

The opportunity for legal entities to claim compensation for non-pecuniary damages successfully, under the Bulgarian Obligations and Contracts Act (OCA), has not been subject of discussion for a long time (over 50 years). The jurisprudence and court practice unanimously held the position that non-pecuniary damages constitute physical and psychic pain and suffering, which are inherent only to natural persons. Therefore a claim for non-pecuniary damages, suffered by legal entities, was considered inadmissible.

The liability for non-pecuniary damages is regulated in art. 52 of the OCA. The legal provision stipulates that the compensation in such case shall be determined by the court on an equitable basis. The criterion to determine the compensation is introduced by the legislator and it is further developed by the Supreme Court (SC) and after that by the Supreme Court of Cassation (SCC), in the interpretative acts for unification of the court practice, by clarifying the circumstances, which shall be taken into account by the court when applying the equity criterion when resolving each specific legal dispute (Decree No 4 from 23.12.1968 of the Plenum of the SC for summarizing the practice on determining the compensations for pecuniary and non-pecuniary damages arising from torts).

The provision of art. 52 of the OCA is applicable for realizing the liability not only for torts, but also for breach of contract. In Interpretative decision No 4 from 29.01.2013 on interpretative case No4/2012, the General meeting of the civil and commercial division of the SCC accepted, that the public provider – energy enterprise is liable on contractual ground when it has discontinued the electric power supply of a consumer in violation of the general terms and conditions of the contract. Its contractual liability in this case includes also the possibility for awarding a compensation for non-pecuniary damages, insofar they are a direct and imminent consequence of the breach and they could have been foreseen when the obligation arose and when the debtor has not acted in good faith, the compensation shall cover all direct and imminent non-pecuniary damages.

When the non-pecuniary damages are suffered as a result of a tort, the compensation includes all damages, which are direct and imminent consequence of the tort. The liability for the non-pecuniary damages again follows the scope of the pecuniary damages subject to compensation, whereas the liability for torts is distinguished by its severity and all established direct and imminent damages are subject to compensation, not only the foreseeable ones as in the case of the contractual liability.

The OCA does not provide for any limitation concerning the subject – natural person or legal

entity, but considering the character of the non-pecuniary damages, the court practice under art. 52 of the OCA has until recently excluded the possibility for legal entities to suffer damages in the form of pain and suffering. The courts held the position that the legal sphere of the legal entity, and especially the one of the commercial company, is comprised exclusively of pecuniary rights; such are also the rights related to the commercial reputation and the trademarks.

In 2013, for the first time, the SCC accepted a claim for non-pecuniary damages, suffered by legal entities, as admissible (court order in private civil case 6155/2013, II civil division of the SCC). Subsequently – for the purpose of updating the court practice and its harmonization with the practice of the European Court of Human Rights, the SCC refer to affirmation of the adopted position and to abandonment of the view, defended for more than half a century, that such a claim is inadmissible. The Bulgarian courts started to acknowledge the right of legal entities to a compensation for non-pecuniary damages with arguments, drawn from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRFF) and the decisions of the European Court on Human Rights. The latter consistently acknowledges the non-pecuniary rights of legal entities and awards compensations for suffered non-pecuniary damages in case of violated rights, e.g. – the right of freedom of practicing religion, right of a fair judicial trial in reasonable terms, protection from discrimination and freedom of assembly and association.

In decision No 274 from 18.03.2019 on civil case No 5120/2017, IV civil division of the SCC it is accepted, that the undermining to the authority of a religion by inflicting insulting or defamatory statements in mass media constitutes a violation of a protectable right, the offence against which does not have a monetary value therefore the caused non-pecuniary damages are subject of compensation.

In decision No 206 from 26.03.2019 on civil case No 4762/2017, III civil division of the SCC again upheld the view, that a claim for non-pecuniary damages, suffered by legal entities is admissible. In the decision, which is also binding practice for the courts, the SCC accepted that legal entities suffer moral damages and can claim, respectively be awarded compensation for the same. The right is acknowledged in favour of all legal entities – commercial companies, NPOs, religious institutions etc. The quoted decision is signed with reserved opinion by the reporting judge, who presented detailed arguments why he does not accept the view of the majority in the court formation. Arguments are set out in favour of the

long-upheld understanding that the legal entities do not have physical health and psychics, nor they experience pain and suffering. It is stated that the legislation acknowledges an independent legal personality to the legal entities, with regard to different goals, for instance to exercise government authority, to participate in commerce, to achieve economic goals, to achieve certain non-profit purpose for public or private interest, to practice a certain religion independently from the Bulgarian state, to form and express the political will. Through listing the groups of purposes, the judge has reached the conclusion, that the legal personality of each legal entity fundamentally excludes the possibility for it to suffer non-pecuniary damages. For this reason he has concluded, that the compensatory function of the awarded compensation in case of an acknowledged claim for non-pecuniary damages, brought by a legal entity, is unfeasible with regard to the latter.

In the reserved opinion there is also an analysis of the provision of art. 41 of the ECPHRRF. The possible contradiction between the Bulgarian OCA and the Convention is also discussed. In accordance with the quoted provision if the ECHR establishes a violation of the Convention and the Protocols to it and if the internal legislation of the respective High Contracting Party allows only a partial compensation, the ECHR, if necessary, shall award fair satisfaction of the affected party. As a result from the analysis the judge has reached the conclusion that the compensation is not related to the internal legal procedures of the state – party to the Convention – and it is possible the internal legislation of a specific state not to acknowledge such a possibility. Thus, the lack of collision between the OCA and the Convention has been motivated, as well as the lack of necessity for change in the established court practice until there is no new and explicit material legal provision, constituting the grounds for such a claim.

In summary, an undisputed positive answer cannot be given to the question whether it is possible, under the Bulgarian law to bring a claim for non-pecuniary damages, suffered by a legal entity, due to the contradicting statements of the judges in the SCC and the scarce court practice. Regardless that there is no contradictory court decisions from different divisions in the SCC, the interpretative decision can be used as instrument for overcoming the different opinions on the matter.