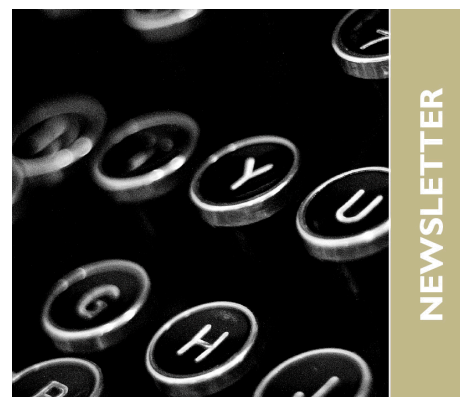


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New regulations regarding damages for pain and suffering and compensation for loss suffered

The new Civil Code continues to give great importance to the protection of personal rights. The scope of personal rights has been enlarged in the new Civil Code by including: protection of disabled persons, the right to nature and a healthy environment as well as the right to a fair trial. Trade secrets are also included in personal rights if the beneficiary takes the generally expected precautionary measures. Know-how will also be considered as a trade secret.

Compensation for infringement of personal rights

Under the new Civil Code, for infringement of personal rights, a kind of damages for pain and suffering may be demanded in lieu of the previous compensation for non-material damages. The main difference is that the damaged person no longer must prove the occurrence of damage or prejudice to receive compensation.

Nevertheless, it is of major importance that the assessment of damages will still be based on the gravity of the infringement of the personal rights, which must be proven by the claimant. Moreover, in case of infringement of intellectual property rights damages can be demanded without evidence of damage or prejudice, provided that the protection of such rights is not governed by a special law. In either case only infringements of rights occurring after 1 May 2010 will substantiate a claim for damages.

Compensation for breach of contract

From 1 January 2011 the regulations based on which the defaulting party must pay damages will be modified. According to the new provisions, the defaulting party will only be exempted from the liability if the named party proves that the damage resulted from circumstances outside the control of the defaulting party, which could not have been foreseen at the conclusion of contract and if the party was not obliged to avoid or prevent these circumstances. At the same time the amount of compensation is limited, in principle only to the damage caused to the object of the contract. The liability for consequential damages is restricted to a limited number of cases. The damaged party is also entitled to demand the conclusion of an alternative transaction, in which case the defaulting party has to compensate for the value difference to the initial transaction. Moreover, the liability of the defaulting party is increased by the fact that the court may not reduce the amount of compensation for reasons of equity any more. The new regulations are applicable to agreements concluded after 1 January 2011.

The second book of the new Civil Code governing the law regarding persons enters into force from 1 May 2010. From a business point of view, particularly in the area of infringement of personal rights important new regulations have been introduced. The regulations regarding compensation for damages have also been partially revised.

Compensation beyond contractual relations

As to damages outside of a contractual relationship after 1 January 2011, the position of the damaged person will improve due to the fact that the damaged person is no longer required to prove the illegality of the cause of damage. Furthermore, the damaged person is not required to prove that the person responsible for the damage has acted culpably. It is rather the person responsible for the damage who must prove that he acted lawfully (as expected). If the damaged person obtained a benefit from the damage, this must be deducted from the compensation amount. Thus the damaged person cannot demand the compensation of a damage which has been otherwise offset. The change in value due to time passing must be considered when fixing the amount of compensation. However, these principles have already been taken into consideration by the jurisprudence, and through the new Civil Code they have now been implemented into legal norms. The position of the damaged persons is also improved where damage has been caused by several persons. The damaged person must not prove for the joint and several liability of the actors that they knew of each other. The new Civil Code also contains provisions on compensation for environmental damages and liability of corporate person for damages caused by its shareholders in certain cases. The new regulations apply to damages occurring after 1 January 2011.

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