim fully. The clarification aims court set a fair Compensation as an ordinary citizen to appreciate as such.

If the Court for the compensation of pecuniary damage refers to losses, loss of profit and other expenses incurred in the case of compensation of non-pecuniary damage the court uses its common principles, case law and an objective assessment of the case taking into account a number of criteria. It is clear that this principle is complementary to the principle of full compensation of damage to achieve the thorough rehabilitation caused by an unlawful act or omission by public administration bodies.

This type of compensation occurs mostly to states based on Common Equity Law and in Great Britain, USA etc. Thus, a judge in awarding the damages non-pecuniary based on three basic principles of accessibility, uniformity (based on other similar issues) and predictability (giving a reward of which measures foreseen by all). This principle has embraced Italy which has produced tables of the Court of Milan today, applicable throughout the country. The tables of Milan Court

triumph on the tables of Rome Court after the Supreme Court's decision no. 12408 dated 07.06.2011. The evaluation criterion of Milanese tables, eliminate way of calculating the non-pecuniary damage lower in those countries that do not have the standard of living as in Milan and vice versa. Also eliminated the practice "forum shopping" where the parties choose between the courts of competent jurisdiction, the court which is more "generous" in the amount of compensation.

Even in France with the emergence of the law on No.26 dated July 5 courts are obliged to publish periodically trends compensation measures applied to all kinds of damage. The courts so since become a unification in minimum and maximum margins which are based on the verdict.

By decision no. 12/2007 of the High Court in Albania supported this principle to meet the rest of the compensation principle of full non-pecuniary damage suffered. Unified Session of this Court, have set minimum and maximum margins for non-pecuniary damage and moral existence which cannot pass both in total more than ¼ to ½ of objectively measured biological damage from physician / legal psycho and evaluator of health damages.

3.1.3 Principle of Unique Rewards

The principle of compensation or a unique lump is the opposite of the principle of compensation in installments. In general, this principle applies to non-material damage which eventually reached to determine the mass of moral, existential or biological damage suffered directly or indirectly by the injured when the fact of illegal happened and maximized when it is measured by judicial experts. While measures of harm from this moment until the execution of the decision becomes final when calculated for each day of delay.

The reward for moral damage is paid measures the injured to spiritual temporary turbulence occurred. Given the fact that pain, stress, insomnia, etc. They are temporary (the opposite would be treated as a mental pathology) makes clear framework of mathematical calculation to reward a complete damage in the past. Also for existential damage which is regarded as damage to the inability of the injured party to exercise in those sling, life satisfaction, and did not socialize that realizes. Biological damage as a third form of non-pecuniary damage that has to do with health, the good condition of the individual, integrity psycho-physical it should be distinguished from property damages health which constitutes the loss of income out due to inability to work. Even in this case, the reward of such damage

since he accurately measured by the Expert forensic- legal psyches-legal much as loss one hundred percent of the entire healthy human body.

The reward for these unique principles is right. As well the judicial practice in Albania is providing consolidated fixed compensation, with a single voice for any non-pecuniary damage and there is no case where the compensation to be provided in parts. This logic is quite acceptable as long as the person claims to damage of the past, personality or honor etc. The best reward would be that in a very thorough and immediate.

4. Conclusions

We conclude that the reward of wealth and non-pecuniary damage they suffer every person in the Republic of Albania by public administration bodies are rewarded for faulty or not faulty acts caused by the authorities or its employees. Although the emergence of the law no. 49/2012 "On the organization and functioning of administrative courts and administrative disputes" as amended judgment awarding damages claims constitute the lawsuits with less number in all administrative courts at three levels.

However, the legal framework for the compensation of contractual damage in Albania appears whole when it combines altogether: the criteria of special law no. 8510/1999 "On the responsibility of organs of state administration", the criteria of Civil Code, interpretations that made the United Chambers of the Supreme Court with the decision no. 12/2007 on types and measurements of non-pecuniary damages. What would be the valuable in Albania are tables or statistics that come from all administrative courts of the Republic of Albania (6 court of first instance, an appellate court and a college Administrative High Court). In this way the values of similar cases awards will avoid various abuses. It is worthy to suggest the publication of the decision of the Administrative Courts in a newspaper or media in reference to the article of the Administrative Procedure Code which not only raise awareness of citizens on their constitutional rights but will also increase the responsibility of the state in the future.

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