

# Client Alert

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The new Hungarian Civil Code (hereinafter referred to as: "new CC"), effective since March 15, 2014, does not include the legal institution of "compensation for non-material damages" which previously was regulated under indemnification rules. At the same time "restitution" was introduced to sanction violations of personality rights. Restitution is applicable to violations committed after the new CC's entry into force.

## **Compensation for Non-material Damages Regulated in the old Hungarian Civil Code**

Regulations and amendments regarding compensation for non-material damages, along with the related judicial practice, go back many decades. Judicial practice allowed financial compensation claims for financially indeterminable non-material damages (e.g. loss of relative, detrimental and inevitable alteration of lifestyle, reduced possibilities of personality, etc.). However some legal experts stressed that proof of non-material damages (the disadvantageous result, the actual loss) is usually difficult or maybe even impossible because most of the time, it is impossible to externally gauge the extent of damage. To solve this problem, courts accepted non-material damages that resulted from serious violations that have come to be accepted as commonly known facts, which bear no specific burden of proof (e.g. traumatic experience related to the loss of a relative). In some cases, however, proving damages such as pain, suffering, and loss of comfort, still remained difficult.

### Ask a question

We shall gladly respond to any questions you may have

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It is important that judicial practice used the sanction of compensation for non-material damages as the general protection for personal rights based on the “equal protection of personality” principle (e.g. an elderly person, moving with difficulty, was entitled to compensation for disability caused by injury, in the same way as a professional athlete who suffered a permanent disability; a comatose person in a state of impaired consciousness was entitled to compensation for non-material damages as was a conscious person who could sense suffering). Many considered this practice of Hungarian law quite an achievement.

### ***Difference between Restitution and Compensation for Non-material Damages***

Restitution is regulated as an instrument of protection for personality rights. With restitution lawmakers intended to ease and expand the scale of enforceable non-material damage claims. It is now unnecessary to prove damages suffered due to violation of personality rights. Non-material damage is established and accepted simply by a proven unlawful and actionable conduct which violates personality rights. Judicature, however, is constantly adding to the extensive list of personality rights (e.g. right to live in an intact family; right of free family planning; right of due process; right of sexual life; right to choose religion, moral; etc.), meaning that hypothetically any detriment, suffered by an individual, shall be considered a violation of a personality right when it results in disadvantageous physical or spiritual changes. As a general rule, previous judicial practice also applied compensation for non-material damages to sanction the violations of personality rights.

Contrary to previous regulations, the current rules of restitution may be applied to petty violations and damages as well.

Personality rights derived from human dignity are to be respected by everyone. Restitution is applicable per se for conduct which is unlawful, actionable and violating. Such actions are unlawful per se because the personality right is violated (unless there is a circumstance that excludes liability for damages, such as permission by law, victim consent, legitimate defence, emergency). This regulation is based on the debatable assumption that infringement of personal rights always and necessarily entails some kind of non-material damage, varying in degree only.

Restitution is only enforceable personally and cannot be transferred or inherited (although in cases in which the violated person dies during the lawsuit, heirs may indeed enter the lawsuit).

### ***Questions concerning Restitution***

Uncertainty remains regarding whether or not judicial practice will break away from the principals regarding compensation for non-material damages. Will practice really take a step backwards from general and equal personality protection to a differentiated and relativized level? Will circumstances such as the victim’s and perpetrator’s financial situation and the existence of liability insurance play a role in restitution awards? (And if such an insurance exists, is it right to refer to the insurer, thus shifting payment obligations to the insured?) Will the depth of the emotional connection to the lost relative play a role in the award?

Another question concerns how the punitive deterrent aspect of restitution as a sanction will remain in judicial practice.

Judicial practice will eventually determine whether petty damages will be excluded from restitution’s scope of application without a specific statutory provision. The answer might be implied in the opinion of Budapest-Capital Regional Court of Appeal which differentiates between violation of a personality right and subjective, emotional conflict of interest. According to this opinion, the latter does not attain the level of a personality right violation, therefore restitution is not applicable.

## ***Do Liability Insurance Policies cover Restitution as well?***

As a result of amendments to the new CC, the general liability insurance (regulated in the new CC), along with specific obligatory liability insurances (e.g. liability insurances for motor vehicles, notaries, attorneys, etc.) are specifically obligated to cover restitution.

Liability insurance agreements concluded before the new CC came into effect shall cover restitution to the extent that it would have covered compensation for non-material damages. According to the new CC, insurance companies are also obligated to inform parties to insurance contracts that insurance agreements can be amended by mutual consent to cover restitution.

## ***Restitution in Labour Law***

Both the employer and the employee might suffer violation of personality rights regarding an employment relationship. Restitution may be applied to violations involving financial damage to the employer, e.g. when an employee publishes a jeopardizing opinion. Employees shall be entitled to restitution for occupational accidents (on account of trauma, pain, difficulties in life) and unlawful termination of employment (on account of violation of the right to work, if the court accepts the right to work as a personality right).

*Should you wish to learn more about Restitution  
our law firm would be pleased to provide you with more comprehensive information.*



### *Disclaimer*

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