



Compensation for Immaterial (Moral) Damage Due to Violation of Personality Rights in Kosovo

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Abstract: Compensation for immaterial damage is one of the most important instruments in the positive right in Kosovo, both in terms of legal regulations as well as for the special relevance of the case law. Violation of personality rights represents one of the most important fundamental forms for compensation of immaterial (moral) damages. In this paper, we are going to address key issues related to personality rights, entailing those moral values of a person through which freedom, physical, moral and spiritual integrity are expressed, which at the same time are a constitutional and legal category, expressively provided for by Constitution, the Law on Obligational Relations. Compensation for immaterial damage is of great importance for the primary function it has for the victim, being the satisfaction to the injured party. According to Kosovo LOR, the injured party has the right to repair of the immaterial damages caused by the infringement of moral integrity by the other party, with the rendering of a judgment or correcting the error. The paper is based on literature in the theoretical and legislative aspect. The end of the paper provides important recommendations for the future legal framework in regard to compensation for immaterial damage in Kosovo, more precisely for the Civil Code of Kosovo.

Keywords: immaterial (moral) damage; the injured; satisfaction; legal rules; Kosovo

1. Introduction

The immaterial (moral) damage means the damage which does not relate to the property or income of any person. It is for this reason that this category covers a wide range of damage, including bodily injury and violation of spiritual health by the feeling of anxiety and spiritual suffering. In most of the legal systems only violation of personal freedom or authority is considered as immaterial damage (Pschiedl, 2006, p. 9). Moral damage (*pretium doloris* or *pecunia doloris*) is the

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internal appearance, temporary of unfair disturbance (*non iure per turbatio*) of the human spiritual state, spiritual pain and suffering, or the state of anxiety and spiritual torment deriving as a consequence of an unlawful fact. Anyone who suffers violations in the field of health and his personality from illegal actions or inactions and due to a fault of a third person, has the right to claim compensation for the moral damage suffered (Musca, 2013, p. 111). The Law on Obligational Relations of Kosovo (LOR, 2012) defines specifically the immaterial damage in Article 137, providing as follows: “Immaterial damage comprises the infliction of physical or mental distress or fear on another”.

Immaterial damage consists of personal right injury that cannot be expressed in property aspect, e.g. if anybody due to physical injury suffers pain and grief has the right to be satisfied by moral damage, while the lost profits is pecuniary (material) damage, spiritual pain resulting from husband, child, killed father, spiritual pain due to disfigurement. Moral damage cannot be compensated, but in relation to it a *satisfaction* is paid (Gams, 1986, p. 322). Moral damage represents a *violation of the personal belongings* of a person. In this way, the psychic part of a natural person is violated. It can appear in different ways, such as violation of freedom, dignity, authority, disgrace, disturbance of the personal and family peace, causing physical or mental suffering to another person (Milošević, 1977, p. 150). It can be caused regardless of and separately from the material damage (e.g. physical pain, fear), but mostly it appears along with the material damage (corporal damage, physical pain, fear).

2. Personality Rights as a Basic Form of Immaterial (Moral) Damage

The violation of personality rights represents one of the most important forms for compensation of immaterial (moral) damage. The personality rights or personal rights in a narrower sense are rights whose subject is the personal property. These are the values of personality through which its freedom is expressed, as well as its physical, moral, spiritual and conceptual integrity. These are moral and conceptual values which constitute the entirety of human personality. (Gams, 170) They at the same time are *constitutional category*, expressively foreseen in the Constitution of the Republic of Kosovo 2008, because of their great importance. These are *the right to physical and spiritual integrity, the right to moral integrity*, more specifically *the right of honor, social protection, free choice of profession, the inviolability of the dwelling, freedom of opinion and expression, free preaching of*

the religion, freedom of expression of nationality and use of the native language, freedom of scientific and artistic creativity and personal confidentiality. Legal persons are entitled to personal rights, except those that are related to biological existence of a natural person, especially the right to the authority and goodwill, honor, professional secrecy, freedom of business. Whether the violation of personality rights has occurred, as a ground for the compensation of the immaterial damage, it is the court that has the authority to make an assessment, taking into consideration all the circumstances of the concrete case, starting from the right of personality as a protected good by the importance of the violated good. (Gorenc, 2005, p. 1712)

Personality rights are personal values closely linked with physical personality and are an integral part of this personality. In this paper we will present the fundamental human rights which are subject to the frequent violation, infringement, denial, which represent the most frequent cases of compensation for immaterial damage for the injured - victim in Kosovo. The right to physical integrity includes in its entirety more rights, which as common characteristic have the physical human existence. These are: The right to life, the right to bodily integrity, right of spiritual integrity, and the right to freedom.

We emphasized so far that personality rights enter in the area of civil rights only to the extent to which they can be expressed in property aspect. We have started with the physical integrity. If physical injury is caused to anyone, the injured person has probably suffered a moral damage, because a moral value has been violated, the physical integrity. But from this injury a pure property damage is caused, which is related to medical treatment expenses and lost profits, if the victim because of the injury was not able to work for a certain time, or if ability to work has been reduced or permanently lost.

The right of the honor and the right to protection of private life. Are other rights for human personality and are a very high importance. (Petrović, 1996, p. 59) Insult of the honor certainly causes moral damage. But it may merely cause economic damage to the property, for example, when for a person news is disseminated that he/she has no relevant professional skills, so for this reason the person loses his job and respective profit, or if someone is killed, persons who were supported by the killed, in addition to serious moral damage in the form of moral distress experienced face also material damage, in the form of losing the possibility of supporting, or other matter, if someone's surname is misused (the name is first and foremost an attribute of personality, but also the right of personality) by the

person with the same surname, except moral damage, material damage can also be suffered, e.g., the lawyer of the person with the same last name loses clients, the enterprise with the same company name loses its business partners.

The right to personal identity, the right in the name and the right to motions and personal letters, are the highest rights and values. (Bydlinski, 2015, p. 79) These rights are guaranteed by the Constitution of the Republic of Kosovo. Article 7 of the Constitution of the Republic of Kosovo expressly provides that: “The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination...”

3. The Immaterial (Moral) Damage from Insults, Defamation and Violation of Dignity

Defamation, insult and violation of dignity represent the most serious forms of violation of human personality enabling the injured party that through a judicial way (Tirana District Court Judgment, no. 6538/2012) fulfil the rights provided by the Civil Law against Defamation and Insult in Kosovo (2008). Insult of the honour certainly causes moral damage. But it can only cause economic damage to property, for example, when news is spread for a person that he does not have the appropriate professional skills, and therefore loses his job and the corresponding profit.

The roots of defamation as a legal institute can be found in Roman Law (Medarski, 2015, p. 13). Thus, the thinking about defamation dates back to the Roman Empire, while the criminal offence *libellis famosi* has sometimes been sentenced by death. According to the provisions of the Law XII Tables, injuria was any violation of the material and personal values of others that were not sanctioned by any particular provision: such as injuria faxsit, viginti quinque, poenae sunt. (Zimmermann, 1996, p. 1050) Since the time of lex Aquelia, were sanctioned by were sanctioned with single or multiple indemnity, and delinquents that violated immaterial values with private points, or with the amount of money previously determined or determined by the court, serving further as relief paid from the right of revenge and as moral satisfaction for the injured people. (Puhan, 1968, p. 375) Although nowadays sentences and defamation charges are not so serious, they have a notorious “frightening effect”, and they pose a risk for prison sentences or high

cash compensation by journalists in many countries. There are still many countries in the world under whose legislation defamation is treated as a criminal offence, while a prison sentence sanction is also prescribed. The Republic of Macedonia was part of this group of countries until the full decriminalization of defamation in November 2012 and the adoption of the new Law on Civil Liability for Defamation and Offense. Kosovo adopted the Civil Law No. 02/L-65 on Defamation and Insult (2008). According to Article 3 of this law, defamation implies “the publication of an untrue fact or statement and the publisher knows or should know that the fact or the statement is untrue, the meaning of which injures the reputation of another person”.

Whereas “insult” according to this law means “the statement, behaviour, or publication of a statement directed at another person that is humiliating”. This law regulates civil responsibility for defamation and insult (CLDI, Article 4).

The basis for the existence of a defamation legal institute is the need to protect the honour and reputation of subjects (both natural persons as well as legal persons). In fact, the defamation provisions protect the conflict between two of the extremely important social goods, honor and reputation of individuals and freedom of expression. These provisions determine the limits of free criticism, and where criticism no longer enjoys protection within the freedom of expression and passes on something to be sanctioned due to the protection of honor and reputation of others. In addition to resolving such conflict, which in essence constitutes definition of defamation (and in some legislations, including that of Kosovo, a particular definition of offense), these provisions also lay down sanctions for defamation, grounds for excluding from responsibility for defamation, the question of apology, reaction and denial as tools for mitigating the damage to honor and reputation, the matter of grounds, level and the conditions for determining the compensation for defamation. What is “reputation”? The concept of “reputation” is unclear and there is no universal definition of what reputation is, and this may be a risk because of the fact that it can be used as a basis for limiting the human rights. When talking about reputation as a defense object, a number of questions are put forward. For example, is there a “negative reputation”, or better formulated “negative fame”? If the answer is yes, then the damage to the reputation of those people will surely be greater. Kosovo Civil Law on Defamation and Insult in Article 1 (c) has foreseen effective and appropriate remedies for persons whose reputation has been damaged by defamation and insult. Article 14 provides compensation for non-pecuniary damage.

4. Immaterial Damage in Case of Violation of Dignity and Dissemination of False Facts

In case of violation of the dignity and dissemination of false facts, the injured party is subject to moral damage. Violation of dignity may occur in a variety of ways, for example, verbally, in writing, with gestures, publicly or just before the injured. In the event of a violation of dignity, the injured person may suffer serious damage to emotional life.

The LOR of Kosovo, in its Article 185, has explicitly regulated the compensation in cash in special cases (violation of dignity). This Article states that: “A person who was forced into punishable sexual intercourse or another sexual act using fraud, force or the abuse of a relationship of subordination or dependence and a person against whom another criminal act against the dignity of the person or the person’s morals was committed shall have the right to just monetary compensation for the mental distress suffered”.

Here, Article 185 of LOR provides specific cases of person’s dignity violation. This legal provision also provides *the right to compensation in cash* due to mental distress suffered. The mental distress caused must be a *consequence of forcing into unnatural, punishable sexual intercourse, or any other criminal offence against dignity, personality and moral*.

In order to be entitled to the compensation of this particular type of damage, the injured party should have been forced to punishable criminal actions through fraud, violence or abuse of any subordination or dependence relation. However, granting the consent of the injured party for these damaging and offensive actions excludes liability for compensation for acts where violence, fraud, abuse of any relationship of subordination or dependence are not elements of the criminal offence. As noted, this is a special case of compensation for damages, where the general rules of the LOR for the compensation of damages apply, namely that it can only be approved if the violation of certain personal right has caused to a spiritual distress of a certain degree and duration to the injured. Here, therefore, it is important to set a fair compensation for these cases, but the criminal offence against the dignity and moral of the person, under influence of fraud, violence, force, or abuse of any subordination or dependence relation must have been committed in advance, thus causing the injured to have suffered deep spiritual distress on a scale and duration that makes the spiritual equilibrium to be highly disturbed. Violation of dignity by

fraud, violence or abuse, and punishable sexual offenses are expressly regulated by *Criminal Code of Kosovo (2012)*.

It is important to point out what needs to be accomplished in order to realize the right to compensation in the case of the violation of dignity in these cases. Article 185 of the LOR stipulates that the following conditions must be fulfilled in order to realize the right to compensation: 1. To have an act committed by means of fraud, violence or abuse of any subordination or dependence relation; 2. There is a punishable sexual intercourse, or unnatural punishable sexual act, or other criminal offense against dignity, personality or moral; and 3. The injured party to have suffered from this deep spiritual distress on a certain scale and duration.

Determining the amount of compensation depends on each specific case. All circumstances that existed at the time of causing the damage or later have an impact, depending on the extent and duration of the spiritual distress caused. The Criminal Code of the Republic of Kosovo has comprehensively regulated the issue of protection of human dignity. Concretely, *criminal offences against human integrity* are included in Chapter XX of the Criminal Code of the Republic of Kosovo, specifically in these Articles: Mistake of fact as to age of victim (Article 229), Rape (Article 230), Sexual services of a victim of trafficking (Article 231), Sexual assault (Article 232), Degradation of sexual integrity (Article 233), Sexual abuse of persons with mental or emotional disorders or disabilities (Article 234), Sexual abuse of persons under the age of sixteen (16) years (Article 235), Inducing sexual acts, touching or activity by persons under the age of sixteen years (Article 236), Offering pornographic material to persons under the age of sixteen (16) years (Article 237), Abuse of children in pornography (Article 238), Sexual abuse by abusing position, authority or profession (Article 239), Inducing sexual acts by false promise of marriage (Article 240), Facilitating or compelling prostitution (Article 241), and Providing premises for prostitution (Article 242). It is important for our paper to focus on analysing “sexual harassment”, “moral harassment”, and “moral damage”. In a precise description, the term “moral harassment” must first be specified, since in itself, when we talk about “*moral harassment*”, we immediately make a connection with the “sexual harassment”. In fact, if we go more in detail in the term “*moral*”, at least having in consideration what is provided by the legislation as well, the exact terminology is “moral damage”, while on the other hand as legal terminology we find it as “sexual harassment” (Zhilla, 2017, pp. 19-20).

As we have pointed out, moral-immaterial damage comes as a result of the violation of the integrity and dignity of the personality, while sexual harassment is foreseen as a criminal offense, which results in causing moral damage. The compensation for moral damages is directly required by the civil court, while for sexual harassment it is necessary to prove the existence of the criminal fact by the criminal court and then to seek moral damages in the civil form. As regards to this right in Kosovo, LOR in Article 182 has provided *rendering of a judgment or correcting the error in cases of violation of the personality rights*.

5. Publication of Judgment or Correction of Error

It should be noted that in those cases where the restoration of the previous situation cannot be done, the court may judge for compensation of the injured party for the immaterial (moral) damage to the morally impaired values (Article 169, paragraph 3 of the LOR). The compensation of immaterial damage is not an enrichment of the injured party, nor does the injured party, after the compensation of the damage, falls into a difficult material state. (Loza, 1978, p. 223) The compensation of the damage in the past has been punitive, whereas in contemporary law it has a preventative character, the character of the compensation itself, while the reimbursement of immaterial damage is a satisfaction for the personal violated goods of the injured party – victim. (Simonović, 2009, p. 7)

The immaterial damage may be due to a criminal offence and the act of delinquency and as a result of the violation of the contract. The person who has suffered immaterial damage is sentenced to money compensation and with this money compensation is affected into mitigating the subjective shocks caused to the victim's personality. The compensation of immaterial damage to the injured party in cash is judged not because the money represents the price for the distress experienced or is presented as a substitution of the material value instead of the damage suffered, but the intention is to enable the injured to restore the psychic-emotional equilibrium which existed prior to the offender action. Such a function of compensation for immaterial damage is called satisfaction and has a subjective character. (Stankovic, 1972, p. 164)

Article 182 of LOR tackles the matter of *publication of the judgment and correction of error*, stipulating that “In a case of the infringement of a personal right the court may order the publication of the judgment or a correction at the injurer’s expense or order that the injurer must retract the statement by which the

infringement was committed or do anything else through which it is possible to achieve the purpose achieved via compensation”.

Article 182 of LOR elaborates about the immaterial damage caused by violating the right of the personality. As to what the violation of personality represents and how that would be violated, it is not determined by this law, because the material goods are in question which are numerous and the manner of violation may be of different kinds. In addition, in more frequent cases, the violation of a personality right of a person may be caused by the violation of authority, honor, bodily and personal integrity, the right to life, health, privacy and other immaterial goods guaranteed by the Law on Defamation and Insult, all in the case of a natural person.

In cases of a legal person, all the rights mentioned above, other than those belonging to the biological being of a natural person, where the violation of these rights is usually done by insult or defamation. For this reason, the injured party has the right to a compensation of the immaterial damage caused thereby. The compensation for the immaterial damage due to the violation of the personality rights is done by payment of the amount determined as satisfaction for this kind of damage. Given the fact that the repair of immaterial damage can be done not only with the payment of the determined amount of money, this legal provision is intended to achieve the ultimate purpose of the compensation of the damage in this way, and this is the re-establishment of the previous state.

This legal provision provides for the manner of compensation for immaterial damage caused in the event of a violation of the right of personality. Its implementation particularly applies in the event of violation of the personality rights through the dissemination of false facts against a natural or legal person, thus damaging their honour and prestige, which, besides material damage, also causes immaterial damage, which can be compensated as regulated by this article. The compensation of this type of immaterial damage can take place in several ways:

1. *Through a court order, a final criminal judgment is made public*, holding the person responsible and guilty as well as sentencing for the criminal offence of violating the personality rights;
2. *Through publication of the civil judgment* whereby the responsible person, pursuant to Article 183 of LOR is obliged to compensate the immaterial damage in monetary form;

3. *Through the publication of public correction* whereby the allegations violating the personality rights are denied and corrected, all on the expense of the injurer;

4. *Through a court order the injurer withdraws the statement*, by which the personality rights were violated, or something else is undertaken so that depending on the concrete case circumstances, public apology or through public remorse, to be able to set aside the violation of the personality right.

5.1. Purpose of a Fair Monetary Compensation of Immaterial Damage - Satisfaction for the Injured

Compensation for immaterial damage is the way of indemnification of the injured subject, because of the violation of personal goods. (Dauti, 2013, p. 202)

In the event of a violation of the dignity, prestige or freedom of any person, the compensation will be the reinstatement of the previous state, and this will be done by *revocation of the violation caused by the withdrawal of the statement or by the declaration of improvement of the statement by the injurer*. When a dispute arises because of a violation of dignity or prestige, the court may order the pronouncement of the judgment at the expense of the offender. However, in the event of physical or psychological suffering and other forms of moral damage, the return to the former state will not be possible.

It is important to note that the fair compensation of immaterial damage has a character of satisfaction for the injured party because of the violation or loss of any immaterial good. The purpose of the fair monetary compensation is to enable the injured party to have a pleasant experience, a pleasure with which could put the psychic balance.

Such compensation is a specific form of protection of personality, expression of humanity, and is in harmony and harmony with the principle of justice and the spirit of contemporary legal order. In the provisions of paragraph 1 of Article 183 of the LOR, “the Court orders to adjudicate the compensation is the circumstances of the concrete case justify so”, which means that the court decides whether the compensation will be judged by serving, inter alia, the criteria of fairness, and if it decides that it must, then determine the reward that is fair.

6. The Compensation of Immaterial (Moral) Damage for Legal Persons

Article 187 of the LOR expressly regulates the monetary compensation of the immaterial damage to the legal person. Pursuant to Article 187 of the LOR, the court grants a fair monetary compensation to the legal person for denigration of reputation or goodwill, irrespective of material damages, if it finds that the circumstances justify this, even if there is no material damage.

The legal person is also entitled to a fair monetary compensation due to immaterial damage. The court grants this compensation to the legal person only in cases when, by the act or omission of the other, the reputation or goodwill of the legal entity is violated. This is due to damage of the reputation or goodwill, for example, to cause material damage to a legal person, but irrespective of material damage, in case of denigration of reputation or name, the legal entity is entitled to a fair monetary compensation, if this is justified by the circumstances of the case. In such cases, it is the court to ascertain the existing status of reputation and the name of the legal entity before the damaging fact, what was the act or omission that might have had an impact on the reduction of reputation and goodwill, and if denigrating of reputation or goodwill of the injured party has occurred.

Based on all the circumstances of the particular case, whether or not there is material damage, and whether or not it has been compensated, the court may determine the monetary compensation depending on the extent and the consequences caused to the injured party. For the owner of the business premises and to economic enterprises, the dissemination of false facts would affect the total or partial loss of customers - clients.

A particular case of dissemination of false facts will present the case of disloyal competition - disallowed competition in commerce that would transfer or disseminate information that would have the effect of undermining the prestige of the other person's work and that they would have to make it impossible for him, thus hindering or reducing his successful work. Since these behaviours, which would be contrary to the rules of normal work, also cause property damage, exactly for this, the injurer will be obliged to compensate the injured party. (Milošević, 1977, p. 166) Kosovo Law on Competition no. 200/36 is an important law for Kosovo given the fact that its purpose is to ensure the development of a stable market economy in Kosovo by stopping actions that restrict the press or distort competition.

7. Inheritance of the Right to Compensation for Immaterial Damage

Claims for compensation of immaterial damage will be passed to heirs only if it is granted by a final decision or by written agreement (Article 188 of the LMD). In this case (Article 184, paragraphs 1, 2, 3, 4 of the LOR) the law has primarily taken into account the function of compensation for immaterial damage, which is manifested in the satisfaction of the injured party's personality. When assessing the existence of this damage, the court keeps account of the duration and intensity of physical pain, psychic suffering, accounts for the importance of the violated goods and the purpose to be realized. From this it can be concluded that this right cannot be inherited or transferred, except if it has been granted by a final decision or by written agreement. Also the right to a fair monetary compensation in the name of immaterial damage is a personal right, which is closely related to the personality of the person to whom it belongs.

8. Statutory Limitation of the Right to Compensation for Immaterial Damage

The statutory limitation for the compensation of immaterial damage is provided for in Article 357 of the LOR. Paragraph 1 of Article 357 sets the statutory limitation period for claims relating to the compensation of damage caused by the injurer. Claims for compensation of damages caused are prescribed for 3 years and for these claims the statutory limitations period start to run from the day the injured party became aware of the damage caused to him/her and about the person who caused the damage. Two statutory limitations of this right are foreseen, the subjective and objective deadline.

Subjective deadline of three years for the prescription of the claim for compensation is related to two circumstances: 1) to notification of the injured party of the damage, and 2) with the subject that caused the damage. The injured party must be aware of the damage caused to him/her but cannot file a claim without knowing the person who has caused the immaterial damage. After the injured party has learned of the damage and the person causing the immaterial damage, the statutory limitation period begins to run and after the expiration of the 3 year deadline, the claim for compensation for the immaterial damage is prescribed and the injured party after the expiration of this period loses the opportunity to realize the claim for compensation of the damage through the judicial way, given the fact

that if the offender in the capacity of the debtor submits the objection on the ground of the statutory limitation expiration of the claim.

In order to protect the injured subject better, an objective (absolute) prescription is envisaged, which begins to run irrespective of the injured party's notification of damage and the offender, by objectively calculating the time from the moment when the damage was caused. Such a statutory limitation period expires upon the expiration of the 5-year period, which runs from the day the damage was caused. This means that the injured party can file a claim against the offender not later than within a period of 5 years, because this deadline applies to any case when the immaterial damage has been caused. The 5 year period of statutory limitation is calculated from the moment of causing the immaterial damage and not from the time the person became aware of the person who caused the damage. This is because of legal certainty for the injured party.

Paragraph 4 of Article 357 of the LOR provides for a 15 year term of statutory limitation of the claim. Under this paragraph, claims for compensation of damage caused by the act of sexual abuse with minors are prescribed fifteen (15) years after the juvenile has reached the age of maturity. As a starting point for the start of the 15-year limitation period of the statutory limitation, the moment of acquiring the ability to act must be taken, which means that the injured party, upon obtaining the full capacity to act, acquires the right to protect his/her right independently.

The age of 18 is the time of commencement of the statutory limitation period for the claim for compensation for the immaterial damage caused by the act of sexual abuse for juveniles, as well as 15 years of statutory limitation, meaning 33 years of age. This means that the injured party has the right to file a claim up to the age of 33. The 15-year term of statutory limitation of claims for compensation for immaterial damage, caused by the act of sexual abuse with minors, is the longest term of the statutory limitation of claims, because minors enjoy special legal protection in positive law in Kosovo, and by the International Convention on the Protection of Children (1990).

The claim for compensation of damage caused by a criminal offence is provided for in Article 358 of the LOR. When immaterial damage is caused by a criminal offence and a longer term of statutory limitation is prescribed for criminal prosecution then the claim for the compensation of immaterial damage to the responsible person expires when the time limit for the prescription of the criminal prosecution expires, which means that the term of statutory limitation of claims for

compensation for damage caused by criminal offence is related to the period of statutory limitation of criminal prosecution.

9. Conclusions

In the review in this paper, related to compensation for immaterial (moral) damage because of violation of personality rights in Kosovo, we have come to the following conclusions provided below.

Moral damage is a violation of a person's personal goods. In that way, the psychic aspect of a physical person is violated. It can appear in various ways, such as violation of freedom, dignity, authority, disgrace, disturbance of personal and family peace, causing physical or psychological suffering to another person. The violation of personality rights is one of the most important forms of compensation for immaterial damage. These are the values of personality through which is his freedom, his physical, moral, spiritual and conceptual integrity is expressed. These are the moral and conceptual values that make up the entirety of human personality. They are at the same time constitutional categories, expressly provided in the Constitution of the Republic of Kosovo 2008, due to their great importance. Personality rights are personal values that are closely connected to physical personality and are an integral part of this personality. This paper presents the fundamental human rights, which are the most frequent subject of violation, infringement and denial, which represent the most frequent cases of compensation for immaterial damage to the injured party - victim in Kosovo. These rights are guaranteed by the Constitution of the Republic of Kosovo.

Defamation, insult and violation of dignity represent the most severe forms of human personality violation that enable the injured party in a judicial way to realize the rights provided by the Civil Law against Defamation and Insult in Kosovo. In the event of a violation of the dignity and dissemination of false facts, the injured party suffers moral damage. In the event of a violation of dignity, the injured person may suffer serious damage to the emotional life. In order to set a fair monetary compensation for these cases, a criminal offence must have been committed against the dignity of the person and morals under the influence of fraud, violence, or abuse of any relationship of subordination or dependence, thus causing the injured person to suffer deep spiritual distress, on a scale and duration that causes the spiritual balance to be seriously disturbed. The violation of dignity

by fraud, violence or abuse, and punishable sexual acts are expressly regulated by the Criminal Code of Kosovo.

The compensation for immaterial damage is the way of indemnification of the injured subject, because of the violation of personal goods. In the event of a violation of the dignity, prestige or freedom of any person, compensation shall be the reinstatement of the previous state, and this shall be done by the revocation of the violation caused by withdrawing the statement or by the announcement of the correction of the statement by the injuring party. When a dispute arises because of a violation of dignity or prestige, the court may order the pronouncement of the judgment at the expense of the injuring party. However, in the event of causing physical or psychological suffering and other forms of moral damage, the return to the previous state will not be possible. Such compensation is a specific form of personality protection, expression of humanity, and is consistent and in harmony with the principle of fairness and the spirit of contemporary legal order.

The legal person is also entitled to a fair monetary compensation because of immaterial damage. This compensation shall only be granted by the court to a legal person if, by the act or omission of another, the reputation has been violated. Claims for compensation of immaterial damage will be passed to heirs only if it is granted by a final decision or by written agreement. In this case the law has primarily taken into account the function of compensation for immaterial damage, which is manifested in the satisfaction of the injured party's personality. When assessing the existence of this damage, the court keeps account of the duration and intensity of physical pain, psychic suffering, accounts for the importance of the violated goods and the purpose to be realized. From this it can be concluded that this right cannot be inherited or transferred, except if it has been granted by a final decision or by written agreement.

Two statutory limitations of this right are foreseen, the subjective and objective deadline. Subjective deadline of three years for the prescription of the claim for compensation is related to two circumstances: 1) to notification of the injured party of the damage, and 2) with the subject that caused the damage. In order to protect the injured subject better, an objective (absolute) prescription is envisaged, which begins to run irrespective of the injured party's notification of damage and the offender, by objectively calculating the time from the moment when the damage was caused. Such a statutory limitation period expires upon the expiration of the 5-year period, which runs from the day the damage was caused.

When immaterial damage is caused by a criminal offence and a longer term of statutory limitation is prescribed for criminal prosecution then the claim for the compensation of immaterial damage to the responsible person expires when the time limit for the prescription of the criminal prosecution expires, which means that the term of statutory limitation of claims for compensation for damage caused by criminal offence is related to the period of statutory limitation of criminal prosecution.

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