

**Guidelines
for Determining
the Amount of
Compensation for
Non-Pecuniary Damage
in Cases
of Discrimination**

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1. Foreword

It has been more than a decade since Bosnia and Herzegovina (BiH), the Republic of North Macedonia and the Republic of Serbia adopted comprehensive anti-discrimination legislation and introduced provisions and instruments for judicial protection within their systems.¹ The respective bodies of legislation adopted at those points aimed to ensure strong legal and judicial protection for victims of discrimination.

In 2021, the OSCE field operations to BiH, Serbia, and Skopje launched a regional co-operation initiative to combat discrimination. Within this co-operation, several meetings were held to address practical challenges as well as one or more interrelated legal issues arising in the judicial responses to discrimination.

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1 *Official Gazette of Bosnia and Herzegovina*, No: 59/09 and 66/16; *Official Gazette of the Republic of North Macedonia*, No: 258/20; *Official Gazette of the Republic of Serbia*, No.22/09 and 52/21.

One of the topics that particularly stood out in these discussions was compensation for damages in cases of discrimination, especially non-pecuniary aspects.

Therefore, the three field operations agreed to address these issues by supporting the development of *Guidelines for Determining Non-pecuniary Damage in Cases of Discrimination* (Guidelines). The text of the Guidelines presented here was formulated by a group of experts from the three countries and represents the result of discussions among dozens of legal professionals - primarily judicial office holders but also lawyers, independent human rights and equality bodies, the civil society sector, and educational institutions. A special contribution to the preparation of the Guidelines was made by representatives of the judiciary through focus group sessions held in 2023 in all three countries.

The Guidelines rely on both international standards and domestic legislations adopted in the field of non-discrimination in the respective jurisdictions, as well as on the case law of international and domestic courts developed over the past 15 years. The Guidelines are structured and broadly divided into the following four groups: general principles, circumstances relating to the act of discrimination, circumstances relating to the victim of discrim-

ination, and finally, circumstances relating to the perpetrator of discrimination.

The Guidelines were developed during 2023 and 2024 by a Working Group composed of Biljana Majkić Marinković, Judge of the Supreme Court of Republika Srpska; Fatima Mrdović, Judge of the Supreme Court of the Federation of BiH; Lidija Dimova, retired judge and former President of the Basic Court in Veles; Bojana Velkovska, Judge of the Basic Civil Court in Skopje; Jelica Kerkez Bojanić, Judge of the Supreme Court of Cassation of the Republic of Serbia; and Prof. dr Nevena Petrušić, Professor at the Faculty of Law, University of Niš.

The drafting of the Guidelines was also supported by the Judicial Academy of the Republic of Serbia and the Academy for Judges and Public Prosecutors of the Republic of North Macedonia.

The development and publication of the Guidelines were supported by the OSCE Mission to Bosnia and Herzegovina, the OSCE Mission to Serbia, and the OSCE Mission to Skopje.

2. Introduction

The publication before us represents an overview and a practical guide to the key factors that determine compensation for non-pecuniary damage in cases of discrimination. It was developed by experts from the three countries, who sought to harmonize the minimum content and criteria for establishing the link between discriminatory conduct and the resulting harm, with special emphasis on achieving fairness, preventing recurrence, and deterring such behaviour. Although each country already assesses non-pecuniary damage in various civil proceedings in different ways, the goal of this publication is to offer guidance that will contribute to the development of consistent judicial practice in discrimination cases. The special significance of this document lies in its reliance on international human rights protection standards, which serve as an important reference point in assessing non-pecuniary damages and ensuring that such compensation is fair, effective, and dissuasive. Therefore, these Guidelines not only help to better understand discrimination and its manifestations but also

strengthen capacities for the effective use of available protection mechanisms, thereby contributing to the further development of judicial practice and the improvement of access to justice for victims of discrimination.

2.1. International Standards

International standards developed within universal and regional human rights protection systems aim to ensure effective protection against discrimination. At the universal level, a particularly important role is played by the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), and the *Convention on the Rights of Persons with Disabilities* (CRPD).

These conventions establish the obligation of the signatory states to ensure protection against racial discrimination, as well as discrimination against women and persons with disabilities, and through the general recommendations issued by the treaty bodies responsible for monitoring the implementation of the conven-

tions, additional obligations are imposed on states to ensure the right to compensation in cases of discrimination.¹

Regarding protection from discrimination and compensation for damages within the European system of human rights protection, Article 13 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (Convention), commonly referred to as the *European Convention on Human Rights* holds particular importance, and it stipulates that everyone whose rights and freedoms under the Convention have been violated has the right to an effective remedy before national authorities, regardless of

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1 General Recommendation No. XXVI of the CERD states that “that the degree to which acts of racial discrimination and racial insults damage the injured party’s perception of his/her own worth and reputation is often underestimated and the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, ..., is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.”. Furthermore, General Recommendation No. XXVIII of the CEDAW establishes the obligation of the state to provide appropriate legal remedies for protection against discrimination, which include various forms of reparation, such as “monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.” In addition, the General comment No. 6 (2018) on equality and non-discrimination of the CRPD state that “The explicit legal prohibition of disability-based and other discrimination against persons with disabilities in legislation should be accompanied by the provision of appropriate and effective legal remedies and sanctions in relation to intersectional discrimination in civil, administrative and criminal proceedings. Where the discrimination is of a systemic nature, the mere granting of compensation to an individual may not have any real effect in terms of changing the approach. In those cases, States parties should also implement “forward-looking, non-pecuniary remedies” in their legislation, meaning that further effective protection against discrimination carried out by private parties and organizations is provided by the State party”.

whether the violation was committed by persons acting in an official capacity. Case law of the European Court of Human Rights concerning violations of personal rights recognizes that compensation for damage may include elements beyond mere compensation, encompassing prevention and deterrence as well.

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe as an independent human rights monitoring body specializing in issues related to racism and intolerance, states in its General Policy Recommendation No. 7 that the law should provide for effective, proportionate, and dissuasive sanctions in cases of discrimination, which should include both material and moral damages.² The same requirement regarding sanctions is contained in the anti-discrimination legislation of the European Union. In the *Racial Equality Directive* and the *Employment Equality Directive*, member states are obliged to establish rules on sanctions applicable in cases of violation of national provisions adopted in accordance with the directives, which may include payment of monetary compensation to the victim of discrimination, and they must be effective, proportionate, and dissuasive.³

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2 Paragraph 12 of the General Policy Recommendation No. 7, available at 16808b5aae

3 The same standard is prescribed in *Directive 2004/113/EC (Article 14)*, *Directive 2006/54/EC (Articles 18 and 25)*, *Draft Directive COM(2008)426 final (Article 14)*, and *Directive 2010/41/EU (Article 10)*.

In the case law of the Court of Justice of the European Union, a sanction is considered effective if it successfully achieves the intended result; proportionate if it reflects the gravity, nature, and degree of the loss or harm suffered; and dissuasive if it serves as a preventive mechanism both for the perpetrator and for society as a whole.¹ According to the position of the Court of Justice of the EU, “a purely symbolic sanction cannot be regarded as compatible with the requirement of fair and adequate application of the principle of non-discrimination.”²

2.2. National Anti-Discrimination Legislation in Bosnia and Herzegovina, The Republic of North Macedonia, and The Republic of Serbia

Within the legal framework of **BiH**, the most important instrument for the prevention and fight against discrimination is the *Law on Prohibition of Discrimination* (LPD), adopted in 2009. The authorities and public bodies in BiH have a legal obligation

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- 1 Tudisco, V., Lantschner, E. *Preventing and Reacting to Discrimination through Sanctions and Remedies*, An EQUINET report, 2020., p.7. available at <https://equineteurope.org/publications/preventing-and-reacting-to-discrimination-through-sanctions-and-remedies/> ,
- 2 Judgment (Third Chamber), 25 April 2013, *Asociatia ACCEPT vs Consiliul National pentru Combaterea Discriminarii*, ESB, C-81/12, para. 64, available at: 62012CJ0081

to respect human rights and the principle of non-discrimination arising from the obligations contained in the *Constitution of BiH*, the constitutions of the entities, the Statute of the Brčko District of BiH, and the constitutions of the ten cantons within the Federation of BiH. Although the prohibition of discrimination was one of the key principles of the BiH legal system even before the adoption of the LPD, various forms of discrimination and the specific mechanisms of protection against it had not been clearly defined. The LPD establishes the obligations of the legislative, judicial, and executive branches, as well as of legal and natural persons exercising public authority, to ensure, protect and create conditions for equal treatment. The LPD was amended in 2016 to address several identified shortcomings. The time limits for initiating court proceedings in discrimination cases were extended and victimization was defined as a form of discrimination. Furthermore, the explicit list of grounds for discrimination was expanded to include age, disability, sexual orientation, gender identity and sex characteristics, along with a clear reference to discrimination by association. The inclusion of these grounds ensures protection not only for individuals who have or are perceived to have the listed characteristics but also for those associated with them. Under this law, a person or group of persons exposed to any form of discrimination is entitled to file a lawsuit and seek the establishment of discrimination; the prohibition or elimination of discrimination;

compensation for material and non-pecuniary damage caused by the violation of rights protected by this law; as well as the publication in the media, at the expense of the defendant, of a judgment confirming the violation of the right to equal treatment. Although these guidelines refer to broader criteria for determining damage and comparative practices in the region, it is important to note that in BiH, orientation criteria and indicative amounts for determining the level of fair monetary compensation for non-pecuniary damage exist within the entities and are applied in cases where discrimination has been established.¹

The law distinguishes between sanctions for legal entities, natural entities, and responsible persons in State, entity, and cantonal institutions, institutions of the Brčko District of BiH, municipal institutions, legal entities with public authority, and other legal entities when they violate Article 2 of the LPD, thereby placing a person or group of persons in a disadvantageous position.

The Republic of North Macedonia, through its 1991 Constitution, established in Article 9 the principle of equality and ratified

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1 See more at: Orijentacioni kriteriji i iznosi za utvrđivanje visine pravicne novčane naknade nematerijalne štete (Orientation criteria and amounts for determining the level of fair monetary compensation for non-material damage). These orientation criteria are intended to enable consistent application of Article 200, paragraph 1 of the *Law on Obligations* ("Official Gazette of the SFRY" Nos. 29/78, 39/85, and 57/89; *Official Gazette of the RBiH* Nos. 2/92 and 13/93; *Official Gazette of the FBiH* Nos. 29/03 and 42/11). Practice of RS available at: Naknada nematerijalne štete (Compensation for non-material damage).

all international agreements prohibiting discrimination and guaranteeing the right to equality. In 2010, the first *Law on Prevention and Protection against Discrimination* was adopted as a *lex specialis*, clearly defining the principle of equality, the prohibition of discrimination on multiple grounds, and the judicial and quasi-judicial mechanisms for protection against discrimination. A new *Law on Prevention and Protection against Discrimination* (LPPD) was adopted in 2020.

Article 34 of the LPPD provides for a specific individual lawsuit against discrimination, establishing various types of independent anti-discrimination claims, including a claim for damages. Through a claim for damages, the plaintiff submits a request for compensation for material and non-pecuniary damage caused by an unlawful violation of rights protected under the LPPD. Compensation is awarded for damage that cannot be remedied by fulfilment of obligations restoring the situation to its original state. In such cases, compensation may be sought for both material and non-pecuniary damage. If a claim for protection against discrimination is submitted in the public interest (*actio popularis*), it is not possible to seek compensation for damages. Additionally, in misdemeanour proceedings, when determining the amount of a monetary fine, in cases of more severe forms of discrimination, the fine imposed is higher in accordance with the LPPD (Arti-

cle 42). The LPPD does not contain specific provisions regarding the concept and types of damage, the causal link between the act and the damage, or special rules on the statute of limitations for claims, and therefore, the general rules on compensation for damages contained in the *Law on Obligations* (LO) apply.

Equality and the prohibition of discrimination represent one of the constitutional principles of the **Republic of Serbia**, which prohibits all forms of discrimination on any grounds. Furthermore, everyone is guaranteed the right to judicial protection if any human or minority right guaranteed by the Constitution has been violated or denied, as well as the right to the removal of consequences resulting from such a violation. In the Republic of Serbia, these principles have been implemented in practice through the provisions of the main *Law on Prohibition of Discrimination* (LoPD) and through specific anti-discrimination laws.

Civil law protection against discrimination represents a form of direct protection of the right to equality and non-discrimination. The LoPD contains, inter alia, provisions relating to civil law protection and compensation for damages. According to Article 43 of the LoPD, a lawsuit may seek: prohibition of the act that threatens discrimination, prohibition of further discriminatory acts, or prohibition of repeating the act of discrimination; a declaration that

the defendant has acted in a discriminatory manner toward the plaintiff or another person; execution of an act aimed at eliminating the consequences of discriminatory behaviour; publication of the judgment issued in relation to any of the claims; and compensation for material and non-pecuniary damage suffered by the victim as a result of discrimination. However, aside from these provisions, the LoPD does not contain specific rules regarding the concept and types of damage, the causal link between the act and the damage, or special rules on the statute of limitations for claims, and therefore, the general rules on compensation for damages contained in the Law on Obligations (LoO) apply.

3. Guidelines for Determining the Amount of Compensation for Non- Pecuniary Damage in Cases of Discrimination

3.1. Starting Points and Principles

1. Discrimination represents the most severe violation of human dignity as the primary and highest value of a human being, by which the right to equality is violated and the principle of equality and prohibition of discrimination is breached.

An act of discrimination is one of the gravest violation of human dignity, as the primary and highest value of every human being,

which determines all other values. Unequal treatment of a person based on their personal characteristic constitutes a violation of the right to equality, as a distinct and autonomous personal right, thereby breaching the general principle of equality and non-discrimination. Therefore, when determining the monetary compensation for non-pecuniary damage caused by an act of discrimination, the importance of human dignity must be taken into account to ensure that its protection is practical and effective.

2. Compensation for non-pecuniary damage in case of discrimination, as a civil law sanction, is based on the principles of effectiveness, proportionality, and individual and general prevention.

To ensure effective protection against discrimination, the amount of monetary compensation for non-pecuniary damage, as a civil law sanction, should be determined in accordance with the principles of effectiveness, proportionality and prevention. The principle of effectiveness means that the monetary compensation awarded to the discriminated person should be set at a level that, to the greatest possible extent, compensates the damage suffered and effectively contributes to the realization of the principles of equality and non-discrimination in social relations. The principle of proportionality implies that compensation for non-pecu-

niary damage should be awarded in an amount proportional to the harm suffered. The principle of prevention means that the awarded monetary compensation for non-pecuniary damage, as a civil law sanction, should fulfil a preventive function, deterring both the perpetrator and other subjects from engaging in discriminatory behaviour. Experience shows that the fear of having to pay compensation for non-pecuniary damage influences behavioural change, both in the person who committed the discrimination and in others, thereby preventing and reducing discrimination in social relations. Therefore, fair monetary compensation should be determined at a level that ensures it fulfils these objectives - that is, its social purpose - as a civil law sanction. Awarding merely symbolic monetary compensation is not consistent with these principles.

3. An act of discrimination generally causes non-pecuniary damage, as it produces a range of harmful consequences in the psychological and emotional sphere of the discriminated person.

The starting point in determining the amount of fair monetary compensation for non-pecuniary damage in cases of discrimination is that an act of discrimination causes mental suffering in the form of a series of negative emotions, such as humiliation, stress,

anxiety, dissatisfaction, anger, diminished self-esteem as an equal individual, feelings of injustice, subordination, degradation, dehumanization and similar. Therefore, it is inappropriate to reject a claim for compensation for non-pecuniary damage in cases where discrimination has been established, on the grounds that the mental suffering was not of sufficient intensity or did not last long enough. In some cases, an act of discrimination may cause fear and lead to permanent physical or psychological disorders, resulting in a reduction of general life activity, which constitutes specific forms of non-pecuniary damage that must be appropriately established in each individual case. In any event, the extent, type and manifestation of the harmful consequences of discrimination affect the amount of compensation and serve as elements for its individualization.

4. The right to equality and non-discrimination is a specific personal right, and its violation causes non-pecuniary damage regardless of whether other personal rights were also violated by the act of discrimination.

An act of discrimination constitutes a violation of the right to equality and non-discrimination, as a distinct personal right, which causes non-pecuniary damage. Therefore, compensation

for non-pecuniary damage caused by discrimination is awarded independently of any other violations of personal rights that may have occurred through the act of discrimination. If the same act of discrimination simultaneously violated another personal right, such as health, reputation or privacy, the discriminated person is also entitled to compensation for the non-pecuniary damage resulting from that violation.

5. The purpose achieved through monetary compensation for non-pecuniary damage in cases of discrimination is moral satisfaction.

Monetary compensation for non-pecuniary damage in cases of discrimination is not compensation in the true sense of the word, as it does not represent an equivalent of the injured good of the discriminated person; rather, its primary purpose is satisfaction. It should allow the victim of discrimination to use the awarded compensation to acquire goods and comforts that would, to some extent, restore their disturbed psychological balance and help them better endure the emotional distress caused by the act of discrimination. For this reason, the court has a duty, when determining the amount of fair monetary compensation for non-pecuniary damage, to also take into account market

prices of goods and services. Awarded monetary compensations that cannot achieve this purpose are merely symbolic and do not fulfil their function.

6. The amount of monetary compensation for non-pecuniary damage in cases of discrimination is determined by the objective and subjective circumstances of each individual case.

When determining the amount of compensation for non-pecuniary damage in cases of discrimination, it is necessary to consider all subjective and objective circumstances of the specific case. A comprehensive assessment should include the circumstances related to the act of discrimination itself, the manner in which it was carried out, and the harmful consequences it caused, as well as the circumstances concerning both the discriminated person and the perpetrator of the discrimination.

7. In cases of discrimination, in addition to fair monetary compensation for non-pecuniary damage, the publication of the judgment establishing discrimination may also be awarded.

The law regulating civil protection against discrimination, as a *lex specialis*, provides for two independent civil law claims: a claim for compensation for non-pecuniary damage and a claim for the publication of the judgment in the media. These claims have different purposes and may be combined in a single lawsuit. Although from the perspective of the discriminated person, the publication of the judgment represents a form of moral satisfaction, it also has a preventive function, as it informs third parties that discrimination constitutes a civil offence for which appropriate compensation is awarded. Therefore, if the court establishes that discrimination has occurred, it may order, by judgment, both the payment of fair monetary compensation for non-pecuniary damage and the publication of the judgment in the media at the expense of the perpetrator.

8. The amount of monetary compensation for non-pecuniary damage due to discrimination should, as a rule, be determined by applying the method of discretionary assessment of the compensation amount.

The application of the method of discretionary assessment in determining the amount of compensation for non-pecuniary damage caused by discrimination, as prescribed by civil procedural law, is justified in cases where a party cannot provide evidence of the amount of damage or has provided such evidence, but its presentation is associated with disproportionate difficulties. However, the application of this method does not relieve the court of its duty to explain in the reasoning of the decision the reasons for applying this method in the specific case, as well as all the circumstances considered in assessing the damage and determining the amount of compensation, since such an approach ensures that the logical reasoning of the court can be evaluated by both the parties and the appellate court.

3.2. Circumstances Related to the Act of Discrimination

9. **The personal characteristic that, in an individual case, constitutes the bases of discrimination does not represent a circumstance relevant for determining the amount of fair compensation for non-pecuniary damage.**

Every personal characteristic, as an individual attribute that defines a person's physical, psychological, spiritual, economic, or social identity, represents an equally relevant basis for discrimination. Since there is no hierarchy among personal characteristics, the personal characteristic serving as the basis of discrimination should not be treated as a relevant circumstance when determining the amount of monetary compensation for non-pecuniary damage, as doing so could lead to the establishment of a hierarchy of personal characteristics, which would be contrary to the general prohibition of discrimination.

10. The extent of compensation for non-pecuniary damage is influenced by the form of discrimination.

Every act of discrimination leads to a violation of the psychological and emotional sphere of a person, which manifests through feelings of humiliation, shame, dissatisfaction, anger, frustration, helplessness, inferiority, rejection, and similar emotions. However, the principle of proportionality requires that, when determining the amount of fair compensation for damage, consideration be given to the nature of the discrimination involved. Direct discrimination, to which a person is directly exposed, may in some cases cause more intense mental suffering than indirect discrimination. This is because direct discrimination involves explicit (visible) unequal treatment of a person compared to others in an analogous situation, whereas indirect (hidden) discrimination involves formally equal treatment that places a person or group of persons at a disadvantage compared to others. . Moreover, severe forms of discrimination, such as repeated and prolonged discrimination, generally cause more intense mental suffering, which is relevant when determining the amount of compensation for non-pecuniary damage. In cases of multiple or intersectional discrimination, compensation should not be accumulated separately for each personal characteristic that forms the basis of discrimination in the specific case, but the fact that multiple and intersectional discrim-

ination are severe forms of discrimination should be taken into account.

11. The extent of non-pecuniary damage is influenced by the type of discriminatory act, the objective circumstances under which the discrimination occurred and the type of right that was denied or restricted as a result of the discrimination.

Discrimination can be carried out in various ways, through action or omission and through factual or legal acts. Although every act of discrimination represents a violation of human dignity, the intensity and duration of the mental suffering experienced by the person differ depending on the manner in which the discrimination was carried out. For example, if a discriminatory criterion was applied to the exercise of a certain right, the emotional distress may be of lower intensity compared to that experienced by a person who, due to their personal characteristic, was directly subjected to offensive, degrading or harassing speech. On the other hand, the nature of the right denied or restricted by the act of discrimination should also be taken into account. For instance, if the act of discrimination deprived or limited a person's right that is essential to their existence and development - such as the right to work, the right to health or social protection, or the right

to education, and similar - the discriminated person should generally be awarded a higher amount of monetary compensation for non-pecuniary damage. In any case, the determination of the amount of fair monetary compensation must be approached carefully, assessing what monetary amount would be fair and reasonable to award, taking into consideration all subjective and objective circumstances of the specific case, as well as the general context in which the discrimination occurred. Such an approach is a prerequisite for ensuring that the compensation for non-pecuniary damage fulfils its purpose and is fair and effective.

3.3. Circumstances Related to the Discriminated Person

- 12. When deciding on compensation for non-pecuniary damage, consideration should be given to how the discrimination affects the moral well-being of the individual.**

The impact of the violation of rights must be significant in its nature and degree. Behaviour that disregards or fails to respect the dignity of an individual is, as a rule and according to the sentiment of any reasonable person, of such a nature that it infringes upon the

moral well-being of the individual, even when there is no medical evidence that such behaviour causes psychological or other harm or pain. In each specific case, it is necessary to examine and assess how distressing the situation is for the individual, whether the emotional consequences are significant, whether they affect relationships with close and other persons, the atmosphere in the workplace and home of the discriminated person and any other particular circumstances. The decision on the right to compensation and its amount should be based on a comprehensive assessment of the impact of discrimination on the moral and psychological constitution and status of the individual, including their suffering in the psychological and emotional sphere, such as feelings of humiliation, stress, anxiety, dissatisfaction, anger, diminished self-esteem as an equal person, a sense of injustice, subordination, degradation, dehumanization and similar. The awarded amount of compensation should contribute to the easier overcoming of negative feelings caused by the act of discrimination and the restoration of psychological and emotional balance in the discriminated person, to the extent that this can be achieved through monetary compensation and other forms of satisfaction.

13. Important personal and life circumstances of the discriminated person are relevant for determining the extent of non-pecuniary damage.

Although every act of discrimination constitutes a violation of human dignity, the intensity and duration of the mental suffering experienced by a person due to discrimination differ. Monetary compensation is awarded as appropriate satisfaction to a specific individual, enabling that person to obtain comforts and goods that help redirect their attention and emotions in a positive direction. For this purpose, it is necessary to establish the personal circumstances of the discriminated person, such as their age, lifestyle, hopes and expectations, profession, personal and family status, and relationship with the perpetrator. When assessing the amount of compensation that would allow the realization of this purpose, the financial status of the victim of discrimination should not be a determining factor in the sense of awarding higher compensation to a wealthy person or disproportionately low compensation to a poor person. Consideration should be given to what exactly was lost or violated by the act of discrimination, the significance of that loss for the discriminated person, and how fair satisfaction can be provided through monetary compensation, taking into account the purchasing power of money to

provide what may constitute comfort for that person, given their age and living circumstances.

14. The range of consequences caused by the violation of personal rights that affect the determination of the amount of non-pecuniary damage.

Discrimination occurs in all areas and is often linked to the exercise of certain rights, some of which are of vital importance. Regarding the non-pecuniary damage suffered by an individual, the nature of the right denied or restricted in the specific case is also significant. For example, if a discriminatory criterion is applied to the exercise of a certain right based on a personal characteristic, the emotional distress may be less intense compared to that experienced by a person who, due to their personal characteristic, is directly subjected to offensive, degrading or harassing speech. In cases of discriminatory termination of employment, a person may suffer intense emotional distress, a loss of self-esteem and various psychological disorders such as post-traumatic stress disorder, as well as a high level of existential fear. They may also experience financial stress and face life difficulties related to finding new employment, along with psychological difficulties if their work played a central role in their identity. In cases of discrimination in access to healthcare, emotional distress may occur and,

in some cases, fear of high intensity as well as mental health disorders that cause not only emotional suffering but, in some situations, depression, anxiety, behavioural disorders, and illness. In such circumstances, a person may experience not only temporary frustration due to being denied access to services that should provide medical assistance or rehabilitation. If emotional suffering or fear has led to a deterioration of mental and physical health that permanently reduces the individual's life activity, the person then has the right to compensation for non-pecuniary damage for emotional suffering caused by the reduction of life activity. When assessing the significance of the violated good or right, it is generally not necessary to obtain expert evidence; the decision can be based on other types of evidence, primarily by hearing the victim about the consequences caused by the act of discrimination and the way they manifested, except when it is necessary to determine whether the discriminatory act caused a temporary or permanent disorder or illness. In that case, the judge lacks the required professional knowledge. The same approach applies in cases where discrimination causes fear. Such is the case, for example, with hate speech that incites hatred, violence, or discrimination by third parties against members of a particular social group based on their personal characteristics.

15. Vulnerability and particular sensitivity of the victim should be taken into account when determining compensation for non-pecuniary damage.

In accordance with the general principle of individualization of compensation for non-pecuniary damage, when determining the amount of fair monetary compensation for mental suffering or fear experienced by a person due to discrimination, the vulnerability and particular sensitivity of the discriminated person should be taken into account, as these factors influence the intensity and duration of the suffering or fear. Certain situations or life circumstances may place the discriminated person in a particularly sensitive position. Such situations include cases where the discriminated person is of young age (for example a pupil, student or employee at the beginning of their career) and the defendant is a person in a position of power (for example professor, mentor, supervisor, or employer); where the victim is in a state of particular sensitivity - for instance, when a pregnant woman's employment is terminated; or where a person with a disability or any particular personal characteristic is denied a service. All of these individuals are in situations of special vulnerability. In such conditions, it is more likely that they experience emotional suffering of higher intensity. Special vulnerability may also arise from the fact that a person is discriminated against on two or more personal

grounds, regardless of whether the influence of each ground can be distinguished (multiple discrimination) or cannot be distinguished (intersectional discrimination). For victims who are particularly sensitive and vulnerable, compensation for non-pecuniary damage in a higher amount is appropriate.

16. The nature of the relationship between the discriminated person and the perpetrator of discrimination influences the determination of the amount of compensation for non-pecuniary damage.

A particularly significant factor in determining the amount of compensation for non-pecuniary damage is the nature of the relationship between the victim of discrimination and the perpetrator of discrimination. The content of that relationship, especially when characterised by an imbalance of power, affects the intensity and duration of the emotional suffering caused by discrimination. In situations involving a delicate relationship in which the perpetrator of discrimination is specifically expected to act without discrimination toward service users (for example, doctor–patient) or where there is an imbalance of power (for example, employer–employee), the amount of fair compensation should be higher. In the context of hierarchical relationships, it is reasonable to assume that certain violations cause more intense suffering. When deter-

mining compensation, it is necessary to take into account the circumstances that preceded or followed the act of discrimination against a specific person, whether the act of discrimination occurred for the first time or involved prolonged or repeated discrimination as severe forms of discriminatory conduct. In cases of a prior relationship and victimization that increase the intensity and duration of emotional suffering, a noticeably higher amount of monetary compensation should be awarded.

17. Discrimination committed in public causes increased emotional suffering and affects the determination of the amount of compensation for non-pecuniary damage.

Discrimination committed in the presence of third parties or through public media, such as the press or social networks, causes intensified emotional suffering. For example, verbal sexual harassment committed publicly at the workplace or through social media constitutes a violation of a person's dignity in several ways: it diminishes self-esteem by placing the person in a subordinate position (humiliation); treats the person as an object or a means to achieve someone else's goals and interests (objectification); reduces their value by denying their worth as an equal human being (degradation); or deprives them of humanity by

reducing them to an inferior or worthless being (dehumanization). This may involve a publicly posted article, sign, notice, flyer or social media post containing material that violates a person's dignity. Such publication may expose the individual to contempt or hatred from others. When the publication subjects an individual or group to contempt, encourages extreme hostility or seeks to humiliate or delegitimize a specific group or individual because of a personal characteristic, it results in more complex and severe consequences. Non-pecuniary damage suffered by a person due to discrimination is generally greater when the discrimination is carried out publicly, through the media, social networks, and similar channels. In such cases, the discriminated person is entitled to higher compensation. Moreover, the possibility of combining moral and material satisfaction should also be considered, provided that such claims have been submitted.

3.4. Circumstances Related to the Perpetrator of Discrimination

18. The status of the perpetrator of discrimination may influence the amount of compensation for non-pecuniary damage.

The amount of compensation may be affected by the status of the perpetrator, that is, whether the perpetrator of discrimination is a natural or legal entity, or a private or public legal entity. In this regard, it should be borne in mind that authorities and institutions have an obligation not only to eliminate unequal treatment, discrimination, and victimization of individuals and groups as prescribed by anti-discrimination regulations, but also to take active steps and measures to meet the needs or minimize the difficulties faced by individuals or groups due to a particular personal characteristic. When acts or omissions of legal entities are the source of discrimination, the discriminated person generally experiences a profound sense of powerlessness and deprivation of rights, especially if the act of discrimination was committed publicly by a person in a position of authority. All these factors decisively contribute to generally awarding higher compensation. On the other hand, if the perpetrator of discrimination is a natural entity and the act of discrimination is purely verbal, without effec-

tively denying the discriminated person any right in an area of life, and the psychological consequences are minor, this should generally result in a lower amount of monetary compensation.

19. The nature of the relationship of superiority and subordination should be taken into account when determining the amount of compensation for non-pecuniary damage.

In cases of discrimination committed against a person toward whom the perpetrator occupies a superior position - such as the relationship between doctor and patient, teacher and student, or supervisor and employee - as well as in situations involving an imbalance of power, these circumstances should be considered when determining the amount of non-pecuniary damage suffered by the discriminated person. The amount of compensation should be higher in order to prevent behaviours characterised by discrimination.

20. The degree of fault of the perpetrator of discrimination should be taken into account when determining the amount of compensation for non-pecuniary damage.

Although the existence of fault is not relevant for establishing discrimination itself, this factor should be considered when determining the amount of fair compensation for the non-pecuniary damage suffered. Experience shows that when a discriminatory act is committed knowingly and intentionally, the discriminated person experiences stronger and longer-lasting emotional distress or fear than in cases where discrimination is committed negligently. Persistence in prohibited discriminatory behaviour should also be taken into account when determining the amount of non-pecuniary damage as a basis for awarding higher compensation.

21. The economic strength of the perpetrator influences the determination of the amount of compensation for non-pecuniary damage.

An important factor in determining the amount of fair compensation for non-pecuniary damage is the financial condition and social status of the perpetrator. The amount of compensation should be higher if the perpetrator of discrimination is a finan-

cially powerful company in order to achieve a deterrent effect. Poor financial condition cannot serve as a reason to exempt the perpetrator from paying a high amount of compensation to the discriminated person if that amount is justified by the other circumstances of the case.