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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

**ON MAKING CHANGES AND ADDITIONS TO THE CIVIL CODE
OF THE REPUBLIC OF ARMENIA
AND ITS RATIONALE**

Article 1

1. Article 17 paragraph 2 of the Civil Code of the Republic of Armenia of 5 May 1998 (hereinafter referred to as “the Code”) shall be edited as follows:

“2. Damages are: the expenses borne or to be borne by the person whose rights have been violated in connection with restoring the violated rights; loss of property or damage thereto (material damage); loss of earnings which the person would have gained in normal conditions of civil life had his rights not been violated (lost income); as well as physical or mental anguish (non-pecuniary damage).”

2. A new paragraph 4 of Article 17 of the Code shall be added which shall read as follows:

“4. Non-pecuniary damage shall be compensated only in cases prescribed by this Code.”

Article 2

A new Article 162.1 shall be added to the Code which shall read as follows:

«Article 162.1. Definition of and compensation for non-pecuniary damage

1. Non-pecuniary damage, within the meaning of this Code, is a physical or mental anguish caused to the person by a decision, action or omission, attempting against non-material goods belonging to him or her by nature or by virtue of law, or violating his property rights or personal non-property rights.

2. The person has the right to seek compensation through the court for non-pecuniary damage caused to him or her, if it is approved by the judicial act that his or her rights, guaranteed by Articles 2, 3 and 5 of 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 body or an official

3. If the convict has been acquitted under the conditions provided by Article 3 of the Protocol No. 7 to the Convention, he or she has the right to seek compensation through the court for non-pecuniary damage caused to him or her.

4. Non-Pecuniary damage shall be compensated in accordance with the procedure and conditions prescribed by Article 1087.2 of this Code.”

Article 3

The title of §2.1 of the Code shall be changed as follows:

“2.1. PROCEDURE AND CONDITIONS OF THE COMPENSATION FOR NON-PECUNIARY DAMAGE.”

Article 4

A new Article 1087.2 shall be added to the Code which shall read as follows:

«Article 1087.2. Procedure and conditions of the compensation for non-pecuniary damage

1. The way, basis and amount of compensation for non-pecuniary damage are determined in accordance with this Article and Article 162.1 of this Code.

2. Compensation for non-pecuniary damage shall be liable for compensation, irrespective of the recoverable material damage.

3. Compensation for non-pecuniary damage shall be liable for compensation, regardless of the presence of guilt of the official.

4. Non-pecuniary damage shall be compensated monetarily with funds allocated from the State budget.

5. The amount of the compensation for non-pecuniary damage shall be determined by the court in accordance with the principles of reasonableness, fairness and proportionality.

6. When deciding the amount of non-pecuniary damage, the court takes into account the nature, degree and length of physical or mental anguish, the presence of guilt when causing it, the individual features of the person who has suffered non-pecuniary damage as well as other relevant conditions.

7. The amount of non-pecuniary damage may not exceed:

1) 1000 times the minimum wage, for violation of the rights guaranteed by Article 2 or Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in a case prescribed by Article 162.1 paragraph 3 of this Code;

2) 500 times the minimum wage, for violation of the right guaranteed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

8. The claim of compensation for non-pecuniary damage can be lodged within a period of four months from the date when the judicial act stipulated by Article 162.1 paragraph 2 of this Code entered into force.”

Article 5

This Law shall enter into force as from 1 November 2014.

**RATIONALE
FOR THE NEED TO ADOPT THE LAW
ON MAKING CHANGES AND ADDITIONS TO THE CIVIL CODE
OF THE REPUBLIC OF ARMENIA'**

1. Current situation and the need for the adoption of the legal act.

The notion of non-pecuniary damage is not prescribed by the legislation of the Republic of Armenia. In result of the addition made to the Civil Code of the Republic of Armenia in 2010, the mechanism of protection of honor, dignity and reputation was provided, which, in the meantime, is only a partial representation of the compensation for non-pecuniary damage. That mechanism concerns the protection of honor, dignity and reputation only, whereas Armenia's current legislation does not provide the availability of material compensation for non-pecuniary damage caused to the person's fundamental rights, i.e. physical or mental anguish caused to him or her, in result of decisions, actions or omission of the officials. The elimination of that lack is important from the perspective of completing the system of domestic remedies, taking into account also the fact that the legislations of almost all the member countries to the Council of Europe have such a mechanism established.

The establishment of the offered mechanism of material compensation for non-pecuniary damage is important from the point of proper implementation of international obligations of the Republic of Armenia as well. Now then, on 26 April 2002 the Republic of Armenia ratified the Convention on Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") which infers that the Republic of Armenia has assumed the obligation to ensure in its territory the fundamental rights and freedoms guaranteed by the Convention. It also indicates that persons who consider their rights guaranteed by the Convention to have been violated by the Republic of Armenia, can apply to the European Court of Human Rights (hereinafter referred to as "the European Court"), in case in Armenia they have exhausted all the domestic remedies corresponding to the declared norms of the international law. According to paragraph 5 of Article 5 (Right to liberty and security) of the Convention, *"Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation"*. This provision mandatory obliges the State which has ratified the Convention, in this case, Armenia, to provide through national legislation the right to the compensation for non-pecuniary damage caused in result of unlawful arrest or detention. Moreover, the need of providing the mechanism of compensation for non-pecuniary damage was mentioned in the judgment against the Republic of Armenia. Particularly, in the judgment of *Khachatryan and other v. Armenia (2012)* the European Court found that the absence of the mechanism of compensation for non-pecuniary damage, in result of which the person who has suffered pain and anguish as a result of violence of paragraphs 1, 2, 3 or 4 of Article 5 of the Convention is deprived from the possibility to claim such a compensation, is itself a violation of Article 5 § 5 of the Convention. Therefore, such availability should be prescribed by domestic legislation. (§§155-159).

Notably, the availability of compensation for non-pecuniary damage provided by the Convention is an important condition for the guarantee of the right to effective domestic remedies provided by Article 13 of the Convention. The aforementioned is indicated by the attitude of the European Court expressed in a number of judgments. This assessment was put also in the judgment of *Poghosyan and Baghdasaryan v. Armenia (2012)*, where the European Court established that *"[I]n the event of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies[.]"*. (See §46). It also concluded that *"[T]he applicant should have been able to apply*

for compensation for the non-pecuniary damage suffered by him as a result of his ill-treatment. No such compensation being available to him under Armenian law, the applicant was deprived of an effective remedy (...). There has accordingly been a violation of Article 13 of the Convention." (See §47-48).

Moreover, in the same judgment of *Poghosyan and Baghdasaryan v. Armenia* the European Court found that the absence of the mechanism of compensation for non-pecuniary damage, and, relatively, a person's deprivation of this possibility, violated Article 3 of the Protocol No. 7 to the Convention, which guarantees the right to compensation for wrongful conviction. In the above cited judgment the Court held that *"[W]hile this provision guarantees payment of compensation according to the law or the practice of the State concerned, it does not mean that no compensation is payable if the domestic law or practice makes no provision for such compensation (see also paragraph 25 of the Explanatory Report to Protocol No. 7 to the Convention, paragraph 30 above). Furthermore, the Court considers that the purpose of Article 3 of Protocol No. 7 is not merely to recover any pecuniary loss caused by a wrongful conviction but also to provide a person convicted as a result of a miscarriage of justice with compensation for any non-pecuniary damage such as distress, anxiety, inconvenience and loss of enjoyment of life. No such compensation, however, was available to the applicant in the present case (...) There has accordingly been a violation of Article 3 of Protocol No. 7 to the Convention."* (See §51-52).

The substantiation of the right to compensation for non-pecuniary damage, available for a person in cases of violations of Articles 2, 3, and 5 of the Convention, and for an acquitted in cases of violations of Article 3 of Protocol No. 7 provided by the draft law, is based on the above-mentioned conventional provisions and the judgments of the European Court.

2. The nature of the offered regulation

The draft law offers to input the concept of the compensation for non-pecuniary damage. By providing the mechanism of compensation for non-pecuniary damage, the implementation of the obligations taken upon the ratification of the Convention will be ensured, as well as the individuals will be vested with the possibility to claim compensation for non-pecuniary damage in each certain case.

In addition to the above, the procedure and conditions of the compensation for non-pecuniary damage is intended to provide in the section "Responsibility in result of caused damage" of the Civil Code of the Republic of Armenia, alongside with the provisions providing the procedure and conditions of the compensation for damage caused to honor, dignity and business reputation.

It is intended to stipulate that if a violation of Article 2 (Right to life), Article 3 (Prohibition of torture and ill-treatment) or Article 5 (Right to liberty and security) has taken place as a result of a decision, action or omission of a state body or an official, the person avails the right to compensation for non-pecuniary damage caused to him through the court. Moreover, the right to compensation is available for a convict who has been acquitted within the conditions prescribed by Article 3 of Protocol No. 7 to the Convention.

In particular, the intended law shall be spread on the following cases:

1. torture/ill-treatment or illegitimate deprivation of life by the competent state body,
2. failure to carry out a proper investigation into the fact of alleged torture/ill-treatment or the death of a person in result of alleged actions or omission of state bodies or officials,
3. unlawful deprivation of person's liberty,

4. [acquittal](#) of a convict upon new or newly discovered circumstances (except for the cases when the conviction was wholly or partially attributable to the convict, for example, was based on his/her confession).

The establishment of the fact of violation of a right guaranteed by the Convention is a necessary condition for compensation for non-pecuniary damage.

The amount of non-pecuniary damage may not exceed:

- 1) 1000 times the minimum wage (which equals to 1000 000 AMD), for violation of the rights guaranteed by Article 2 or Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in a case prescribed by Article 162.1 paragraph 3 of this Code;
- 2) 500 times the minimum wage (which equals to 500 000 AMD), for violation of the right guaranteed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The draft law shall enter into force as from 1 November 2014.

3. Institutions and persons involved in the development of the draft law and their positions

The draft law has been developed by the Ministry of Justice of the Republic of Armenia.

4. Results to be achieved

The adoption of the law is expected to have ensured the implementation of obligations assumed by the Republic of Armenia upon ratification of the Convention, as well as the proper execution of European Court's judgments of *Poghosyan and Baghdasaryan v. Armenia* and *Khachatryan and other v. Armenia*. In addition to this, it is expected to increase the level of legal protection of the RA citizens by vesting them with a new instrument of available domestic remedies, as well as to increase the responsibility of competent state bodies and officials in passing decisions, taking actions and omissions concerning a person's fundamental rights.

The adoption of the law is also expected to have reduced the number of judgments delivered by the European Court against Armenia and establishing violations of the Convention as well.