

YEREVAN STATE UNIVERSITY

FACULTY OF LAW

**MATERIALS OF THE
CONFERENCE DEVOTED TO
THE 85TH ANNIVERSARY OF
THE FACULTY OF LAW OF
THE YEREVAN STATE
UNIVERSITY**

**Yerevan
YSU Press
2018**

UDC 378:340:06

Editorial board

Gagik Ghazinyan Editor in Chief, Dean of the Faculty of Law, Yerevan State University, Member of the RA National Academy of Sciences, Doctor of Legal Sciences, Professor

Armen Haykants Doctor of Legal Sciences, Professor at the Chair of Civil Law of the Yerevan State University

Yeghishe Kirakosyan Candidate of Legal Sciences (Ph.D.), Associate Professor at the Chair of European and International Law of the Yerevan State University, Advisor to the Prime-Minister of the RA

The present publication includes reports presented during the Conference devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

This publication can be accessed online by the following address:
http://ysu.am/files/Law_faculty_English_book_85.pdf

ISBN 978-5-8084-2326-8

© YSU Press, 2018

Contents

| | |
|---|----|
| Artur Vagharshyan | |
| DEFENSIBILITY AS THE PRINCIPLE OF STATE CONSTRUCTION: CONCEPT AND NORMTIVE CONTENT | 9 |
| Taron Simonyan | |
| CONTROLLED REALITY AND THE FICTION OF FREEDOM: SYNERGY ALGORITHMS | 25 |
| Viktorya Ohanyan | |
| INTERSECTORAL AND INTEGRAL APPROACHES AS A RESPONSE OF THE THEORY OF LAW TO THE CONTEMPORARY ISSUES OF THE IMPLEMENTATION OF LAW | 36 |
| Karen Amiryan | |
| NATURE OF RELATIONS BETWEEN THE CONSTITUTIONAL COURT AND LEGISLATIVE AUTHORITY IN THE REPUBLIC OF ARMENIA | 47 |
| Vardan Ayvazyan | |
| SYSTEMATIZATION OF CONSTITUTIONALITY | 57 |
| Gevorg Danielyan | |
| EVOLUTION OF TERMINOLOGY IN THE CONTEXT OF ARMENIAN JURISPRUDENCE..... | 72 |
| Anahit Manasyan | |
| CONSTITUTIONAL DEVELOPMENTS REGARDING THE INSTITUTE OF CONSTITUTIONAL JUSTICE IN THE REPUBLIC OF ARMENIA..... | 88 |
| Rustam Makhmudyan | |
| KEY QUESTIONS (ISSUES) OF REALIZATION OF CONSTITUTIONAL-LEGAL STATUS OF LEGISLATION OF SUPREME JUDICIAL COUNCIL..... | 95 |

| | |
|---|-----|
| Vahram Avetisyan | |
| CORPORATE GOVERNANCE AND RESOLUTION OF CORPORATE DISPUTES IN THE REPUBLIC OF ARMENIA .. | 110 |
| Davit Serobyán | |
| THE PROBLEM OF INTERPLAY OF THE CONCEPTS OF ECONOMIC ACTIVITY AND ENTREPRENEURIAL ACTIVITY IN THE LIGHT OF CONSTITUTIONAL AMENDMENTS..... | 127 |
| Arpine Hovhannisyan, Narine Avagyan | |
| TRADEMARKS AND BRANDS: WHAT ARE THE DIFFERENCES? | 138 |
| Grikor Bekmezyan | |
| ON SOME ISSUES PERTAINING TO COMPENSATION OF NON PECUNIARY DAMAGE IN CIVIL LAW OF THE REPUBLIC OF ARMENIA | 153 |
| Arsen Tavadyan | |
| REGULATION OF INVALID CONTRACTS UNDER ARMENIAN LEGISLATION..... | 166 |
| Tatevik Davtyan | |
| PROMOTING A PRO BONO CULTURE IN ARMENIA’S LEGAL PROFESSION | 173 |
| Harutyun Khachikyan | |
| THE RESOCIALIZATION OF THE CONVICT AND THE NEW CRIMINAL AND PENITENTIARY LEGISLATIONS OF ARMENIA..... | 190 |
| Ara Gabuzyan | |
| SOME ISSUES PERTAINING TO LEGISLATIVE DEFINITION OF “CRIMINAL OFFENSE” | 203 |
| Gagik Ghazinyan | |
| THE CONSTITUTIONAL FOUNDATIONS OF THE INDEPENDENCE OF THE JUDICIAL POWER IN THE REPUBLIC OF ARMENIA | 210 |

| | |
|---|-----|
| Vahe Yengibaryan | |
| THE KEY ISSUES OF THE CRIMINAL PROCEDURE GROUNDS FOR THE FORENSIC EXPERTISE..... | 232 |
| Tatevik Sujyan | |
| PECULIARITIES OF JUDICIAL ACTS APPEAL AND CASSATION REVISION IN CRIMINAL PROCEDURES | 242 |
| Armen Hovhannisyan | |
| JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS AS A BASIS FOR EXCEPTIONAL REVIEW IN CRIMINAL PROCEDURE IN A FORM OF NEW CIRCUMSTANCE | 258 |
| Nelli Aghababyan | |
| PECULIARITIES OF JUVENILE PROCEEDINGS IN THE CRIMINAL PROCEDURES OF THE REPUBLIC OF ARMENIA..... | 270 |
| Vahe Hovhannisyan | |
| THE CHALLENGES OF RIGHT TO EXAMINE THE CASE AT CIVIL COURT WITHIN A REASONABLE TIMEFRAME | 278 |
| Sergey Meghryan, Hayk Hovhannisyan | |
| APPORTION OF BURDEN OF PROOF IN WORKS AND/OR SERVICES CONTRACTS: ARMENIAN PERSPECTIVE: THEORY AND PRACTICE..... | 291 |
| Aida Iskoyan, Heghine Grigoryan | |
| THE ANTHOLOGY AND THE SYSTEM OF ENVIRONMENTAL LAW OF THE REPUBLIC OF ARMENIA | 309 |
| Tirayr Vardazaryan | |
| GENERIC DESCRIPTION OF EMPLOYMENT PROTECTION IN TRANSFERS OF UNDERTAKINGS (TUPE) UNDER THE ENGLISH LAW: DEFINITION AND CLASSIFICATION | 332 |
| Tigran Markosyan, Lilit Petrosyan | |
| GENERAL LEGAL CHARACTERISTICS AND FEATURES OF OBLIGATORY ACTION..... | 350 |

Tigran Grigoryan, Mher Mkrtchyan
SOME CRITICAL REMARKS ON THE JUDGMENT OF THE
EUROPEAN COURT OF HUMAN RIGHTS CONCERNING THE
CASE AYVAZYAN v. ARMENIA 358

Ani Simonyan
RIGHT TO DEVELOPMENT:
KEY CONCEPTS AND OUTLOOK..... 373

ON SOME ISSUES PERTAINING TO COMPENSATION OF NON PECUNIARY DAMAGE IN CIVIL LAW OF THE REPUBLIC OF ARMENIA

Grikor Bekmezyan¹

As we know, the first condition for the existence of responsibility for the damage cause is the existence of damage itself. There is no definition of damage in the legal scholarship yet. According to P. Keyn, damage is the essence of the plaintiff's actions, which according to the author, means, that unless the victim has some financial or health loss, he/she cannot claim compensation of damages from the respondent.² G. Gharakhanyan, Y.A. Fleyshits, A.M. Belyakova define damage as non-favorable negative consequence, which arises in case of violation of property rights and non-tangible good³. According to N.S. Malenin, damage is a social category. And in more general terms, according to the author, damage can be defined as a consequence of violation of legally guaranteed rights and interests of the state, entities, and individuals.⁴ The Civil Code of RA defines damage as expense of the person, who's rights have been violated, has born or will bear for the purpose of reinstating the breached rights, restitution of the lost or damaged property (in case of real damage), lost profit, which the person would have received in the ordinary course of civil relations, given that the

¹ Candidate of Legal Sciences, Associate Professor of the Chair of Civil Law of the Yerevan State University. E-mail: gbekmezyan@gmail.com

² See Peter Cane, "The Anatomy of Tort Law" Hart Publishing, Oxford 1997 p. 89:

³ See Հայաստանի Հանրապետության քաղաքացիական իրավունք, Երկրորդ մաս (Civil Law of the Republic of Armenia. Second Part), P. 603, Флейшиц Е.А. Обязательства из причинения вреда и из неосновательного обогащения. М. 1951 (Fleischits E.A. Obligations arising from injury and unjust enrichment. М. 1951) P. 20, Белякова А.М. Имущественная ответственность за причинение вреда. М. Юрид. Лит., 1979 (Belyakova A.M., Property Liability for Causing Harm. Moscow, 1979), P. 7.

⁴ See Маленин Н.С. Возмещение вреда, причиненного личности. М. 1965 (Malein N.S. Compensation for Personal Injury. Moscow, 1965), P. 5.

rights would have been violated, as well as non-pecuniary damage.

Evidently, there are two types of damage: pecuniary and non-pecuniary. Pecuniary damage can be calculated, while non-pecuniary damage is impossible to calculate. In case of pecuniary damage, the victim can lose the salary, legal capacity, make additional expenses connected with medical treatment, drugs, recreational treatment and other purposes. In case of losing the main care taker expenses connected with the funeral may arise. Expenses connected with losing the main care-taker shall be compensated.¹ In case if the damage is caused to the property, then the owner can require compensation for restoring the property or expenses related to replacing the property, etc. If the damage cannot be assessed in monetary terms, then the damage is non-material or non-pecuniary.

The concept of non-pecuniary damage was not enshrined in the civil code before 2014, notwithstanding the fact that it actually was enforced since 2010 under the concept of compensation of damage caused to honor, dignity and business reputation, with being deemed as such²: Nevertheless it must be noted that the concept of non-pecuniary or moral damage has been enshrined in the legislation of the Republic of Armenia. In particular, the Article 23(1)(c) of the Law on Commercial Advertisements or Article 268 of the Administrative Offences Code of RA.

The concept of “moral damage” is also prescribed in the number of provisions of the Criminal Procedures Code. In particular, Article 6(45), in which “damage” is defined as “moral, physical, property damage expressed in monetary terms”. Article 58(1) of the same Code when enshrining the definition of the term “victim” stipulates the following: “the victim is the person, who has directly suffered moral, physical or property damage as a consequence of a criminally punishable conduct. Victim is also the person who could have

¹ See Civil Code of RA, Articles 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1087.

² See Civil Law of RA. Second Part, P. 66.

suffered moral, physical or property damage if the criminally punishable act had been committed.”

Article 104 (1) of the Law on Fundamentals of Administrative Action and Administrative Proceedings, titled as “Grounds and procedure for compensation of non-property damage” reads as follows: “In cases of causing non-property damage through restriction of the freedom of a natural person, breach of his or her security, inviolability of home, privacy of personal and family life, discrediting his or her honor, good reputation or dignity by unlawful administrative action, the person shall have the right to claim compensation by monetary means or elimination of consequences caused, in the amount equivalent to the non-property damage caused”.

Some of the mentioned legal acts, in particular the Law on Commercial Advertisements and the RA Code on Administrative Offences, contained provisions on moral damage even before the adoption of the Civil Code of 1998, and we honestly believe that the mentioned provisions merely remained in the texts of the mentioned statutes mechanically and did not have any practical application.

Financial legislation also prescribes compensation for non-pecuniary damage. For example, the Law on Consumer Loans provides that in case of violation of consumer rights of persons utilizing loan services, a fine of 300,000 AMD can be charged in favor of the consumer if the violation has been confirmed either by the Court or by the mediator of the financial system.¹

As it was noted above the concept of non-pecuniary damage was prescribed in the Civil Code since 2014. In particular, Article 17 (2) of the Civil Code damages shall comprise expenses, incurred by the person whose right has been violated, which have been or must be covered by said person in order to restore the violated right, the loss

¹ See “Law on Consumer Loans” 2008, article 20.

of or harm to the property thereof (actual damage), unearned income that this person would have received under the usual conditions of civil practices had the right thereof not been violated (lost benefit), as well as intangible damages.

Part 4 of the Article 17 before 2015 enshrined certain cases of compensation of intangible damage, limiting that the intangible damage can only be compensated in cases provided by the Civil Code. After the amendment of December 2015 words “this law” of the part 4 of Article 17 were replaced with the word “law”. As a result the scope of cases of compensation of intangible damage increased, which definitely can be deemed as a positive amendment.

The Civil Code also provides the notion of the intangible damage and the principles of compensation thereof. The Article 162.1 reads as follows:

“1. Within the meaning of this Code, intangible damage is physical or mental suffering caused as a result of a decision, action or omission encroaching on tangible or intangible assets belonging to a person from birth or by virtue of law or violating his or her personal property or non-property rights.

2. A person or, in case of his or her death or in case he or she lacks active legal capacity, his or her spouse, parent, adoptive parent, child, adoptee, guardian, curator shall have the right to claim, through judicial procedure, compensation for intangible damage, where the criminal prosecution body or court has confirmed that the following fundamental rights of that person guaranteed by the Constitution of the Republic of Armenia and the Convention for the Protection of Human Rights and Fundamental Freedoms have been violated as a result of a decision, action or omission of a state or local self-government body or official:

(1) right to life;

(2) right to freedom from torture and inhuman or degrading treatment or punishment;

(3) right to personal liberty and inviolability;

(4) right to fair trial;

(5) right to respect for private and family life, inviolability of residence;

(6) right to freedom of thought, conscience and religion, freedom of expression;

(7) right to freedom of assembly and association;

(8) right to effective remedy;

(9) right of ownership.

3. Where a convict has been acquitted under conditions provided for by Article 3 of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, he or she shall have the right to claim, through judicial procedure, compensation for intangible damage (i.e., within the meaning of this Code, compensation for wrongful conviction) caused to him or her.

4. Damage caused to one's honor, dignity or business reputation shall be compensated in accordance with Article 1087.1 of this Code, whereas intangible damage caused as a result of violation of fundamental rights and wrongful conviction shall be compensated in accordance with the procedure and conditions prescribed by Article 1087.2.

5. Intangible damage caused as a result of unlawful administrative actions shall be compensated as prescribed by the Law of the Republic of Armenia "On fundamentals of administrative action and administrative proceedings".

Thus, obviously the scope of the intangible damage has been widened, which is a positive development. The Civil Vode prescribes the cases of compensation of intangible damage in Article 1087.1 limiting it to damage to honor, dignity and business reputation, and in Article 1087.2, limiting it to intangible damage caused by the violation of rights guaranteed under the Convention and in the result

of unfair conviction. And finally, the cases of compensation of intangible damage are set in the Article 1087.3, which sets the concept, content, procedure and conditions for compensation of the intangible damage caused by torture.

If the previous wording of Article 17(4) limited the rights of individual for seeking compensation of intangible damage under other statutes, e.g. in the framework of the law on commercial ads, the current wording does not contain such limitation.

Nevertheless, we are of the view that the mentioned regulations do not completely secure and guarantee a complete compensation of the intangible damage in Armenia, thus limiting the opportunity of individuals for receiving ample and satisfactory compensation. This is particularly important for the recent times of widespread cases of damages caused by the manufacturers, sellers and providers of low quality goods and services, or damages caused by financial organizations to the customers in the result of abuse of the rights or non-performance of obligations by financial organizations, which can lead both to a minor financial damage, and at the same time cause significant disturbances, deprivations, i.e. intangible damage.

For example, when banks freeze the whole amount on the bank accounts of an individual instead of freezing the exact amount indicated in the document provided by the judicial executor, which actually deprives the person of the right to use his/her monetary resources. Or in cases when insurance companies artificially delay the payment of insurance compensations, as well as intangible deprivations caused by unfair advertisement of goods, services or works.

Considering all above mentioned we are of the view that the current regulations contained in the Civil Code continue to be incomplete. In particular, limiting the compensation of intangible damage only to a very limited cases, with such a symbolic amount,

does not serve the interests of fairness, as well as does not secure the full compensation of the damage caused to the victim. Such regulation does not ensure the preventive nature of the compensation of damages in itself.

We think that it is the right time expand the notion of intangible damages in the Civil Code, completely prescribing the compensation of intangible or preventive damage.

Preventive damage, or how it is known in the US legal system – “punitive damage”, i.e. damage that is aimed at punishing, means a monetary compensation, which is awarded to the victim and which is outside the scope of the actual damage suffered by the victim in the result of act causing the damage, and the purpose of which is to punish the offender.¹ As it is evident from the wording, and as we will see below, one of the features of the punitive damage is that the compensation of damage resembles fine, and has preventive-punitive nature, exceeds the amount of the actual damage and is payable to the victim directly.

As a general rule punitive damages, as an exclusive type of compensation of damages can be awarded by the court along with the actual damages, which has the purpose of compensating the victim for the the griefs.² The punitive damage is a means for punishing the person causing the damage, and is based on the theory, that the interests of the victim and the society can be protected more completely if an additional financial burden will be put on the offender. The purpose of such compensation mechanism is the preventing future damages by the offender or other offenders, by punishing the offender.

Punitive damage, as a type of civil liability was first applied in England in 1763, after which it started being applicable in the

¹ See <http://legal-dictionary.thefreedictionary.com/punitive+damages>

² See <http://legal-dictionary.thefreedictionary.com/punitive+damages>,
<http://verdict.justia.com/2013/04/08/the-constitution-and-punitive-damages>

American colonies. Before 1850s the punitive damage an integral part of the Anglo-American legal system.¹

Considering the specific characteristics of punitive damage, it is crucial to highlight clearly the conditions when punitive damage compensation can be awarded. Among those conditions are flagrant abuse of law, dishonesty, fraud, coercion, public danger of the conduct or the offence, etc. Important that the enumerated conditions should be in the context of intentional conduct of the offender or at least be committed in gross negligence. We think that the punitive damage should only be awarded by courts and only in such cases, when compensation of actual damages has been awarded or the intentional or grossly negligent conduct of the offenders was proven in another procedural manner.

The issue relating to punitive damages has always been subject of dispute in the US legal proactive. The claimant victims and their attorneys are willing often to claim punitive damages from companies providing services or producing goods, while the respondents, as a general rule deem such mode of compensation as non-adequate, which puts a heavy burden on their shoulders.

They assert that the punitive damages are unfair, unpredictable, and often exaggerated, which lead to financially attractive but unjustifiably huge compensation of damages for the claimants.

The proponents of punitive damage note that this variety of damages has several social factors, including the compensation, prevention, restraint and rule of law.²

The peculiarity of the punitive damage is that it is intended to prevent similar infringements by the same subject or other similar entities in the future. It is indisputable that this type of damage compensation has also the nature of compensation. Often, victims are liable for material damage as well as non-material damages

¹ Available at: <http://legal-dictionary.thefreedictionary.com/punitive+damages>

² *Ibid.*

calculation of which is extremely difficult, but their availability is evident. The punitive damages are aimed at compensation of such damages, because compensation for material damage in some cases can be very small, can not provide full compensation for all sufferings of the victim.

It is not possible to assess the amount of damage in case when your bank accounts have been blocked illegally and you have not been able to pay for your corporate or business dinner organized for your future partners. In such a case, one of the invited guests can pay for the dinner, or you can try to pay cash, which you may not have. It is difficult to talk about the damage in reality. But is it not damaging to be shameful in front of your future partner when the waiter says, "Your bank card is blocked". How would you explain that you have enough money on your card, you have not violated any contractual terms with the bank, simply the Bank has decided to block all your accounts by its ease or any employee's negligence or any on other illegal basis?

Supporters of punitive damage stress as an important positive point that this type of compensation can contribute to the rule of law. This circumstance is justified by the fact that the victims, without the possibility of receiving large-scale reimbursement, often will avoid resorting to the protection of their rights and bringing claim before state authorities. And more effective remedies are contributing to raising legal awareness of persons and helping them take steps towards real protection of infringed rights.¹ You can not disagree with that.

Studies of judicial practice in Armenia show that, regardless of the nature and degree of danger of the offense, if the damage is not large, victims avoids applying to the court for the protection of their rights. One of the main reasons for this is that litigations are usually time-consuming and costly. A considerable part of these costs goes to

¹ See <http://legal-dictionary.thefreedictionary.com/punitive+damages>

attorney services. However, it is unlikely, even almost unbelievable that the court will satisfy the fee paid to the lawyer, for example, in the amount of 300,000 AMD in case if the claimed damage amounts to 50,000 AMD.

However, every practicing attorney would confirm that 300,000 AMD fee for a case lasting one year is not high at all. Even the Council of the Chamber of Advocates in its decision of 26.12.2013 , in the case of compensation for damage and lost benefit, in particular compensation for damages caused to life and health, compensation for damages caused by defects in goods, works or services, as well as the damage caused by the offense compensation for damages and compensation for damages caused by administrative damage is guided by 5% of the amount subject to levy, but not less than 100 base state fee.¹: Obviously, in such circumstances, many victims will prefer to stay without compensation of damages, rather than receiving a limited compensation paying a double or triple expense.

The adversaries of the punitive damage state that the threshold of large-scale compensation is unfair, unfounded and ineffective for the public. One of the main reasons for criticism is that compensation for such damage is quasi-criminal, though it is compensated within the framework of a civil suit.²

The next argument is that victims receive a fairly large profit, which is unfair to other members of society. It is also disputed that compensation for damages in case of damage cause by the action of state authorities is a heavy burden for the taxpayers.³

Of course, the above mentioned opinions have their logic, however they do not exclude the use of the notion of punitive damage

¹ See Decision of the Council of Chamber of Advocates of Armenia of 26.12.2013p. number 33/3-L, which approves the Average Pricelist for Compensating Attorney's Fees connects with the compensation of the judicial expenses by the courts, para. 2.

² Available at: <http://verdict.justia.com/2013/04/08/the-constitution-and-punitive-damages>, http://www.biztositasizemle.hu/files/201206/punitive_damage_in_europe.pdf

³ Available at: <http://legal-dictionary.thefreedictionary.com/punitive+damages>

in Armenia. Since its import into the legal system of Armenia does not mean that we are going to apply the Anglo-American punitive damages absolutely in the same manner. Moreover, the notion of “punitive damage” has already undergone considerable changes in the result of the US Supreme Court's case-law, which aims to further regulate and clarify the calculation of the amount of punitive damages.¹

It is important to note that punitive damage as a form of compensation for damages is not adopted in the legislation of a number of leading European countries, particularly in Austria, France, Germany, Denmark, Finland, etc.

However, it should also be noted that despite the absence of the compensation of the punitive damages in these countries, the legal systems of many of these countries contain provisions that are similar to the notion of punitive damages. For example, the French insurance legislation has the notion of “insurer's dishonesty”, which implies that if the insurer failed to respond in a timely manner to the reimbursement payable under the insurance policy, then the insurer is obliged to pay the double amount.²

Moreover, the Court of Cassation of France has even recognized the US court ruling that imposes punitive damages compensation, however at the same time declined the implementation of the verdict because it found that the punitive damage was not proportionate to the actual damage.³

The German justice also enshrines the possibility of increase in the amount of damages in case of dishonesty on the part of the insurer. In this case, dishonesty is expressed by delaying processes, falsifying accusations, undue and excessive effects of the victim or

¹ See *State Farm Mutual Automobile Insurance Co. v. Campbell*, <https://supreme.justia.com/cases/federal/us/538/408/case.html>:

² Available at: http://www.biztositasizemle.hu/files/201206/punitive_damage_in_europe.pdf

³ *Ibid.*

third party, where punitive damages can exceed 10 or 100% of total damages.¹

Unlike France and Germany, Ireland is a country of private law. The use of punitive damages in terms of private law is not excluded for the violation of constitutional rights or delict commitments.²

Although punitive damages are not envisaged by the Dutch law, however, the Dutch Civil Code provides the courts with flexibility in determining the amount of compensation. Particularly, a judge may assess the amount of damage as compared to income earned by the offender which may result in the amount of compensation for damage more than the actual damage.³

The English law along with compensation for actual damages, also provides compensation for punitive damages, which is also called an increase in the amount of compensation. In any case, in 1964, the House of Lords at *Weeks v. Bernard* case found that punitive damages could only be allowed in exceptional cases. According to this decision punitive damages are applied only in three cases: A) the damage caused by cruel, arbitrary or unconstitutional actions of public servants. At the same time, royal servants, police, state or other officials are also included in the list of public servants. (B) In the case of an action aimed at the receipt of profits when such profits can exceed the compensation paid to the injured person, c) in exceptional cases prescribed by law.⁴

Certainly it would be wrong to unequivocally claim that punitive damage, as it is applied in the United States, should be incorporated into our legislation. However, taking into consideration our reality with a view to realizing the full protection of victims' rights in the

¹ See Court of Appeal/OLG Frankfurt, 12-U 7/98, NJW 1999, 2447.

² See Civil Liabilities Act of 1961.

³ Available at: http://www.biztositaszemle.hu/files/201206/punitive_damage_in_europe.pdf

⁴ Available at: http://www.biztositaszemle.hu/files/201206/punitive_damage_in_europe.pdf

case of violations of rights of the victims, considering the experience of the European countries and the extensive legal enforcement experience of the US, it would be advisable to incorporate the such a regulation of damages that will be involved both punitive and compensatory components and will be aimed at compensation of non-material damage.

Considering the fact that one of the main goals of the the regulation of compensation is prevention of damage, we suggest to name the new type of damage Preventive Damage.

It is important to note that only the intentional or gross negligence of the offender should be the basis for reimbursement of preventive damages. In order to award a preventive damage the following factors need to be taken into account: the nature of the offense, the danger, publicity, the negative economic value of the offense, the income of the offender, and the like.¹

One of the main problems of preventive damages is the determination of the compensation amount. We believe that courts should not be availed with the discretion to determine the amount of compensation, rather to stipulate in the law clearly the limits within which the courts, taking into account the nature of the offense and the other circumstances mentioned above, will determine the amount of compensation.

¹ Available at: http://lawbrain.com/wiki/Punitive_Damages