

## **DAMAGE COMPENSATION DUE TO VIOLATING OTHERS' HONOR, DIGNITY, PRESTIGE BY VIETNAMESE CIVIL LAW**

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### **Abstract**

*Honor, dignity and prestige are inviolable rights of individuals and organizations. Therefore, unlawful acts infringing this right and causing damages must be responsible for compensation according to the rule of law. The article focuses on analyzing theoretical and legal issues about compensation for damages caused by infringing honor, dignity and prestige; supplemented with comments on judicial practices so as to deeply understand the shortcomings of current Civil Code. Thereby, the author will give directions and solutions to perfect the regulations of law on compensation for damages caused by infringing these personal rights.*

**Keywords:** *Compensation for non-contractual damage, dignity and prestige, honor.*

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## **BỒI THƯỜNG THIẾT HẠI DO XÂM PHẠM DANH DỰ, NHÂN PHẨM, UY TÍN THEO QUY ĐỊNH CỦA PHÁP LUẬT VIỆT NAM**

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### **Tóm tắt**

*Danh dự, nhân phẩm, uy tín là quyền bất khả xâm phạm của cá nhân, tổ chức. Vì thế, mọi hành vi trái luật xâm phạm đến quyền này gây thiệt hại phải chịu trách nhiệm bồi thường theo quy định pháp luật. Bài viết tập trung phân tích những vấn đề lý luận và pháp lý về bồi thường thiệt hại do xâm phạm danh dự, nhân phẩm, uy tín; kết hợp với bình luận về thực tiễn xét xử để đưa ra những bất cập, hạn chế của Bộ luật dân sự hiện hành. Từ đó, tác giả sẽ đưa ra những phương hướng, giải pháp để hoàn thiện những quy định pháp luật về bồi thường thiệt hại do xâm phạm danh dự, nhân phẩm, uy tín.*

**Từ khóa:** *Bồi thường thiệt hại ngoài hợp đồng, danh dự, nhân phẩm, uy tín.*

## 1. Setting the problem

The liability for compensating non-contractual damage is an important and long-standing institution in Civil Code in Vietnam. This is a basis for generating rights and obligations of the parties that do not stem from contractual performances and force subjects who cause damage to life, health, property, honor, dignity, and prestige to be responsible for compensation in accordance with the law.

Practically, cases involving “non-contractual damages” are common and there are many disputes related to this issue. Especially, those damages of personal “honor, dignity, and prestige” are difficult to deal with. Sometimes, the victims and the Courts are still very confused when they have to prove mental damages and determine the appropriate compensation level because this damage is hard to quantify by measurement units. Therefore, those cases include similar details but the trial of the mental compensation of each court is markedly different with the sensibility of the trial panel. Therefore, to create unified basis, specific criteria to determine damage compensation for being violated honor, dignity and prestige and studying of Vietnamese law, the author will give specific suggestions.

## 2. Legal provisions on liability to compensate damages when being violated honor, dignity and prestige in 2015 Civil Code and directions for improvement

### 2.1. Some concepts

#### 2.1.1. Non-contractual compensation

Compensation for damages is a type of liability that the subject must bear when performing acts that violate social relationships protected by law, which is cited clearly in a contract or in accordance with the law. Compensation for damage is divided into two categories; first, due to breach of contract or acts of causing non-contractual damage.

Liability to compensate non-contractual

damages is a type of civil liability when the subject performing illegal acts that cause damage to others' life, health, property, honor, dignity, and prestige protected by law are obligated to assume the liability they have caused.

#### 2.1.2. Honor, dignity, and prestige

Honor, dignity and prestige are personal rights Vietnamese law did not given any concepts of honor, dignity, prestige. However, from the perspective of social life, we can understand these concepts as:

Honor is the importance of public opinion that is based on spiritual and moral values. Dignity is the human's quality and value. Prestige is the trust and admiration that is recognized.

### 2.2. Liability for damage compensation for violated honor, dignity and prestige in 2015 Civil Code

#### 2.2.1. Bases of damage compensation for honor, dignity and prestige

Although being in effect for nearly 3 years, the promulgation of legal documents guiding the implementation of 2015 Civil Code is still limited; especially, compensation for non-contractual damages has had no new guiding documents so far. In fact, when dealing with cases related to this issue, the procedural authorities and related parties all refer to the regulation of Resolution No.03/2006/NQ-HĐTP (referred to as Resolution No.03) of the Justice Council of the Supreme People's Court that guide the application of some regulation of 2005 Civil Law on non-contractual damage compensation. From the combination of the mentioned documents, we can generalize the liability of damage compensation for violating honor, dignity, and prestige on the following grounds:

#### *First: There must be actual damages*

Pursuant to Clause 1, Article 584 of 2015 Civil Code, “Those who commit acts of violating life, health, honor, dignity, prestige, properties, other legitimate rights and interests of others must compensate except from this law, other

laws related to other regulations.” Therefore, a prerequisite for determining liability for non-contractual damages generally must be an actual damage. If there is no damage, there will be no liability for compensation. The damage can be material damage or mental to the victim, resulting from illegal acts.

In case personal values such as honor, dignity, and prestige of the subject are violated, the damage is determined to be material such as reasonable costs to limit and remedy the consequence, collect the evidences which are lost or decreased. Besides, there are also mental losses such as sorrow, suffering, shame, humiliation, etc., from which the subject suffers. Therefore, the person who suffers damage of honor, dignity and prestige must prove that the actual damage observed in order to claim damages. If there is no damage, there is no potential liability.

*Second: The act of causing damage must be illegal*

Illegal acts are done are not in accordance with law. The right to protection of honor, dignity, and prestige of the subject is protected by law and inviolable. Therefore, all acts of violating honor, dignity, and prestige such as violating secrets of privacy, slandering, humiliating others, etc. are considered as illegal acts, if the damage occurs in reality, compensation has to be carried out in accordance with the law.

*Third: There must be a causal relationship between illegal behavior and actual damage observed*

Illegal acts are the cause of the damage; conversely, the damage is an inevitable result of this act. Therefore, the act should come first, followed by subsequent consequences. Non-contractual damage compensation arises only when determining the causal relationship between these two factors.

From the perspective of damage compensation for honor, dignity and prestige, illegal acts are those violating honor, dignity

and prestige of the subject. These acts result in the damages from which the subject suffers materially and mentally.

*Note on error factor*

Pursuant to Clause 1, Article 604, 2015 Civil Code and Resolution No.03 of the Justice Council of the Supreme People's Court, there is guidance applying some regulations of 2005 Civil Code, which consider the error element as a basis for determining the liability of damage compensation. However, Clause 1, Article 584, 2015 Civil Code did not mention the error element as a basis for determining liability for compensation. However, errors are the factor that need to be considered when determining legal liability in general and the liability of damage compensation in particular. The new issue of 2015 Civil Code is a “speculative error,” which means that causing damage is carried out without being proved.

*2.2.2. Determining damage to honor, dignity and prestige*

In the liability for damage compensation, the victim is only entitled to request the person who caused the damage to compensate when the damage actually occurred. The level of compensation will be based on the losses from which they have suffered due to the illegal act. Based on Article 592, 2015 Civil Code to determine damage to honor, dignity and prestige, it should be based on the followings:

*a. Reasonable expenses to limit and remedy damage*

Honor, dignity, and prestige of a subject may be violated by various forms and means such as slandering, humiliating others, violating on mass media (social networks, the press, radio, television, etc.). When this right is violated, the victim may have to pay an expense to remedy consequences such as: “necessary expenses for withdrawing publications with contents violating honor, dignity, and prestige of the victims; expenses for collecting documents

and evidence proving that their honor, dignity, and prestige are violated; expenses for means of transportation; expenses for requesting administrative agencies to verify incidents and rectify on the mass media; expenses for organization of public apology and rectification at the victims' places of residence or working places" and other reasonable expenses are used to limit and remedy the consequences.

*b. Actual income lost or reduced*

In fact, when honor, dignity and prestige are violated, the victim is affected by income. For example, when the spirit crisis must leave or lose customers due to fabricated information, etc., the victim has the right to require the person causing the damage to compensate for these losses. Thus, to determine the lost or reduced level of income must rely on income before and after the damaging act occurred, reasonable days off due for the spirit crisis and reasonable days off to carry out restrictive procedures, remedy consequences, and proceedings.

*c. Compensation for mental losses*

In addition to compensation for quantifiable material damages, civil law also stipulates that the person who causes damage must pay mental damages to reduce mental suffering for the victims. However, the determination of mental damage is in fact a complicated issue and law does not clearly define the grounds for determining the level of mental compensation. According to Clause 2, Article 592, 2015 Civil Code, the legislator grants the right to negotiate the level of mental damages to the involved parties; however, if two parties cannot reach an agreement, the court will decide the amount of compensation that does not exceed to ten months of basic salary which is determined by the government at the time of settlement of compensation.

The determination of the extent of mental suffering must be based on the form of violation (verbally or published in the press, or mass media), the act of violation and the spread of

offensive information. However, to determine this level of compensation is quite challenging because the regulation of law is general and there is no quantitative basis for the Court to rely on and make decision on compensation for each specific case.

*d. Other expenses prescribed by law*

Regulations on other costs, a progressive point of 2015 Civil Code compared to 2005 Civil Code, provides an open direction to solve arising issues that have not been anticipated; however, there is no guiding document on other costs in any case.

However, from the theoretical view, it is clear that if the victim can prove the reasonable expenses that he or she has to pay for due to the act of causing damage, he or she will still be accepted for compensation. In fact, many acts violating honor, dignity, and prestige through social networks are popular. Hence, it causes serious consequences and tremendous psychological shock to the victim. Moreover, some people cannot stand this abuse and the consequence is depression, mental illness, or more severe suicide (the nudity of a female senior in the 12th grade was spread on Facebook and she killed herself). Therefore, these medical treatment costs are still considered as direct damages from the violations, so the Court should accept them.

**2.3. Practice of hearing on compensation for mental damage when violating honor, dignity and prestige**

*2.3.1. Proof of mental damage*

*Civil judgment No.1: The appellate civil judgment No.104/2017/DSST of the People's Court of Can Tho City on July 12, 2017.*

Ms. A accused Mr. B of raping her in a private room but failed. Mr. B acknowledged his act at the police and in the court. Ms. A sued to ask Mr. B to pay damages for violating her honor, dignity, and prestige with the amount of 50,000,000 VND and spiritual loss, 11,500,000 VND. At the appellate court, she demanded a

compensation of 20,000,000 VND. Mr. B did not accept it, and offered to compensate 5,000,000 VND. The first-instance court rejected Ms. A's demand, and accepted Mr. B's offer of 5,000,000 VND. The appellate court reserved the first-instance judgment's decision. According to the judgment of the appellate court, Ms. A could not prove the damage of honor, dignity, and prestige and there is no basis to identify her mental damage because when the case had been over. She had not shouted for help; thus, neighbors and colleagues did not know her case and it did not prove for her spiritual damage.

*Civil judgment No.2: Civil judgment No. 22/2017/DS-ST People's Court of N town, Soc Trang province.*

Ms. M sued Ms. H for damage compensation for honor and dignity with the amount of 15,000,000 VND. The reason is that Ms. H spoke badly to Ms. M with the content "Ms. M had sex in the daytime with Mr. T" and had witnesses. The first-instance court rejected Ms. M's lawsuit because she failed to prove material damage, and there was no mental damage such as misunderstanding, alienation by relatives, friends, and society. Therefore, Ms. M's lawsuit claim forcing Ms. H to compensate damage for honor and dignity was not reasonable for the trial panel to accept.

### **Comment about the cases:**

Through two civil judgments, the question arises "Whether or not does mental damage need proving? How can one prove it?" As mentioned in the argument, mental damage is rather difficult to identify because it belongs to each human mind and does not have any measurable quantities. The two civil judgments in the court rejected the plaintiff's claim for compensation for honor, dignity and prestige, for being violated both property and spirit, and the court stated that the victim did not prove his/her damage. The Court's argument for no moral harm is unreasonable in the civil judgment No.1 with the statement "no one knows so

it does not hurt the spirit" even though the "rape" occurred. This act both broke the law and seriously violated morally and traumatized the victims' spirit, so they often did not shout for help; however, that does not mean they are not offended, suffering, obsessive about the violating act. So, the direction to handle the civil judgment No.1 is completely unreasonable.

For the civil judgment No.2, it is also similarly handled and it had to prove the loss of spirit because of not being alienated or misunderstood by friends and society. This approach is clearly not appropriate to the spirit of Resolution No.03, the mental loss is the sorrow, suffering, and shame that the victim has to bear the consequence, certainly not how the society realize and think about the current case. If this section is heard, the decision to determine the level of mental compensation should be considered carefully.

### *2.3.2. Compensation for mental damage caused by violating honor, dignity, and prestige*

How should mental damage be converted to monetary values when violating honor, dignity and prestige? 2015 Civil Law does not specify it. Thus, each court decides compensation levels inconsistently and subjectively as found in the following cases:

*Civil judgment No.3: Civil judgment No.80/2019/DS-PT on April 11, 2019 of the People's Court of Tay Ninh province.*

Mr. N sued to ask Ms. O for compensation because Ms. O has posted information which insulted Mr. N on social networks. From the false information Ms. O posted on Facebook, it caused family members, friends, colleagues, and customers had negative thoughts and misunderstandings about Mr. N. Some of them who did not understand the true story had offensive comments and intentionally shared the information uncontrollably on social networks. Mr. N required Ms. O to remove it but she did not agree. Mr. N requested Ms. O to compensate for spiritual damage, 13

million VND (10-month-minimum-wage). Both the first-instance and appeal courts accepted this maximum compensation without making any argument because this compensation is appropriate.

*Civil judgment No.4: Civil judgment No. 130/2019 /DS-PT on November 4, 2019 of the People's Court of Tra Vinh province.*

Ms. L and Ms. D sued Ms. P for being violated their honor, dignity, and prestige with the compensation for mental loss, 5,000,000 VND/person. Because Ms. P had a land dispute with Ms. L and Ms. D. Ms. P wrote letters of denunciation and insulted Ms. L and Ms. D, and sent this letter to Ms. D's departments and parents of her daughter/son-in-law. Moreover, this letter was stuck on the pole. Considering that Ms. P's behavior violated honor, dignity, and prestige of Ms. L and D, the courts at the two levels determined that they had mental damage and the compensation was 03-month-basic-salary at the time of adjudication which is equivalent to 4,470,000 VND.

#### **Comment about the cases:**

From two civil judgments No.3 and No.4, the compensation for mental damage caused by violating honor, dignity and prestige is difficult to determine how much compensation is reasonable. Two cases in the court decided the compensation but did not give any reason to determine that it was reasonable. Civil judgment No.3 accepted the maximum compensation of 10-month-minimum-salary due to violating the other on social network, but civil judgment No.4 was reduced to 03-month-basic-salary although in the civil judgment No.4, illegal act was carried out by various methods such as: writing letters of denunciation, posting papers on the poles, sending letters to parents of her daughter/son-in-law, cursing. It seems that the imposition of compensation was considered by feeling and the subjective manner of the trial panel; thus it led to inconsistencies in handling between the different courts.

## **2.4. Some recommendations to improve the law on damage compensation for violated honor, dignity and prestige**

### *2.4.1. Demonstrate mental damage due to honor, dignity and prestige violated*

As mentioned comments, one of the prerequisites for generating the right to claim non-contractual damage compensation of the plaintiff is that there must be actual damage observed. Therefore, in order to claim mental damages due to violating honor, dignity and prestige, the victims must prove the spiritual damage from which they have suffered. However, asking the victim proves this damage is rather difficult because it is impossible to quantify, or measure; especially honor, dignity, prestige are intangible values. In some actual cases in the civil judgment No.1 and No.2, the rejection of the plaintiffs' requests were unreasonable because the court said that there was no damage although the unlawful acts are obvious.

#### **Recommendation:**

In practice of adjudication, with claim for damage compensation of spiritual loss due to honor, dignity and reputation violated, the victim does not need to prove the damage to the court. This kind of damage is speculative; however, if there is an illegal act that harms honor, dignity, and prestige of the subject, the default of spiritual damage occurs and a liability for compensation is incurred. The effect on the psychology of the victim, the level of parties' error will be considered for the level of compensation.

### *2.4.2. The level of compensation for mental damage*

2015 Civil Code does not specify how to determine the level of compensation for mental damage for violating honor, dignity and prestige. However, Resolution No.03 has outlined a guide for the Court to determine the level of compensation for mental damages. Accordingly, it should base on the level of mental damage and the form of violation (in spoken language or posting on mass media ...), violating act, the level

of spreading offensive information. The amount of compensation for victim's mental suffering is firstly agreed by the parties. If no agreement can be reached, the amount of compensation for mental suffering must be based on the level of mental damage; but the maximum must not exceed 10 months of the minimum wage prescribed by the government at the time of settling compensation.

However, the way of determining compensation is still general and vague; as a result, the application of law is inconsistent. Therefore, lawmakers need to promulgate guidelines for determining the clearer compensation levels and quantitative bases.

#### 2.4.3. Other costs

The regulation of other costs in the case of damage compensation for violating honor, dignity, and prestige is one of the progressive points of 2015 Civil Code. This regulation creates an open solution for the court at all levels to consider other appropriate expenses that have not been listed to claim for compensation. But since 2015 Civil Code came into effect, there have not been any documents guiding this type of expense. Therefore, it is recommended to issue a document guiding the recognition of related expenses due to damaging acts such as: costs of legal advice, hiring a lawyer, expenses for treatment of mental illness, depression, etc. because these expenses are incurred on the basis of illegal acts that violate others' honor, dignity, and prestige; hence, the victims must be compensated.

### 3. Conclusion

From the mentioned issues, we can conclude that the right to protect honor, dignity, and prestige is inviolable. So, unlawful acts that violate this right must be legally responsible. In particular, in Civil Code, the liability to compensate non-contractual damages is a type of legal liability that violators must bear when

causing damage to honor, dignity, and prestige of other people. However, the current law still has certain limitations about this case. Therefore, the article has generalized some legal regulations, analyze law and judicial practices; as a result, it has thoughtful comments in order to make improvement of law./.

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