

Second Study Commission: Questionnaire for the 2008 Meeting

Second Study Commission Civil Law and Procedure

QUESTIONNAIRE

DAMAGES FOR PERSONAL INJURY

LIECHTENSTEIN

Part I - General questions

- 1a. Does your system of law have any rules governing damages for personal injury? If so, what do they provide?

The rules of section 1325 to 1329 of the Liechtenstein civil law (ABGB) covers injuries of body, health, liberty and the right of sexual self determination. The tortfeasor has to pay the costs of treatment, loss of earnings and damages for pain and suffering. In addition, there are some other laws providing compensation to death, sickness, injury and any type of physical or mental damage.

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

Non-pecuniary damages are awarded only if the law expressly provides for non-pecuniary damages.

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

Pecuniary loss includes any loss that can be evaluated in monetary terms. These expenses include the costs of treatment (medical bills, costs of assistance provided by relations and/or nurse), loss of earning and affect as well as the past and the future. Damages for personal injury are easier to claim because they can be claimed also in cases of simple negligence without restrictions. Non-

patrimonial losses concern goods like health. In legal practice exact assessment of non-patrimonial damage into money is not possible. So the same kind of injury may result in different heights of compensation.

- 3a. What are the primary aim and the general principle of the law of damages for personal injury (e.g. prevention, sanction, distributive function, adequate compensation)?

The main function of damages for personal injuries is adequate compensation ("restitutio in integrum"); also important is the principal of prevention.

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

No, especially no punitive damages exist.

4. Does your system of law recognize different categories of damages for personal injury, particularly:
- physical pain
 - mental suffering due to permanent loss of abilities
 - mental suffering due to false imprisonment
 - mental suffering due to damage to intangible rights of personality
 - sentiments of fear (e.g. the worry caused by the fear of developing cancer)
 - mental suffering caused by the death of a close relative

The Liechtenstein law system recognizes all these categories of damages of personal injury. For example, mental suffering due to false imprisonment the Liechtenstein Supreme Court usually used the amounts awarded for medium pains of the same duration, this means EUR 250.-- for each day of imprisonment.

- 5a. What methods are used to assess the non-patrimonial damage? Are there any statutory rules on sums to be awarded (e.g. minimum, maximum sums)? Are there any judicial tariffs?

There are no any official judicial tariffs. The judge has - according to his own conviction - to determine the damages for pains and suffering. For light pains the High Court of Liechtenstein award EUR 120.-- to 150.-- per day, EUR 250.-- to 300.-- for medium pain and EUR 370.-- to 400.-- for strong pain per day.

- 5b. According to your system of law, which circumstances should be taken into consideration in assessing non-patrimonial loss (e.g. nature, intensity and duration of the injury and/or suffering; individual circumstances of the victim; social position; financial situation)?

The measuring of the sum of damages in case of personal injuries starts with the kind of injury. There are no minimum or maximum sums for awarding damages. For determine the amount awarded for pain and suffering, physical pains are – as mentioned above - divided into three categories, i.e. light, medium and strong pains. Important is also the duration of the injury. There is no separate calculation of damages for physical and mental pains. In most of the cases the financial situation of the tortfeaser not taken into consideration.

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

Medical expert is needed by the court in determine the duration and intensity of pains suffered by the victim and the kind of injury as well as the intensity of the physical and mental pains. In all these cases the court itself appoint an expert for this purpose.

II - Cases

6. A defective product harms V, a 25-year-old woman. Her right eye is severely injured (the sight is reduced to 50 %). What kind of non-patrimonial (non-pecuniary) damages is she entitled to?

There is so far no comparable case already decided in Liechtenstein, so it's impossible to say what amount of money for damage is adjudged.

7. A 20-year-old student, suffers severe brain injuries. He is reduced to a living dead. Are his parents who take care of him entitled to a compensation for their mental suffering?

It depends on the degree of suffering which would have to be unusually high.

8. A, a publisher publishes an article, which contains many untrue and offending statements of B's life. B sues for compensation. When assessing the non-patrimonial loss does it make any difference if B is a rock star, a politician or an unknown citizen?

Yes.

9. A who is slightly injured in a car accident misses a trip to Australia he had booked recently. Is he entitled to a compensation because he was prevented from enjoying his holiday (non-pecuniary damages)?

Yes.

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

Probably not, mental suffering can only be compensated in very grave cases (e.g. item 7).

III

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

No, at the moment there are none such proposals in Liechtenstein.

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

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

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