

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (75) 7

ON COMPENSATION FOR PHYSICAL INJURY OR DEATH

*(Adopted by the Committee of Ministers on 14 March 1975
at the 243rd meeting of the Ministers' Deputies)*

The Committee of Ministers,

Having regard to Resolution (63) 29 on the legal programme of the Council of Europe ;

Having examined the report submitted to the CCJ by its Sub-Committee on Fundamental Legal Concepts concerning compensation for physical injury or death in the field of non-contractual liability ;

Considering that it is desirable to reduce existing divergencies between the laws and practices of member states in this field ;

Considering that the principles and explanatory memorandum contained in the report of the sub-committee may contribute to the promotion of harmonisation of these laws and practices,

Recommends to the governments of member states :

1. To take the principles concerning compensation for physical injury or death contained in the annex to this resolution into consideration when preparing new legislation on this subject ;
2. To make this resolution and its annex and the explanatory memorandum available to the appropriate authorities and other interested bodies in their countries.

ANNEX

PRINCIPLES RELATED TO COMPENSATION FOR DAMAGE IN THE CASE OF PHYSICAL INJURY AND DEATH

I. General provisions

1. Subject to the rules relating to liability, the person who has suffered damage has the right to compensation for this damage suffered so that he is restored to a situation as near as possible to that in which he would have been if the act for which compensation is claimed had not occurred.
2. Compensation for damage is to be calculated according to the value of the damage at the date of the judgement, without prejudice to principles 8, 9 and 17.
3. As far as possible, the judgement should indicate the details of the indemnities awarded under the various heads of damage suffered by the victim.

II. Compensation in the case of physical injury

4. Expenses incurred by the victim as a result of the damage are to be refunded as are those arising from the victim's increased needs.
5. The victim is entitled to compensation if he is no longer capable of carrying out the household tasks which he performed before the damage occurred, even where such tasks are not thereafter performed by some other person. The right to compensation is personal to the victim.
6. Compensation for loss of anticipated profits is to be awarded for the period up to the judgement as well as for the future. To this end all the known or foreseeable factors are to be taken into account. These include the degree of disablement, the nature of the victim's occupation, his earnings after the accident compared with those which would have accrued if the damage had not occurred, as well as the probable length of his working activities and his expectation of life.
7. Compensation for loss of anticipated profits may take the form either of a pension or of a lump sum, according to criteria determined by national law. If the award is in the form of a pension, it is desirable to provide accompanying measures to ensure that the payments bear a constant relation to the amount of damage notwithstanding any monetary depreciation.
8. If the loss of anticipated profits has been indemnified by the award of a pension, this may subsequently be augmented or reduced on the grounds of a decrease or increase in the victim's working capacity resulting from a deterioration or an improvement in his state of health. The same applies when there is some change in the value of money or the level of income. These changes are not, however, to be taken into consideration where the judge had taken them into account when first assessing the damage.
9. If loss of anticipated profits has been indemnified by the award of a lump sum, a subsequent increase in the amount is to be allowed only where some new damage arises from an aggravation of the state of health of the victim which could not have been taken into account at the time of the initial assessment of the damage. A reduction of the lump sum awarded is not to be allowed.
10. The fact that the victim has to make greater efforts to obtain the same result in his work constitutes damage giving rise to a right to compensation.
11. The victim is to receive compensation for aesthetic damage, physical pain and mental suffering. This last category includes, as far as the victim is concerned, a variety of complaints and disorders such as malaises, insomnia, feelings of inferiority, diminution of pleasure in life due notably to the inability to engage in certain pleasurable activities.
12. Compensation is to be paid for physical pain and mental suffering on the basis of their severity and duration. Compensation is to be calculated without regard to the victim's financial situation.
13. The father, mother and spouse of the victim who by reason of a physical or mental disability of the victim sustain mental suffering should only be entitled to compensation if the suffering is of an exceptional nature ; other persons should not be entitled to this kind of compensation.

III. Compensation in the case of death

14. Expenses incurred as a result of the death of the victim, notably funeral expenses, are to be refunded.

15. The death of the victim confers entitlement to compensation for material damage on :

a. persons to whom the victim was or would have been under a legal maintenance obligation ;

b. those persons whom the victim had or would have maintained, wholly or partly, even though not legally bound to do so. This right exists for the benefit of a person living out of wedlock with the victim if their relationship was stable ; however, this may be refused if the relationship was adulterous.

16. The compensation of material damage consequent on the death of the victim and suffered by persons envisaged under principle 15 may be awarded in the form either of a pension or of a lump sum, in accordance with the criteria determined by national law. If the award is in the form of a pension, it is desirable to provide accompanying measures to ensure that the payments bear a constant relation to the value of the damage notwithstanding any monetary depreciation.

17. Where the compensation of material damage consequent on the death of the victim and suffered by persons envisaged under principle 15 takes the form of a pension, the amount of such pension may be revised where the circumstances which were taken into consideration for the evaluation of the initial amount are modified. The criteria for such revision are to be determined by national law.

18. Where the compensation of material damage consequent on the death of the victim and suffered by persons envisaged under principle 15 takes the form of a lump sum, no subsequent change in the amount is to be allowed.

19. Legal systems which at present do not recognise a right to compensation for mental suffering of a third party as a result of the death of the victim should not extend compensation to persons other than the spouse of the victim or his children, parent or fiancé ; even in these cases, compensation should only be granted subject to the condition that these persons have maintained close bonds of affection with the victim at the time of his death.

Under legal systems which at present confer on third parties such a right to compensation, this right shall not be extended as regards either the categories of persons entitled to sue, or the amount of compensation payable.