

# **GREECE**

Prof. Dr. Eugenia Dacoronia  
National and Kapodistrian University of Athens  
Law School

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## **Compensation of Moral Harm of a Person who Became a 'Vegetable' after an Accident**

### **Facts**

After an accident, P remained in a coma (aphasia), having lost the power to use words or to communicate with his environment. The Court of Appeal awarded him € 90,000 as compensation for his moral harm.

## Judgment

- The Court of Cassation confirmed the decision of the Court of Appeal and held that, according to art 932 GCC, in the case of a delict, the courts may award a reasonable amount of money to compensate the moral harm which the victim suffered as a consequence of the unlawful act. Accordingly, two interesting issues emerge concerning an injured party who remained in a coma:
  - a) whether or not he felt mental pain, sorrow, grief, etc and
  - b) whether he feels joy and relief with the pecuniary compensation awarded to him for his moral harm.

- The Court of Cassation stresses that it must be noted that, every time compensation due to moral harm is owed, there is, simultaneously, an infringement of the victim's personality (arts 57 and 59 GCC). Whether an infringement of the personality has taken place is objectively perceived. Accordingly, the Court states that it ultimately makes no difference whether or not the victim felt the harm, etc.

- Especially in the case where the victim was in good health prior to the occurrence of the harmful event, but was later rendered permanently disabled because of it, his moral harm must be compensated, due to the infringement of his personality which has taken place, even if the victim is unable to feel it and will never feel it even in the future (if the impairment is irreversible).

- Otherwise, D benefits from the incidental fact that the victim cannot, at present or even for ever, feel the damage he suffered.
- Also, a different approach would be inconsistent with the settled view that even legal entities are entitled to compensation for moral harm.
- Moreover, it would lead to a violation of art 2 § 1 and art 21 § § 2 and 3 of the Constitution, which provide for special care for disabled persons and, thus, to a further infringement of their personality.

- There is also a methodological reason which leads to the conclusion that the moral harm must always be compensated when the harmful event itself caused the mental disability. More particularly, it is one of the principles of the law of damages, according to Greek law, that a person cannot invoke his own unlawful act in order to be exempted from his obligation to restore the damage caused by this act. Consequently, even if the mental capacity is part of the rule of law about compensation due to moral harm, the application of the rule of law must not be impeded when the lack of mental capacity is due to the harmful event itself.

## Commentary

- Courts in Greece have awarded compensation for moral harm even in cases where the victim is, due to his/her very severe injury, disconnected from the environment and not able to feel the gravity of the accident and of the harm he/she has suffered, on the ground that it is possible that his/her health situation may be ameliorated in the future and he/she may be able to feel the consequences of the accident



- What is interesting in the decision of the Court of Cassation is that it goes a step further, holding that compensation of moral harm should always be awarded when the tortfeasor caused the victim's disabled situation on the basis of the infringement of the latter's personality.
- On the similar issue of whether a disabled person who is not able to experience emotional effects from the outside world is entitled to compensation for pain and suffering in the case of death of a member of his/her family, the prevailing view in the Greek jurisprudence, though, gives a negative answer.