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COMPENSATION FOR NON-PROPRIETARY DAMAGE CAUSED TO LEGAL ENTITIES: APPROACHES OF BELARUS AND CERTAIN FOREIGN STATES

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In the article legal grounds for compensation of non-proprietary damage to legal entities in the Republic of Belarus and certain foreign states (Republic of Poland, Ukraine, the Russian Federation) are considered. Both differences and commonalities of approaches of legislators and (or) higher courts of these foreign countries in this sphere are demonstrated. It is concluded that national legislation shall entitle legal entities with the relevant right by the introduction of a new legal institution with the preservation or exclusion of the institution of moral damage, or by modifying the latter (in particular, by changing its definition, including legal entities in the circle of the entities having the right to its compensation). Since the determination by the plaintiff of the exact amount of non-proprietary damage caused to him, in contrast to the amount of the losses, may often be impossible, the author believes that it must provide the norm guaranteeing that Belarusian courts will not dismiss the relevant claim in such cases.

Keywords: business reputation; compensation; legal entities; non-proprietary damage; personal benefit.

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КОМПЕНСАЦИЯ НЕИМУЩЕСТВЕННОГО ВРЕДА, ПРИЧИНЕННОГО ЮРИДИЧЕСКИМ ЛИЦАМ: ПОДХОДЫ РЕСПУБЛИКИ БЕЛАРУСЬ И НЕКОТОРЫХ ЗАРУБЕЖНЫХ ГОСУДАРСТВ

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Рассматриваются правовые основы для компенсации неимущественного вреда юридическим лицам в Республике Беларусь и отдельных зарубежных государствах (Республика Польша, Украина, Российская Федерация). Продемонстрированы как отличительные, так и схожие моменты в подходах законодателей и (или) высших судебных инстанций указанных зарубежных стран в данной сфере. Сделан вывод о необходимости наделения отечественным законодательством юридических лиц соответствующим правом путем введения в него нового правового института с сохранением или исключением института морального вреда, либо за счет модификации последнего (в частности, путем изменения его определения, включения юридических лиц в круг субъектов, имеющих право на его компенсацию). Поскольку определение истцом точного размера причиненного ему неимущественного вреда (в отличие от размера убытков) на практике может быть зачастую невозможным, автор считает необходимым закрепить норму, служащую гарантией того, что в удовлетворении соответствующего требования судами в таких случаях отказано не будет.

Ключевые слова: деловая репутация; компенсация; юридические лица; неимущественный вред; личное благо.

The possibility of causing non-proprietary damage to legal entities follows from certain Belarusian legal acts, in particular, para. 10 of art. 1 of the Law "On counteraction to monopolistic activities and development of competition" of 12 December 2013 No. 94-3, in the version of the Law of the Republic of Belarus of 8 January 2018 No. 98-3[1] according to which, in order for the actions specified in it to be recognized as unfair competition, it is necessary, inter alia, that they can cause or cause losses to other competitors or may cause damage or damage their business reputation. Legal acts do not define the latter. In para. 15 of the Guidelines for establishing the fact of existence (absence) of antitrust violation in the part of unfair competition, approved by the Order of the Minister of Antitrust Regulation and Trade of the Republic Belarus of 18 September 2017 No. 154[2], it is stated that under the damage caused to the business reputation of competitors, it is necessary to understand any of its diminution, which can have both proprietary and non-proprietary character. The latter is manifested in loss of positive opinion about competitors' business qualities in the eyes of public and, in particular, of the business community. It follows from this paragraph that such a loss would not necessarily result in property losses.

The analysis of the Constitution of the Republic of Belarus of 1994[3] (part 2 of art. 60) and of the Civil Code of the Republic of Belarus of 7 December 1998[4] (hereinafter the Belarusian CC) allows to conclude that they do not lay down compensation of any non-proprietary damage, except for moral damage. As it is defined as physical or moral suffering, it is logical that legal entities are not entitled to claim its monetary compensation (art. 152, para. 7 of art. 153 of the Belarusian CC, para. 18 of the Ruling of the Supreme Court of the Republic of Belarus of 23 December 1999 No. 15 "On courts' practice of hearing of civil disputes on protection of honor, dignity and business reputation"[5]). This is true for other legal acts[6]. Thus, for the time being in Belarus there is no legal ground for compensation of non-proprietary damage caused to legal entities.

The need for the introduction of such legal institution into the national legislation is supported by some Belarusian [1, p. 12; 2, p. 52] and Russian [3] scholars.

[1]On Counteraction to Monopolistic Activity and Development of Competition : Law of the Republic of Belarus of 12 December 2013 No. 94-3 : as amended by the Law of 8 January 2018 No. 98-3 [Electronic resource]. URL: http://www.pravo.by/document/?guid=3871&p0=h11300094 (date of access: 18.11.2019).

[2]Guidelines for establishing the fact of existence (absence) of antitrust violation in the part of unfair competition : approved by the Order of the Minister of Antitrust Regulation and Trade of the Republic Belarus on 18 September 2017 No. 154 [Electronic resource]. URL: https://mart.gov.by/files/live/sites/mart/files/documents/Methodics%20NDK%20(order%20Minister%20from%09.09.2017%20№154).pdf (date of access: 18.11.2019).

[3]The Constitution of the Republic of Belarus of 1994 : with amendments and additions adopted at the Republican Referenda on 24 November 1996 and 17 October 2004) [Electronic resource]. URL: http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/ (date of access: 18.11.2019).

[4]Civil Code of the Republic of Belarus of 7 December 1998 No. 218-3 : adopted by the House of Representatives on 28 October 1998: approved by the Council of Republic on 19 November 1998 : with amendments and additions, introduced by the Law of 18 December 2018 No. 151-3 [Electronic resource]. URL: http://pravo.by/document/?guid=3871&p0=hk9800218 (date of access: 18.11.2019).

[5]On courts' practice of hearing of civil disputes on protection of honor, dignity and business reputation : Ruling of the Plenum of the Supreme Court of the Republic of Belarus of 23 December 1999 No. 15 [Electronic resource]. URL: http://court.gov.by/en/jurisprudence/post_plen/civil/moral/dfc0f3c11d36bd76.html (date of access: 18.11.2019).

[6]The list of civil remedies provided for in art. 11 of the Belarusian CC has an open character.

The relevant proposals are based mainly on the analysis of the Russian legal experience, while, to our mind, for this purpose the appropriate legal regulation and jurisprudence of other countries shall also be properly studied. In this article the approaches of Polish and Ukrainian legislators and courts will additionally be considered in detail.

Thus, in the legislation of the **Republic of Poland**, the norms relating to compensation for non-proprietary damage are contained in art. 24 (§1), 445 and 448 of the Civil Code of the Republic of Poland of 23 April 1964[7] (hereinafter the Polish CC). Art. 445 of the Polish CC applies only to individuals, therefore, its consideration in the framework of this article seems superfluous.

The Polish CC in art. 24 (§ 1) provides the civil remedies which may be applied in the violation of personal benefits, inter alia, monetary compensation (zadośćuczynienia pieniężnego) and payment of the relevant sum for the specified public objective.

Pursuant to art. 448 of the Polish CC, in the event of a breach of personal benefit court may grant to the person, whose personal benefit has been violated, the appropriate sum of money in compensation for the resentment suffered or at his request to award the appropriate amount of money to the social objective specified by him, regardless of other measures needed to remove the effects of the infringement.

It bears noting that the Polish CC (art. 23) contains only the list of personal benefits of an individual (health, freedom, honor, freedom of conscience, surname or nickname, image, privacy of correspondence, inviolability of the apartment, scientific, artistic, inventive and rationalizing creativity).

At the same time, pursuant to art. 43 of the Polish CC, the provisions on the protection of the personal benefits of individuals apply according to legal entities. This allows, firstly, to recognize the existence of personal rights of legal entities, and secondly, to apply to them all the mentioned remedies, including monetary compensation[8].

The Supreme Court of the Republic of Poland rightly points out that the provision of art. 43 of the Polish CC, as well as its other provisions, contain neither any catalog of personal benefits of legal entities, nor a definition of the concept of such benefits[9]. According to it, "…personal rights of legal entities are non-property values which enable a legal entity to function in accordance with its scope of activities"[10].

Personal benefits recognized in the Polish doctrine and jurisprudence as entitled to legal entities are name (a particular type of name: legal entity's company name, these are the equivalents of the first and last name of the natural person), inviolability of the premises, good reputation (equivalent to human dignity, confidentiality of correspondence, as well as some kind of privacy of a legal person) [4].

The Supreme Court in its judgment of 24 September 2008 (II CSK 126/08) noted the following:

"the notion of resentment referred to in that provision[11] means non-pecuniary damage resulting from the violation of personal benefits, in other words, the aggrieved person suffered non-proprietary damage, moral damage;

that notion cannot be equated with experiencing only physical and mental suffering by individuals who are concerned by the provisions on the protection of personal benefits contained in art. 23, 24, 445 and 448 of the CC. For obvious reasons, legal entities experience neither physical nor mental sufferings. However, they also suffer non-pecuniary damage as a result of violation of their personal benefits, which cannot be measured in money, which justifies the relevant application of art. 448 of the Polish CC in connection with art. 24 (§ 1) and art. 43 of that Code for compensation of non-proprietary damage caused" (hereinafter translated by *N. M.*)[12].

In the case law of the Supreme Court of the Republic of Poland, it is assumed that the claims based on art. 448 of the Polish CC must be satisfied provided that not only the unlawfulness of the infringement of personal benefits, but also the violator's fault has been demonstrated[13].

The Polish CC does not set forth any provision, concerning the calculation of non-proprietary damage. In the Judgment of the Supreme Court of 16 April 2002 (V CKN 1010/00)[14], it is stated that the compensation provided in art. 448 of the Polish CC has a compensatory rather than a repressive function and that the amount awarded shall be moderate, kept within reasonable limits. It also concluded that when determining

[7]Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny [Electronic resource]. URL: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640160093 (date of access: 11.11.2019).

[8]This position, as it will be demonstrated, is shared by the Supreme Court of the Republic of Poland. At the same time, there are some decisions of courts of lower instances based on the opinion that art. 448 of the Polish CC does not apply to legal entities. See: Wyrok SO w Warszawie z dnia 14 czerwca 2016 r., Sygn. akt IV C 919/14 [Electronic resource]. URL: https://www.saos.org.pl/judgments/content/336769.html (date of access: 11.11.2019).

[9]Wyrok SN z dnia 24 września 2008 r., Sygn. akt II CSK 126/08 [Electronic resource]. URL: https://www.saos.org.pl/judgments/88741 (date of access: 11.11.2019).

[10]SN z dnia 14 listopada 1986 r., II CR 295/86 08 [Electronic resource]. URL: https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/ii-cr-295-86-wyrok-sadu-najwyzszego-520097036 (date of access: 11.11.2019).

[11]The provision of art. 448 of the Polish CC.

[12]Wyrok SN z dnia 24 września 2008 r., Sygn. akt II CSK 126/08 [Electronic resource]. URL: https://www.saos.org.pl/judgments/88741 (date of access: 11.11.2019).

[13]Там же.

[14]Wyrok SN z dnia 16 kwietnia 2002 r., V CKN 1010/00 [Electronic resource]. URL: http://www.sn.pl/sites/orzecznictwo/Orzeczenia1/V%20CKN%201010-00.pdf (date of access: 11.11.2019).

it, all the circumstances of the case shall me taken into consideration: the type of benefits violated and the degree of the damage caused, the intensity of the violation and the degree of fault of the guilty person, as well as the property status of the debtor. The monetary compensation shall not be an opportunity for the aggrieved person to obtain revenue[15].

In the legislation of **Ukraine** non-proprietary damage is the synonym of moral damage. According to a Ukrainian scholar V. D. Prymak, compensation for moral damage is a universal civil remedy that can be applied in the presence of non-proprietary losses caused by primary violation of a person's both absolute and relative (including contractual), non-proprietary and proprietary subjective civil rights and regardless of whether this happened as a result of violations of civil, other private or even public legal relations; however, the purpose of applying of moral damage in all circumstances is to compensate for the non-proprietary losses of the aggrieved person [5, p. 175].

The right of a person to compensation of moral damage caused by violation of his or her rights is provided in art. 23 (1) of the Civil Code of Ukraine of 16 January 2003[16] (hereinafter the Ukrainian CC). This right belongs both to individuals and legal entities.

Pursuant to para. 7 of the Ruling of the Plenum of the Supreme Court of Ukraine of 3 part 1995 No. 4 "On judicial practice in cases of compensation for moral (non-proprietary) damage"[17] (hereinafter Ruling No. 4) the inflicted moral (non-proprietary) damage is compensated to the legal entity, whose rights were directly violated by unlawful actions (inaction) of others persons.

From art. 23 (1 (4)) of the Ukrainian CC it follows that it consists in denigration of legal entities' business reputation[18]. According to para. 6 of the Information sheet of the Supreme Economic Court of 28 March 2007 No. 01-8/184 "On some issues of practice of application of legislation on information by commercial courts"[19] denigration of business reputation of a legal entity (entrepreneur) is dissemination in any form of false, inaccurate or incomplete information that discredit the way of doing or the results of carrying out of its economic (entrepreneurial) activity, therefore reducing the value of its intangible assets.

At the same time, in the Ruling No. 4 there is a broader approach to understanding of moral damage caused to legal entities: in accordance with para. 3, moral damage should be understood as loss of a non-proprietary character due to negative phenomena caused to a legal entity by illegal actions or inaction of other persons. Non-proprietary damage caused to a legal entity should be understood as losses of non-proprietary nature that occurred in connection with the denigration of its business reputation, encroachment on a company name, trademark, industrial sign, disclosure of trade secrets, as well as actions aimed at reducing prestige or undermining trust in its activities.

In the claim on compensation for moral (non-proprietary) damage it must be stated what this damage consists in, by which illegal action or inaction it is caused to the plaintiff, from what considerations he proceeded determining the amount of the damage, and by which evidence it is supported (para. 4 of the Ruling No. 4).

According to the general grounds of civil law liability within hearing the dispute on compensation of moral (non-proprietary) damage the following shall be clarified: the existence of such damage, the wrongfulness of the actions of the person having inflicted it, the causal link between the damage and the wrongful act of the tortfeaser and the fault of the latter in its infliction. The court, in particular, must find out what confirms the fact of causing moral or physical suffering or loss of non-material nature to the claimant, under what circumstances or by what actions (inaction) they were caused, in what sum of money or material form the plaintiff evaluates the harm caused[20] and from what he proceeds for this purpose as well as other circumstances relevant to the settlement of the dispute (para. 5 of the Ruling No. 4).

In the Ukrainian jurisprudence there are some judgments by which moral damage was awarded to plaintiffs due to the defendant's actions causing threat of diminishing of plaintiff's business reputation. Thus, in the Decision of Dzerzhynskyi District Court of Kryvyi Rih City of 2 May 2018 No. 73919267 the following is stated: "…the fact of reducing non-proprietary benefits as a result of the wrongdoing of the offender is not

[15]Wyrok SN z dnia 13 stycznia 2012 r. [Electronic resource]. URL: https://mojepanstwo.pl/dane/sn_orzeczenia/15675,csk-790-10 (date of access: 11.11.2019).

[16]Civil Code of Ukraine of 16 January 2003 No. 435-IV [Electronic resource]. URL: https://zakon.rada.gov.ua/laws/show/435-15 (date of access: 11.11.2019).

[17]On judicial practice in cases of compensation for moral (non-proprietary) damage : the Ruling of the Plenum of the Supreme Court of Ukraine of 3 March 1995 No. 4 [Electronic resource]. URL: https://zakon.rada.gov.ua/laws/main/v0004700-95 (date of access: 11.11.2019).

[18]The most typical cases of causing moral damage to legal entities are dissemination, including through the mass media, of false information that denigrate their business reputation or harm their interests (para. 4 of the Clarifications of the Supreme Arbitration Court of Ukraine for the Arbitration courts of Ukraine of 29 February 1996 No. 02-5/95 "On certain issues of the practice of settlement of the disputes related to moral damage". See: On certain issues of the practice of settlement of the disputes related to moral damage: Clarifications of the Supreme Arbitration Court of Ukraine for the Arbitration courts of Ukraine of 29 February 1996 No. 02-5/95 [Electronic resource]. URL: https://zakon.rada.gov.ua/laws/main/v5_95800-96 (date of access: 11.11.2019) (hereinafter – Clarifications No. 02-5/95).

[19]On some issues of practice of application of legislation on information by commercial courts : Information sheet of the Supreme Economic Court of 28 March 2007 No. 01-8/184 [Electronic resource]. URL: https://zakon.rada.gov.ua/laws/show/v_184600-07 (date of access: 11.11.2019).

[20]Under art. 23 (3) of the Ukrainian Civil Code, moral damage shall be indemnified by cash, other property or otherwise.

a necessary condition for the right to compensation for moral damage. It is enough for the offender's actions to create a real threat of diminishing non-proprietary benefits. This is stated in art. 23 of the Civil Code, where the grounds for the emergence of the right to compensation for non-pecuniary damage are the actions that only create a threat of breach of business reputation (dissemination of false information). Thus, in this particular case, the high level of business reputation of PJSC "ArcelorMetal Kryviy Rih" is the key to success, stability, and material benefits of the company. At the same time, false information circulated by PERSON_3 among the persons present at the rally INFORMATION_1 about the allegedly negative activity of the plaintiff, discredit him as an economic entity and create a real threat to the violation of its business reputation. The statements of PERSON_3 affect the honor, dignity and business reputation of specific employees of the company and the business reputation of third parties of companies of international level, which cooperate with the plaintiff, which causes the risk of deterioration of the fundamentally important business relations of the plaintiff with partner companies"[21]. Thus, the court considered the fact of causing PJSC "ArcelorMetal Kryviy Rih" moral damage as proved.

Such understanding of moral damage seems to be in contradiction with the relevant provisions of the Ukrainian CC and the Ruling No. 4.

The burden of proof of the defendant's fault is not levied on the plaintiff: the defendant himself must prove its absence (para. 5 of the Ruling No. 4)[22].

Under art. 23 (3) of the Ukrainian CC as applied to legal entities the amount of moral damage shall be specified by the court depending on the nature or infringement, the degree of fault of the person inflicting such damage, if fault is the ground for its compensation as well as with due regard for other significantly important circumstances and the requirements of reasonableness and fairness. Moral damage is compensated irrespective of the proprietary damage to be recovered and is not related to its amount. Pursuant to para. 9 of the Ruling No. 4, the character of non-proprietary losses (their duration, the possibility of recovery, etc.), the gravity of the forced changes in industrial relations of the aggrieved legal entity, the degree of decline in its prestige, business reputation, time and the efforts required to restore its state, voluntary or at the request of the victim refutation of the disseminated information by the editorial of the mass media, shall also be taken into account.

In para. 6 of the Clarifications No. 02-5/95 it is stated that in all circumstances, the amount of compensation of moral damage may not be less than five minimum wages. But this provision is in contradiction with the Ukrainian CC, which provides neither minimum nor maximum amount of the sum of moral damage.

Pursuant to the previous version of part 1 of art. 152 of the Civil Code of the **Russian Federation** of 21 October 1994 (Russian CC)[23], legal entities were entitled, inter alia, with the right to compensation for moral damage caused by the dissemination of false information denigrating their honor, dignity or business reputation[24]. According to the Federal Law of 2 July 2013 No. 142-ФЗ[25] "On amendments to subsection 3 of section I of part one of the Civil Code of the Russian Federation", which entered into force on 1 October 2010, art. 152 was edited resulting in the exclusion of the possibility for legal entities to claim the compensation for moral damage[26]. However, in the Ruling of the Judicial Board of the Supreme Court of the Russian Federation of 18 November 2016 No. 307-ЭС16-8923[27] it is indicated that this fact "...does not hinder the protection of the violated right through a legal entity's claim for compensation for damages caused to its reputation, which is understood as any its diminution manifested, in particular, in the losses caused to a legal entity by the dissemination of denigrating information and other adverse consequences *in the form of loss of positive opinion on legal entity's business qualities in the eyes of the public and business community, loss of competitiveness, impossibility to plan its activities*, etc." This conclusion, as stated, follows from the Ruling of the Constitutional Court of

[21]The Decision of Dzerzhynskii District Court of Kryvyi Rih City of 2 May 2018 No. 73919267 [Electronic resource]. URL: https://youcontrol.com.ua/catalog/court-document/73919267/ (date of access: 11.11.2019).

[22]As a general rule, compensation for moral damage shall be provided only on the condition of fault of the person who has caused it (para. 1 of art.1167 of the Ukrainian CC). Exceptions are para. 2 of art. 1167 of the Ukrainian CC.

[23]Overview of the changes to the Civil Code of the Russian Federation (part one) of 30 November 1994 No. 51-ФЗ [Electronic resource]. URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=76277&fld=134&dst=100075,0&rnd=0.1415308950072649#042956397366414634 (date of access: 11.11.2019).

[24]Para. 5 of art. 152 of the Russian CC provided that a citizen in respect of whom the information denigrating his honor, dignity or business reputation has been disseminated, is entitled, along with the refutation of such information, to demand compensation for losses and moral damage caused by their dissemination. In its turn, para. 7 of art. 152 of the Russian CC stated that the provisions of this article on the protection of the business reputation of a citizen respectively apply to the protection of the business reputation of a legal entity.

[25]On amendments to subsection 3 of section I of part one of the Civil Code of the Russian Federation : Federal Law of 2 July 2013 No. 142-ФЗ [Electronic resource]. URL: http://www.consultant.ru/document/cons_doc_LAW_148454/3d0cac60971a511280cbba229d9b6329c07731f7/#dst100009 (date of access: 11.11.2019).

[26]According to para. 11 of its current version, the rules of this article on the protection of the business reputation of a citizen, apply respectively to the protection of the business reputation of a legal entity, with the exception of the provisions on moral damage.

[27]The Ruling of the Judicial Board of the Supreme Court of the Russian Federation of 18 November 2016 No. 307-ЭС16-8923 [Electronic resource]. URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=481912#05819295275417109 (date of access: 11.11.2019).

the Russian Federation of 4 December 2003 No. 508-O[28], according to which "the absence of a direct indication in the law on the remedy for protection of business reputation of legal entities does not deprive them of the right to file claims for compensation of damages, inter alia, *non-proprietary ones*, caused by diminution of business reputation, or *non-proprietary damage* having its own content (different from the content of moral damage caused to a citizen), which follows from the essence of the violated non-proprietary right and the nature of the consequences of this violation (para. 2 of art. 150 of the Russian CC)… this conclusion is based on the provisions of art. 45 (part 2) of the Constitution of the Russian Federation, according to which everyone has the right to protect his rights and freedoms by all means not prohibited by law".

In para. 21 of the Review of jurisprudence of the Supreme Court of the Russian Federation No. 1 (2017), approved by the Presidium of the Supreme Court of the Russian Federation on 16 February 2017[29] it is set forth that if the reputation of a legal entity is diminished, it is entitled to protection of its right by filing a claim for compensation for damage caused to the reputation of a legal entity. It is also pointed out that the legal entity whose right to a business reputation is violated by actions of dissemination of the information denigrating such a reputation has the right to demand restoration of its right when the general conditions of tort liability are proved (the unlawful act of the defendant, adverse consequences of these actions for the plaintiff, causal relationship between the defendant's actions and the occurrence of adverse consequences for the plaintiff) (Ruling of the Presidium of the Supreme Arbitration Court of the Russian Federation of 17 July 2012 No. 17528/11). The defendant's fault is presumed (clause 2, para. 2 of art. 1064 of the Russian CC).

The fact of the distribution by the defendant of the information denigrating the business reputation of the plaintiff is not enough to conclude that damage to business reputation has been caused and to pay monetary compensation for the unjustified diminution of business reputation. The plaintiff, by virtue of the requirements of art. 65 of the of the Arbitration Procedure Code of the Russian Federation[30], is obliged to prove the circumstances to which he refers as the ground of his claims, that is, to prove, firstly, the existence of a formed reputation in a particular area of business relations (industry, business, services, education, etc.) and, secondly, the onset of adverse consequences for him as a result of the dissemination of denigrating information, the fact of loss of confidence in his reputation or its diminishment.

Among the factors taken into account by the Russian courts when determining the amount of the sum of compensation for reputational damage, the relevant court decisions mention the nature and content of the disputed information, negative consequences in the sphere of plaintiff business, proportionality of the amount to the violation, principles of reasonableness and justice, failure of the defendant to take measures to stop the spread of the previously disseminated false information, the need of maintenance of a balance of parties' interests[31].

As can be seen, in relation to non-proprietary damage that can be compensated to legal entities, the legislation and judicial practice of the examined foreign states use various terms: "moral damage", "non-material losses", "non-pecuniary damage", "reputational damage". To our mind, it is explained by different approaches to its understanding. It is common for all states to provide a broad judicial discretion in determining the amounts recoverable as compensation of such damage, which seems to be correct in light of the objective of this civil remedy.

In our opinion, Belarusian legislation shall provide legal entities with the opportunity to demand compensation for non-proprietary damage caused to them. Its presence will contribute to the maximum realization of the protective function of civil law, which consists not only in the full restoration of the property and non-property sphere of subjects of civil legal relations, but also in the prevention of future offenses, i. e. serve the satisfaction of both private and public interests.

Given the analyzed experience of foreign countries, it seems possible by the introduction of a new legal institution with the preservation or exclusion of the institution of moral damage, or by modifying the latter (in particular, by changing its definition, including le-

[28]The Ruling of the Constitutional Court of the Russian Federation of 4 December 2003 No. 508-O [Electronic resource]. URL: http://www.consultant.ru/cons/cgi/online.cgi?rnd=C5157D517392750AFEAF88C9F6444C41&req=doc&base=ARB&n=19661&REFFIELD=134&REFDST=100019&REFDOC=481912&REFBASE=ARB&stat=refcode%3D10881%3Bindex%3D24#c7i9wqjo0rc (date of access: 11.11.2019).

[29]Review of jurisprudence of the Supreme Court of the Russian Federation No. 1 (2017) : approved by the Presidium of the Supreme Court of the Russian Federation on 16 February 2017 : with amendments of 26 April 2017 [Electronic resource]. URL: http://www.consultant.ru/document/cons_doc_LAW_212958/ (date of access: 11.11.2019).

[30]Arbitration Procedure Code of the Russian Federation of 24 July 2002 No. 95-ФЗ [Electronic resource]. URL: http://www.consultant.ru/document/cons_doc_LAW_37800/ (date of access: 11.11.2019).

[31]See, for example, Decision of the Arbitration Court of the Saratov Region of 26 December 2018 in case No. A57-15161 / 2018 [Electronic resource]. URL: http://ras.arbitr.ru/ (date of access: 11.11.2019); Decision of the Twelfth Arbitration Court of Appeal of 26 February 2019 in case No. A57-15161 / 2018 [Electronic resource]. URL: http://ras.arbitr.ru/ (date of access: 11.11.2019); Decision of the Arbitration Court of the Volga Region of 11 July 2019 in case No. A57-15161 / 2018 [Electronic resource]. URL: http://ras.arbitr.ru/ (date of access: 11.11.2019); Decision of the Arbitration Court of the Lipetsk Region of 26 October 2018 in case No. A36-2639 / 2018 [Electronic resource]. URL: http://ras.arbitr.ru/ (date of access: 11.11.2019); Decision of the Nineteenth Arbitration Court of Appeal of 7 February 2019 in case No. A36-2639 / 2018 [Electronic resource]. URL: http://ras.arbitr.ru/ (date of access: 11.11.2019); Decision of the Arbitration Court of the Central District of 5 June 2019 in case No. A36-2639 / 2018 [Electronic resource]. URL: http://ras.arbitr.ru/ (date of access: 11.11.2019).

gal entities in the circle of the entities having the right to its compensation).

In any case, since the determination by the plaintiff of the exact amount of non-proprietary damage caused to him, in contrast to the amount of the losses, may often be impossible, the national legislation shall have norms guaranteeing that Belarusian courts will not dismiss the relevant claim in such cases.

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