

## **Abstract: Compensation for non-patrimonial damage arising from causing the death of a close person**

### **Objective**

The objective of the analysis is to examine court practice related to compensation for non-patrimonial damage arising from causing the death of a close person. Namely, § 134 (3) of the Law of Obligations Act stipulates that in the case of an obligation to compensate for damage arising from the death of a person or a serious bodily injury or health damage caused to the person, the persons close to the deceased or the aggrieved person may also claim compensation for non-patrimonial damage if payment of such compensation is justified by exceptional circumstances. This provision has remained unchanged and has been applicable since becoming into force of the Law of Obligations Act on 1 July 2002. The following issues were primarily addressed:

- who is considered to be a close person in court practice;
- under what circumstances is ordering of compensation for non-patrimonial damage considered to be justificatory exceptional circumstances in court practice.

The analysis is based on judgements made in civil, criminal and administrative cases that were accessible via the court information system (54 decisions altogether).

### **Contents**

Legal provisions and the practice of the Supreme Court governing the area are introduced. The largest part of the analysis comprises the examination of decisions made in the mentioned area by courts of first and second instance. Compensation for non-patrimonial damage arising from causing the death of a close person in criminal cases where the death of a person was caused by a traffic offence, an offence against the person or a violation of occupational safety requirements is analysed. In civil matters, the problem is analysed in cases where the death was caused due to a traffic accident, a violation of occupational safety requirements, the provision of substandard health services, or other circumstances. In addition, compensation for non-patrimonial damage arising from the death of a close person in administrative matters is discussed.

### **Summary**

The analysis reveals that in defining a close person, the Supreme Court has emphasised the arrangement of daily life, blood relations and family connections. In the analysed judgements of courts of first and second instance, spouses, partners, children, siblings and parents are deemed to be close persons in court practise. If the child is an adult, an additional supportive argument in favour of his or her closeness to his or her parents is represented in the fact that they live together, communicate frequently and are there for each other. Parents and children are usually presumed to be close persons. This presumption is evidently refutable, for example, in cases where the parent has been deprived of parental rights or where the nature of the relationship disproves the presumption due to some other reason. However, in one case, the court did not consider a half-brother to have the right of claim because his closeness or especially trusting relationship between him and his deceased half-sister could not be identified.

The analysis explains the exceptional circumstances as follows. The Law of Obligations Act allows imposition of compensation for damages in relation to the death of a close person under any exceptional circumstances. In court practice, however, exceptional circumstances are primarily substantiated through the mental disorder or hardship of the person bearing the right of claim. Meanwhile, it is unclear under what circumstances is mental hardship considered an exceptional circumstance.

The Civil Chamber of the Supreme Court takes the position that exceptional circumstances are, for example, spatial proximity to the deceased at the time of the damage, directly witnessing the accident or its consequences, witnessing the deceased or seriously injured person's injuries or suffering as well as the circumstances under which the damage was caused (e.g. an intent of the person that caused damage to cause damage in combination with the later hardship of close persons). The Criminal Chamber of the Supreme Court has also specified that intent to cause damage does not mean that the criminal offence had to be committed intentionally, considering it sufficient if the accused damaged the victim intentionally, i.e. used violence against the person. Still, the Supreme Court holds the position that loss of family, decreased standard of living or ordinary mourning is not an exceptional circumstance.

The analysis also reveals that courts substantiate exceptional circumstances in various ways. On the one hand, in civil matters, courts consistently tend to emphasise that if the extraordinary seriousness of hardship, serious consequences, or witnessing death directly cannot be proven, the existence of exceptional circumstances has not been proved. On the other hand, in criminal cases (especially in case of intentional causing of death), the tacit presumption has established that a close person becoming the victim of an offence against a person causes hardship that does not require separate proof. Based on the above, the author of the analysis believes that the burden of proof of the victim is greater in civil cases than in case of a similar claim in criminal cases.

Consequently, the assessment given by a court of the exceptional nature of circumstances and ordered compensation may in certain cases vary depending on whether the case is reviewed by a civil or a criminal court. Although it is somewhat inevitable that a criminal court is generally more sympathetic to the victim, it should not be so, as every judge reviewing a civil action must be able to administer justice in compliance with the rules of civil proceedings and private law while also taking into account the principle that compensation for damage under private law is not generally punitive in nature.

The analysis showed that in some cases, criminal courts tend to use punitive arguments as a justification for ordering compensation for non-patrimonial damage. Although private law in Continental Europe generally denies punitive compensation for damage, it must be admitted that some punitive elements have been included in the local law of obligations. Giving punitive effect to a compensation for non-patrimonial damage in a circumstance where a person has already been punished pursuant to criminal procedure may be in conflict with the principle of imposing a single penalty for a single act.

The analysis also notes that not all negative consequences (including serious mental hardship) can be or should be compensated with money.

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