

# ECONOMIC LIABILITY OF EMPLOYERS, IN THE EMPLOYMENT RELATIONS, FOR MORAL DAMAGE MADE TO EMPLOYEES

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**Abstract:** *In the paper work “Economic liability of employers, in the employment relations, for moral damage made to employees” we expose the main aspects regarding the economic liability of employers for moral damages made to employees.*

*The law 237/2007 put an end to doctrinal disputes about the moral prejudice done to employees, thereby the jurisprudence gained a unitary character.*

*But problems arise concerning moral damages quantification. The court must consider the negative consequences suffered by the claimant on the physical and psychological standards, the importance of harmed values, the extent to which these values have been damaged and the intensity with which they were perceived, the degree of impairment of his / her family situation, the professional and social consequences.*

**Key words:** *moral damage, the employer, liability heritage.*

The liability of employee-employer, employer-employee is done in two-way, thereby, not only workers respond to the employer assuming that they produce a loss, but the employer is responsible also towards the employees in such a situation.

Sometimes the employer's liability is specifically provided in the provisions of law, such as:

- the obligation to pay a compensation in case of dismissal cancellation;
- compensation due in the event of criminal innocence of the person suspended from service/office;
- the obligation to pay a compensation for moral damage;

By the law no. 237/2007 from July 2007 the article 269 paragraph 1 of the Labour Code has been changed, in the sense that it granted employees also the compensation for moral damage. Before changing it, the High Court of Cassation and Justice gave a sentence regarding the pecuniary liability of employers for material damage produced to employees.

Moral damage consists of the harm brought to the human personality: his existence, body integrity and health, physical or mental sensitivity, his feelings, honesty, honour, professional reputation, non patrimonial elements entering the contents of copyright or inventor.

From many situations in which employers may be liable for material damage produced, we remind as significant the following:

- ✓ the disciplinary sanctioning;
- ✓ the demotion or suspension from office;
- ✓ the change in position or movement to another job;
- ✓ the wage reduction;
- ✓ the promotion refusal.

According to the High Court of Cassation and Justice, in labour disputes, in what concerns the economic liability of employers, according to article 269 paragraph 1 of the Labour Code, moral damages may be awarded to employees only if the law, the collective labour agreement or the individual employment contract contain clauses expressly for this purpose.

The HCCJ (High Court of Cassation and Justice) found that there are two guidelines in courts' practice regarding the application of article 269 paragraph 1 of the Labour Code in the settlement of work litigations where employees request to be awarded moral damages.

Some courts have held that the moral damages award in the labour dispute is admissible because the stipulations of articles 998 and 999 of the Civil Code, relating to tort liability for damage caused which has the character of general law in relation to provisions of the Labour Code, compliment these.

Other courts, by contrast, have held that the moral damages award in the labour dispute is admissible only to the extent in which the contents of the collective labour agreement or individual employment contract contain clauses expressly for this purpose.

The decision of the HCCJ confirmed that "the latter court correctly interpreted and applied the provisions of the law".

At that time HCCJ specified that in the content of the third chapter of the Labour Code, title XI, the pecuniary liability is governed by the employer and employee, establishing the principles that generate it and also concrete ways of recovering damages.

In this regulatory framework, in article 269 paragraph 1 of the Labour Code, it was provided that "the employer is compelled under the rules and principles of contractual liability, to compensate the employee if he has suffered a material injury from the fault of the employer, during the accomplishment of work obligations or in connection with the work".

Correspondingly, by article 270 paragraph 1 from the same code which covers the material responsibility of workers, has provided that "employees have patrimonial responsibility under the rules and principles of contractual liability, for the damage produced to the employer's property, by the employees fault and in relation to their work".

The HCCJ stated that "in the provisions of the two texts of law arises unequivocal intention of the legislature, that pecuniary liability of the employer and employee, can be established solely for property damage and not for moral damage".

At the same time the HCCJ noted that article 295 paragraph 1 of the Labour Code provided that "this code is complete with the other provisions of the labour law and, if they are incompatible with the specificity of employment under this code, with civil law".

HCCJ stated that "in order to complete the specific provisions of the Labour Code with those of the Civil Code it was necessary, as shown in the mentioned text, that the particular situation should not be covered by a provision of the Labour Code and, there should not be any incompatibility determined by the nature of employment reports as long as they are based on a collective or individual employment contract".

HCCJ stated that these two conditions could not be considered fulfilled, in order to justify the application of article 269 paragraph 1 of the Labour Code in conjunction with articles 998 and 999 of the Civil Code as the legal basis for the moral damage repair inside of employment legal relationships, as long as mutual pecuniary liability of the parties in such a report can only result according to employment contract, based on the principles of contractual liability.

HCCJ considered that, as long as the legal nature of patrimonial responsibility, governed by the Labour Code, is a variety of contractual liability, with certain features stated within the employment relationship, among which we can mention the one set derogatory, by article 269 paragraph 1 and article 270 paragraph 1 that only covered property damage repair. It was obvious that under such liability no moral damages could be granted. They could be claimed according to the conditions stated in articles 998 and 999 of the Civil Code, only in tort liability, concluded HCCJ.

By deciding this, the HCCJ violated the constitutional principle of dignity, principle which states expressly "the employee is entitled to dignity at work". Such a decision also violates the European Rules of labour law, which provides employer liability for non-pecuniary moral damage produced to employees.

Before July 28, 2007, by the decision of the European Court of Human Rights (Case Ghilbuși against Romania)<sup>1</sup> it has been found out that article 6 paragraph 1 of the Convention on Human Rights and Fundamental Freedoms has been infringed because it was not enforced a court order establishing the employer's obligations when he concluded the individual employment contract. Consequently, the Romanian state was obliged to pay an amount representing the material and moral damage suffered by the person concerned.

HCCJ error was repaired by the Romanian Parliament, which adopted the Law no. 237/2007, governing pecuniary liability of the employer for material moral damage produced to the employees, but the text of the law is questionable, because inside it is specified: "The employer is required under the rules and principles of contractual liability, to compensate the employee when he suffered a material or moral damage due to the fault of the employer while he was performing work obligations or in connection with the work".

The text of this regulation, badly written, leaves room for interpretation so that one may think that the legislature wanted and implemented a cumulative solution.

The employer is responsible, if need be, either for material damage or for the moral one, or, finally, both for material damage and for the moral prejudice.

So the text of the law should have been the next: "The employer is required under the rules and principles of contractual liability, to compensate the employee if he has suffered material injury and / or moral due to the fault of the employer while he was performing work obligations or in connection with the work".

This regulation has a positive side because its occurrence has effects regarding the way in which the dispute should be solved. Thus, until the occurrence of the amendment, when the employee,

based his claims on the provisions of the Civil Code in order to obtain material damage, the case could have been trailed in the court or tribunal, depending on the value of plaintiff's claims.

According to the regulations of Law 237/2007, the case shall be tried by a specialized work and social security court in a panel made up of two judges and two judicial assistants. Judicial Assistants participate at the deliberations and have an advisory vote.

The advantage is that being judged by a specialized work court, the employee's claims may be better analyzed in terms of employment report that he has with his employer and may enjoy greater protection in his relation with him.

Law 237/2007 put an end to doctrinal disputes on moral prejudices produced to employees, thus the jurisprudence got a unitary character.

But problems arise regarding moral damage quantification. The court must consider the negative consequences suffered by the claimant at the physical and psychological level, the importance of harmed values, the extent to which these values have been damaged and the intensity with which the consequences of the harm, the degree of impairment of familial, professional and social situation were perceived.

Evaluation of moral damage caused by the employer and, consequently, moral damage assessment present in individual employment relationships a difficulty level similar to other cases with the same subject.

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