

## The Georgian Model of Compensation of Non-property Damage for Violating Personal Rights in Line with European Standards

*Personal origin is reflected in civil law in personal rights, which are closely linked to personality and the inner self of a human. Accordingly, private legal protection of personal rights is a guarantee of Individuality. Though guaranties of defense of personality have been reflected in Georgian civil law accounting for the European experience, but with some specificities. The purpose of the research is to understand the European standard in order to clarify the relation between Georgian and European approaches.*

*It should be mentioned right from beginning that besides term of "personal right", The Civil Code of Georgia (hereinafter - CCG) envisages a term of "personal non-property rights". But it is appropriate to also use a term of "personality rights" recognized in Europe for a comprehensive protection individuals.*

*Objects of some personal rights can be separated from the person (name, image, personal data and etc.), while some of them cannot (honor, dignity...). There are protected by Article 18, 18<sup>1</sup>, 992 of CCG. Also, the personal non-property rights were nominated in general part of CCG, meanwhile Article 992-993 of CCG strengthened the extended protection of personality rights in tort law, accounting for the European experience, which created a solid mechanism for protection of Personality. In addition, the Georgian legislation moved much closer to the European standards on one hand with the adoption of "Personal Data Protection Act" and implementation of international demands and on the other hand by spreading private law protection by CCG Article 18<sup>1</sup> on additional personal data.*

*Compensation of non-material damage, which in itself is quite a difficult problem because it is linked to many aspects, plays an important role for civil legal protection of personal non-property rights. Research showed that a common characteristic rule of Continental Europe is actually laid out in Article 413, paragraph 1, in which it is stated that the non-property damages shall be compensated only in cases prescribed by the law. Accordingly, the amount of cases of compensation for non-material damages is limited and only substantial non-property damage is compensated. It is important to generalize the problems by using a deep theoretical knowledge and in full compliance with the law. Considering these details would help create a higher standard of protection for Personality.*

**Keywords:** *Personal Non-property Rights, Personality Rights, Individuality, Personality, Dignity and Honor, Name, Image, Personal Data, European Standard, Non-material Damage, Theological Reduction, Criteria of Compensation, Function of Compensation, Satisfaction and Prevention.*

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## 1. Introduction

In Democratic state, a human being is the unique value in the face of God, as well as, people; the state must serve the Individual and not on the contrary. “Sociological” individualism corresponds to individual ethics, according to which the humanity is not to be treated as means only but also as an end goal. This is why the teachings of the basic rights is based on personal individuality.<sup>1</sup>

For Georgia, which is part of European space, it is essential to accept modern European values.<sup>2</sup> One of them is the value of human identity<sup>3</sup>, which is the subject of sociology, philosophy and other sciences. It is not left beyond attention of Jurisprudence either.

The purpose of research is to determine the scope of Individuality in general sociological point of view using analysis and synthesis methods, while the normative-dogmatic methods help us determine what forms it takes in civil law. It should be determined, does the protection of Individuality and compensation of non-material damage in Georgian civil law rely on the European standard, national bases or a mix of the two. In addition, it must be defined what is the particular characteristics of protection of personality in Georgian private law. Accordingly, in order to determine based on the method of comparison between Georgian and European approaches, it is important to know what a European standard is. However, the paper will focus on only a few problems of protection of personality because it is impossible to exhaust the topic within the framework. In this regard it is important that the essence of non-property damage compensation for violation of personal rights is properly understood, so it should be based on solid methodological foundations and teleological definition of the norm.

Also, the topic is timely in the era of technological development and Internet, when the threat of violation of personal rights is higher than ever. It has a high theoretical and practical significance in the process of Europeanization of Georgian legislation to study the abovementioned issues.

## 2. The Concept of Individuality and its Various Forms in Civil Law

### 2.1. Concept of Individuality

Considering Georgia as a part of the legal culture of continental Europe is somewhat a big challenge in the process of Europeanization of Georgian law. It is related to formation of a new legal culture in Georgia with the help of various event leading to it. Also, the Europeanization of Georgian law is considered to be a cultural-historical process and its successful completion is influenced by few factors. In this direction close collaboration with European universities or scientists and lawyers is

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<sup>1</sup> Chanturia L., Introduction to the General Part of Georgian Civil Law, Tbilisi, 2000, 77 (in Georgian).

<sup>2</sup> About Europeanization see Samkharadze I., Europization of Georgia: Key Legal Aspects of EU Membership, Journal “Justice and Law”, №5, 2015, 39-54 (in Georgian).

<sup>3</sup> Meißner, H., Griechische Wurzeln des europäischen Wertkanons, In: Die kulturelle Eigenart Europas (Herausgeber Buchstab G.), Freiburg, 2010, 24.

especially important<sup>4</sup>. Georgia took a path to Europe which goes through Germany and the process of development of legal reforms happened through cooperation with German lawyers without omitting any field of law. Such trace of the relationship has been reflected in private law as well.<sup>5</sup>

Taking into account well-established principle in Europe, personality and individuality have become the foremost value in the legal protection in Georgia too, which was reflected in private law with different means of protection for those values.

The personality is not only a matter of psychology studies but also philosophy and human history.<sup>6</sup> However, any attempt of defining the notion of personality cannot be perfect because it is based on abstract idea of person's ability to act freely.<sup>7</sup>

Personality can be considered as a unique combination of different personal traits. These traits create an individual inner, original unity with the awareness of own identity, spirituality, intellect and free will.<sup>8</sup> In addition, the personality is not only human by the general features but also human by its social, spiritual and physical characteristic as well. To be a personality it means to be free, intelligent, have a choice, make a decision and have a responsibility. The notion of a "human" is generic in character and reflects common characteristics of the human race, while a human becomes Individual thanks to being special.<sup>9</sup> Therefore, individuality reflects the difference from other subjects. Who is special, is unique, thus he is also individual.<sup>10</sup> It is linked to the content of a right because a right is the area of power, in which the subject acts freely according to the opinion and the will of their own.<sup>11</sup> Therefore, human's individuality is the combination of natural, social, physical, mental, or other properties, what distinguishes one person from others. It is human interest to protect own identity, be presented uniquely in front of the public, free from alien physical or social characteristics that could be forced on him intentionally or unintentionally.<sup>12</sup>

## 2.2. Various Forms of Personality in Civil Law

GCC took into account an experience, accumulated in western countries (such as France, Germany), on legislative rule about personal non-property rights, and created an institute in civil law by

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<sup>4</sup> see in Details *Chanturia, L.*, Die Europäisierung des georgischen Rechts – bloßer Wunsch oder große Herausforderung? In *Rabels Zeitschrift*, Band 74, Heft 1, 2010, 154-181.

<sup>5</sup> *Zoidze B.*, Reception of European Private Law in Georgia, Tbilisi, 2005, 105 (in Georgian).

<sup>6</sup> *Aleksej N. Leont'ev*, Tätigkeit - Bewusstsein - Persönlichkeit, Band 40, Neu übersetzt von *E. Hoffmann*, Bearbeitet und herausgegeben von *G. Rückriem*, Berlin, 2012, 141.

<sup>7</sup> *Westermann H.*, Person und Persönlichkeit als Wert im Zivilrecht, Heft, 47, Wiesbaden, 1957, 17.

<sup>8</sup> *Unselde F.*, Die Kommerzialisierung personenbezogener Daten, München, 2010, 11-12.

<sup>9</sup> *Tcomaia N.*, A Role of Personality in Development of Society, Journal "Intercultural Communications", №17, 2012., 173-175 (in Georgian).

<sup>10</sup> *Peifer K.N.*, Individualität im Zivilrecht, Mohr Siebeck, Tübingen, 2001, 8-9.

<sup>11</sup> *Stuhlmann Chr.*, Der zivilrechtliche Persönlichkeitsschutz bei Ehrenverletzung und kommerzieller Vermarktung in Deutschland, Taschenbuch, 2001, 83.

<sup>12</sup> *Ninidze T.*, Individuality of Human – Subject of Soviet Civil Law Protection, Bulletin of SSR Scientific Academy of Georgia; Philosophy, Psychology, Economy and Law Series No. 4, 1977, 88 (in Georgian).

developing judicial practice. These rights are reflected in general part of Georgian civil law.<sup>13</sup> But some fundamental norms, which make it possible to have a wide spectrum of protection of personal rights under Articles 992 and 993 GCC, have appeared in tort law. Sharing European experience in Georgia first of all caused recognition of personal non-property rights and then protection of those right. That was prompted by the necessity to realize that human is not only creator of wealth but actually is a creature with a dignity.<sup>14</sup>

In GCC now can be found a term "private relationships" in Article 1, i.e. non-property relationships that are associated with the property, as well as, those that are associated with the property.<sup>15</sup> "Personal non-property relations" was used in civil law of old regime (SSR of Georgia) and it was a contextual analog of "personal relations". But these concepts are not essentially different from each other by their meaning. In addition, the new term of "personal rights" is used in civil law (Article 19 CCG) except for the term of "personal non-property rights", which was derived from the term of "personal relation" (Article 18 CCG). A term "non-property" is characterized by absence of a property feature in it but it does not reflect the content of the phenomenon itself. Objects of some personal rights are inseparable from the person, while some of them can be separated from subjects and can be objectified immaterial goods (name, image, personal data and etc.). Separable personal goods are protected by civil legislation, while personal relations, object of which is non-material good that can be separated from person, is regulated by civil legislation. Accordingly, the idea of classifying personal non-property relations classified as regulated and protected relations, which was partially shared by the legal doctrine of old regime, is not reflected in CCG. Therefore, private legal impacts on protected and regulated relations are expressed in the term "regulation" under Article 1 CCG.<sup>16</sup>

But the thing is that in Article 18 GCC private non-property rights are listed in singular principle, while personal rights are universal in nature and are not exhaustive.<sup>17</sup> It is appropriate to use both terms, instead of replacing one, and, thus, adopt a term "personal" too, which is recognized in Europe.<sup>18</sup>

Honor, dignity, name, portrait, voice and other goods have mutually independent roles in individualization of a human.<sup>19</sup>

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<sup>13</sup> Chanturia L., General Section of Civil Law, Tbilisi, 2011, 74 (in Georgian).

<sup>14</sup> Chanturia L., Personal Non-property Rights in Modern Civil Law, Journal "Law", №11-12, 1997, 24-30 (in Georgian).

<sup>15</sup> Zoidze B., Reception of European Private Law in Georgia, Tbilisi, 2005, 178 (in Georgian).

<sup>16</sup> Ninidze T., Structure of first Article of Civil Code, In anniversary Collection of Akaky Labartkava 80<sup>th</sup> (red. Chanturia L.), Tbilisi, 2013, 167-169 (in Georgian).

<sup>17</sup> Bichia M., Protection of Personal Life, in Accordance with the Civil Law of Georgia, Tbilisi, 2012, 330 (in Georgian).

<sup>18</sup> There is an idea that it is preferable to use a term "personality right" (Persönlichkeitsrecht) because it expresses personality better than a term "personal non-property right". See Kereselidze D., The Most General Notions of Private Law, Tbilisi, 2009, 132-133 (in Georgian).

<sup>19</sup> Ninidze T., Individuality of Human – Subject of Soviet Civil Law Protection, Bulletin of SSR Scientific Academy of Georgia; Philosophy, Psychology, Economy and Law Series №4, 1977, 88 (in Georgian).

### 2.2.1. Dignity and Honor

The constitution of Georgia, which sets the necessary boundaries for development of private law, is considered as the measurement of valuable order in civil law of Georgia (part 1, article 2 of CCG). But by main rights, identified by constitution, are used indirectly in private law relations. Dignity, honor, privacy, freedom of creativity and the protection of the rights of other goods belong to those rights. They may be revealed in the basic defining nature of private law, such as freedom of individual and private autonomy. Obviously, freedom of individual is limited by law. One of the means of such restriction in tort law are prohibitions. According to most general formula, a person who unlawfully and intentionally caused damage to other person, must compensate him for the damage (under Article 992 CCG).<sup>20</sup> Thus, participation of private persons in civil relations is limited by laws, which state that it is unacceptable to use rights in order to cause damage to others.

Indeed, the constitutional law determines an individuality in the form of principle, but the civil law gives the specific civil legal form to protection of personal rights, in order to the person implement them themselves, through granting various rights. Primary rights are the person's self-protective rights from actions of the state, when the purpose of civil law is to regulate the legal relationships between the separate private persons.<sup>21</sup> Thus, the Constitution of Georgia regulates the private law (horizontal) relationships, through indirect norms of private law.<sup>22</sup>

In addition, the primary value in Europe is a human being, as original, free and equal to other human beings. The respect for human being's dignity, as an absolute right, means personal acknowledgement of each human being, deprivation and restriction of which, by any reason, is inadmissible<sup>23</sup> In ethical and legal terms the honour and dignity belong to normative sphere, because humans, who are actually unequal and, in social terms, have unequal honour, normative construct is making it possible for them to be considered as equal.<sup>24</sup> But in legal terms, an individual's self-evaluation, which more or less coincides with the public evaluation, is important. Thus, an individual's social (external) evaluation must be protected at full volume. On the other hand, internal evaluation is protected to the degree that coincides with the external assessment, as human qualities (dignity) is protected only to the extent that is valued by the society.<sup>25</sup>

In civil legal terms, the attitude of society towards the person and evaluation of own meaning by a person is considered in moral categories of honour and dignity, which have to comply with appropriate facts of reality.<sup>26</sup>

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<sup>20</sup> *Chanturia L.*, General Section of Civil Law, Tbilisi, 2011, 82-89 (in Georgian).

<sup>21</sup> *Siebrecht I.*, Der Schutz der Ehre im Zivilrecht, in: JuS, Heft 4, 2001, 337.

<sup>22</sup> *Phirtskhalashvili A.*, Schutzpflichten und die horizontale Wirkung von Grundrechten in der Verfassung Georgiens vom 24. August 1995, Berlin, Universitätsverlag Potsdam, 2010, 47, 49-52.

<sup>23</sup> Decision of Constitutional Court of Georgia, 26 October, 2007 №2/2/-389 (in Georgian).

<sup>24</sup> *Rühl, Ulli F.H.*, Die Semantik der Ehre im Rechtsdiskurs, "Kritische Justiz", Heft 2, 2002, 201-203.

<sup>25</sup> *Todua M., Qurdadze Sh.*, Peculiarities of Decision-making on Certain Categories of Civil Cases, Tbilisi, Association of Georgian Judges, 2005, 49 (in Georgian).

<sup>26</sup> Decision of August 3, 2012 №as-1739-1720-2011 of the Chamber of the Civil Category Cases of the Supreme Court of Georgia (in Georgian).

### 2.2.2. Name

The right on name is an absolute right. According to dogmatic standpoint, it is be treated as a right on personal or non-material good, which could belong to physical and legal persons, as well as a union of persons.<sup>27</sup>

A right on name, as a non-property right, is not included in the inheritance mass and is closely linked to personality. Therefore, this right cannot be split<sup>28</sup> and cannot be transferred. However, the civil name can be transformed into a trade name as a part of the enterprise property in commercial relations and it can be considered as non-material property right. The right on name exhibits such a double (dualistic) nature.<sup>29</sup>

The right on name is of dichotomous nature by its content and includes the authority to (a) bearing the name and demanding its recognition from everyone (positive side), (b) as well as prohibiting others from using the same name and avoiding the mixing of names, because the “interest of identity” takes the foremost priority (negative aspect).<sup>30</sup>

In addition, third persons are prohibited not the use of the same name but the use of that name that will cause damage to the person authorized with the name, if that will make the wrong impression about the name in the public eye. Therefore, here we mean the threat to the individuality of person that bears the name (and not use the same name).<sup>31</sup>

Right of owning a name can apply to 3 elements: 1) usage of pseudonym or fictitious name, 2) public name and 3) right of family members to submit a claim. Main aim of using pseudonym is to conceal the real name. By using the pseudonym, the author creates a unique literary, artistic, or acting individuality. They differ by scope of application. Civil name individualizes the person as a member of society. It is used in area of public and private life. Person may have one civil name and several pseudonyms, depending on how many fields does he participate in. But the person may have several pseudonyms in one field in order to be in center of attention in the field of newspapers and magazines. The aim of name and surname is to individualize person. Surname confirms person’s affiliation toward certain family. As for the right to submit a claim, it is owned by carrier of the name.<sup>32</sup>

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<sup>27</sup> *Ohrmann Chr.*, Der Schutz der Persönlichkeit in Onlien-Medien, Unter besonderer Berücksichtigung von Weblogs, Meinungsforen und Onlinearchiven, Frankfurt am Main, 2010, 29.

<sup>28</sup> *Agarkov M.M.*, The Right to Name, In Collection of Articles on Civil and Business Law, Dedicated to the Jubilee of prof. *Garielia F.Sh.*, M., 2005, 150 (in Russian).

<sup>29</sup> *Chanturia L.*, General Section of Civil Law, Tbilisi, 2011, 199-201 (in Georgian).

<sup>30</sup> *Heermann P.*, Verwertung von Persönlichkeitsrechten der Bundesligafußballspieler durch die Bundesligaclubs sowie die Deutsche Fußball Liga GmbH (Seminar zum Sportrecht), 2008, 7, 8; *Agarkov M.M.*, The Right to Name, In Collection of Articles on Civil and Business Law, Dedicated to the Jubilee of prof. *Garielia F.Sh.*, M., 2005, 147 (in Russian).

<sup>31</sup> *Agarkov M.M.*, The Right to Name, In Collection of Articles on Civil and Business Law, Dedicated to the Jubilee of prof. *Garielia F.Sh.*, M., 2005, 148-149 (in Russian).

<sup>32</sup> *Ibid*, 154-156, 158.

Preconditions for claims about protection of own name are: 1) the name must be owned by the petitioner; 2) respondent must have used this name in violation of the law; 3) It should be followed by violation of the applicant's interests (material or non-material damage).<sup>33</sup>

Thus, special features of the name include, mostly, an interest of identifying (identification) a person from others, and a person's interest to be individualized from others (individualization).<sup>34</sup> In addition, some separate individuation function of the name, which distinguishes a style of the labor product from other products.<sup>35</sup>

### 2.2.3. Image

Person has a non-property right to prohibit painter from publishing a picture, where he is depicted.<sup>36</sup> Right to personal image is a form of a general personal right. This is why publishing personal image without a consent is considered inadmissible interference in general personal rights. In addition, a person's general personal rights are violated if his personal image was from the private sphere, as well as, if it's made available to the public.<sup>37</sup>

The right of protection of image is considered in conjunction with personal life in Europe because a bases for imposing non-property damage is interference in a person's private sphere. Wrongful depiction of a person in advertisement is bases for claims for a non-material damage. However, this assumption is rebutted when the owner of the image was paid for it.<sup>38</sup> This idea was reflected in Article 18 of the Civil Code's Section 5, according to which, publishing person's image (photo image, movie, video film) without his consent is equivalent to infringing person's honor and dignity. The consent is not required when a person's image is published in relation to his public notoriety, the position held, or in demand of the police or the administration of justice. In addition, property claims can be made in case of culpable infringement. It is important novelty of the civil code to include principle of material compensation for non-material damages. Person is entitled to demand compensation for non-property damages in case of culpable infringement of personal right (Under Article 18 of Section 6 of CCG). However, publishing personal image for commercial purposes always requires consent of the person. For example, if a model is payed for her image, the consent is not needed, because it is considered as consent.<sup>39</sup> In this case, moral good (A person's appearance) and his/her material good (posture effort) is considered as an object for contract.<sup>40</sup>

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<sup>33</sup> Ibid, 161.

<sup>34</sup> *Peifer K.N.*, Individualität im Zivilrecht, Mohr Siebeck, Tübingen, 2001, 168.

<sup>35</sup> *Bichia M.*, Protection of Personal life, in Accordance with the Civil Law of Georgia, Tbilisi, 2012, 149 (in Georgian).

<sup>36</sup> *Ninidze T.*, Moral Damage in Civil Law, "Soviet Law", №2, 1978, 51 (in Georgian).

<sup>37</sup> *Höhne T.*, Persönlichkeits und Medienrecht, Gezieltes Fotografieren einer Person - Verletzung des Rechts am eigene Bildnis, In: "Zeitschrift für Informationsrecht" (ZIR), Heft3, 2013, 207-208.

<sup>38</sup> *Bartnik M.*, Der Bildnisschutz im deutschen und französischen Zivilrecht, Mohr Siebeck, Tübingen, 2004, 259-260.

<sup>39</sup> *Chanturia L.*, Personal non-property rights in modern civil law, journal "Law", №11-12, 1997, 30, 28 (in Georgian).

<sup>40</sup> *Ninidze T.*, Moral Damage in Civil Law, "Soviet Law", №2, 1978, 51 (in Georgian).

The issue is particularly relevant in the light of technical development,<sup>41</sup> because as for today it's very easy to display a person's image with some technical means. If a person's image is falsified using photomontage, the person is entitled for compensation for non-property damages. Two cases must be distinguished: a) whether it comes to imitation of person's appearance using his/her twin, b) or whether it reflects the image of a person's portrait.<sup>42</sup> Thus, protection of personal image must be considered as one of the legal guarantees for the protection of individuality and privacy.<sup>43</sup>

#### 2.2.4. Voice

Right on own voice is equated to the right on own image.<sup>44</sup> Just like protection of the image, protection of the phonogram recordings, on one hand, must be considered as means for protection of person's individuality, and, on the other, as one of the legal guarantees of the right to privacy protection. Illegally recorded sound could lead to violation of the right to person's individuality; one person speaking or doing a performance (song) may be attributed to others, which should be avoided especially in radio or film synchronization.<sup>45</sup>

Sound, much like image, is a natural good, which is attributed to a person for a long term and is developing. However, it bears less information than an image. An image can transfer information through visual communication. Mainly, protection of one's voice comes in 3 fields: a) originality, b) confidentiality, c) and protection of expressed will.<sup>46</sup>

Protection of voice is considered special personal right and the right of its usage and management is only in disposal of an authorized person. Voice, on its own is enough for identification of the person.<sup>47</sup>

In addition, with respect to the right of protection of the phonogram recordings, it must be determined how important is it to distinguish public and nonpublic speeches. But it is noteworthy, that, in both cases, the speech may be insincere or less thought through, which depends on the person's inner attitudes. Also, if a person's speech were recorded and released without his consent, this may adversely affect his honor and dignity. It's prohibited to use hidden microphones, if recording of the sound is not intended for public (state) or scientific purposes.<sup>48</sup>

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<sup>41</sup> *Höhne T.*, Persönlichkeits und Medienrecht, Gezieltes Fotografieren einer Person - Verletzung des Rechts am eigene Bildnis, In: ZIR, Heft 3, 2013, 207-208.

<sup>42</sup> *Bartnik M.*, Der Bildnisschutz im deutschen und französischen Zivilrecht, Mohr Siebeck, Tübingen, 2004, 259-260, 58.

<sup>43</sup> *Ninidze T.*, Civil law Guarantees of Protection of Personal Confidentiality, Journal „Soviet Law”, №1, 1977, 24 (in Georgian).

<sup>44</sup> *Chanturia L.*, Personal Non-property Rights in Modern Civil Law, Journal “Law”, №11-12, 1997, 28 (in Georgian).

<sup>45</sup> *Ninidze T.*, Individuality of Human – Subject of Soviet Civil Law Protection, Bulletin of SSR Scientific Academy of Georgia; Philosophy, Psychology, Economy and Law Series №4, 1977, 94 (in Georgian).

<sup>46</sup> *Peifer K.N.*, Individualität im Zivilrecht, Mohr Siebeck, Tübingen, 2001, 162.

<sup>47</sup> *Werthwein S.*, Das Persönlichkeitsrecht im Privatrecht der VR China, Berlin, 2009, 95.

<sup>48</sup> *Ninidze T.*, Individuality of Human – Subject of Soviet Civil Law Protection, Bulletin of SSR Scientific Academy of Georgia; Philosophy, Psychology, Economy and Law Series №4, 1977, 94-95 (in Georgian).



### 2.2.5. Personal Data

The personal data is considered as means for person's identification. The owner of these kind of information is authorized to decide whether it should be allowed to give them to others or not.<sup>49</sup> Accordingly, the personal data here is considered as an object of commercialization<sup>50</sup> that can be separated from a person.

Personal data is a mean to identify an individual. Data owner has the authority to decide whether it is allowed to issue them to others.<sup>51</sup> Personal information is: person's bank account, information about health condition, genetic code, and information concerning personnel, shop visiting habits and sexual interests.<sup>52</sup> At the same time, we deal with personal space, where each person develops his/her own individuality and protects his/her personal information from commercial or similar use, in the forms of publication or distribution. There are often conflicts between private and public interests in this process. However, in certain cases, the intervention of private sphere may be justified by the protection of public interest.<sup>53</sup>

Until 2009, the Constitution of Georgia and General Administrative Code protected personal data. However, it was necessary to protect personal data by private law norms too, a fortiori, the Constitution of Georgia foresaw it. Thus, the Civil Code's paragraph 18<sup>1</sup> was added, which refers to the possibility of getting personal data.<sup>54</sup>

Today this gap has been filled by the private law, under the article 18<sup>1</sup> of civil code Protection of personal data fell within the framework of private law, and is in compliance with international law. This subjected Georgian legislation to international harmonization and part of private life fell under the scope of legal regulation.<sup>55</sup> Namely, in 2008 under legislative change concerning the possibility of getting personal data, the article 18<sup>1</sup> was added to the civil code.<sup>56</sup> It was necessary to fill the vacuum. A person has been granted the right to access the personal data, and records relating to its financial or other private matters, and make copies of this information (under Article 18<sup>1</sup> Part 1). Under article 18<sup>1</sup> section 3 a person is obligated to transfer personal data under the written request, if he submits a written consent of

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<sup>49</sup> *Prins C.*, When personal data, behavior and virtual identities become a commodity: Would a property rights approach matter? SCRIPT-ed, Vol. 3, Issue 4, 2006, 278.

<sup>50</sup> *Unsel F.*, Die Kommerzialisierung personenbezogener Daten, München, 2010, 11-14.

<sup>51</sup> *Schemitsch M.*, Identitätsdaten als Persönlichkeitsgüter (Dissertation), Darmstadt, 2004, 125.

<sup>52</sup> *Bichia M.*, Protection of Personal life, in accordance with the Civil Law of Georgia, Tbilisi, 2012, 167 (in Georgian).

<sup>53</sup> *Amelung U.*, Der Schutz der Privatheit im Zivilrecht, Schadenersatz und Gewinnabschöpfung bei Verletzung des Rechts auf Selbstbestimmung über personenbezogene Informationen im deutschen, englischen und US-amerikanischen Recht, Tübingen, 2002, 19.

<sup>54</sup> *Moniava P.(T.)*, The Right to Obtaining Personal Data in Civil Law, Journal "World and law", №2 (6), 2009, 17 (in Georgian).

<sup>55</sup> Explanatory Card about a Amendment in Civil Code of Georgia Bill "On March 14, 2008 № 5919\_I-s Law (in Georgian).

<sup>56</sup> *Moniava P. (T.)*, The Right to obtaining Personal Data in Civil Law, Journal "World and Law", №2 (6), 2009, 17 (in Georgian).

the person, whose personal data is relevant information. In this case, a person has to protect the confidentiality of this information.

However, it is not specified in the Civil Code what are the legal consequences can be caused by denying or issuing personal data. There is an expressed opinion in the legal literature that this issue should be regulated similar to administrative law, by strictly defined framework. Accordingly, if denial or issue of personal data causes material or moral damage, the last one must be compensated.<sup>57</sup>

Thus, in Europe it is highlighted that any action must serve a person, as a final goal. Georgia shares this view and tries to identify special significance of a person, which requires specific changes in legislation as well in practice.

### 3. Compensation for Non-property Damages

#### 3.1. General Basis for Compensation for Non-property Damages

As Europe recognized person as supreme virtue, for its defense was established principle of compensation for non-property damages. This rule is also reflected in the Civil Code. Namely, under article 18<sup>1</sup> section 6, in case of culpable infringement of private virtues (honor, dignity, image etc.) person is given right to claim compensation for non-property damages.<sup>58</sup> Since the concept of non-property damage is difficult to imagine, the EU member states consider it in general terms, as the opposite of material damage, which monetary equivalent can't be determined.<sup>59</sup> However it can be noted that non-property damage is "physical or mental pain." In this case, the actions of the intruder must be reflected in the victim's state of mind, and must cause some mental reactions. These are negative feelings or sensations.<sup>60</sup>

General basis of liability (damages, illegitimacy, causal link, fault) is used for monetary compensation for inflicted suffering (non-material damages) (Under the article 992 of CCG).<sup>61</sup> Fault, in turn, can be expressed with the intention or negligence.<sup>62</sup> For the most part, however, infringement of individuality, e.g. publishing image and unacceptable infringement of personal space is done with intent.<sup>63</sup>

Claims for non-property damages may be filed in conjunction with other claims, as well as independently. In the cases concerning non-pecuniary damages Plaintiff is a person who has suffered

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<sup>57</sup> *Jorbenadze S.*, Onleincommentary of the Civil Code, gcc.ge, 08.10.2015, Art. 18<sup>1</sup>, Abs. 18-19 (in Georgian).

<sup>58</sup> *Chanturia L.*, Personal Non-property Rights in Modern Civil Law, Journal "Law", №11-12, 1997, 30, 28 (in Georgian).

<sup>59</sup> *Wurmnest W.*, Grundzüge eines europäischen Haftungsrechts: eine rechtsvergleichende Untersuchung des Gemeinschaftsrechts, Tübingen, 2003, 280, 287.

<sup>60</sup> *Erdelevsky A.*, Compensation of Morale Damage: Analysis and Commentary of Legislation and Judicial Practice, 3<sup>rd</sup> ed., revised and enlarged, Moscow, 2007, 1 (in Russian).

<sup>61</sup> *Erdelevsky A.*, Compensation of Morale Damage: Analysis and Commentary of Legislation and Judicial Practice, 3<sup>rd</sup> ed., revised and enlarged, Moscow, 2007, 57 (in Russian).

<sup>62</sup> *Fuchs M.*, Deliktsrecht, 4-te Auflage, Heidelberg, 2003, 79.

<sup>63</sup> *Höhne T.*, Persönlichkeits und Medienrecht, Gezieltes Fotografieren einer Person - Verletzung des Rechts am eigene Bildnis, In: ZIR, Heft 3, 2013, 208.

physical or mental pain, and the respondent is a person who has inflicted such pain with its action (or omission).<sup>64</sup>

In this case the burden of proof is on the plaintiff. He must prove: a) that specific person has caused damage, b) the character of physical or mental pain, c) causal link between action and the result, d) the amount of monetary compensation. Object of Proof includes following legal facts: 1) Does a defendant's action cause or not moral or physical suffering of a plaintiff, the nature of the actions and when the damage is done; 2) which personal rights of a plaintiff are violated; 3) What reveals physical or moral suffering of a claimant; 4) Quality of guilt of a person who has done damage (when it should be taken into consideration). 5) Amount of compensation.<sup>65</sup>

### **3.2. Theleological Reduction of Article 413 of Civil Code<sup>66</sup>**

Under article 413 section 1 of GCC for non-property damages compensation in money can only be claimed in cases prescribed by law (statute), with reasonable and fair compensation. Aim of this law is to reduce and diminish unjustified expansion of the scope of this norm, which ensures the stability and order of the civil turnover.<sup>67</sup> If there is mentioned only "compensation for damages" in the provision and not exactly "compensation for non-material damages", it means that material damages would be entitled.<sup>68</sup>

Thus, legislation allows to grant a compensation for significant (severe) non-material damage in the case of encroachment on legal wealth (such are honor, dignity, health, privacy, and others) and its existence. In this way legislator differentiated essential and nonessential damages. Non-material damage may be entitled if it is legally considerable, since it is difficult to confirm the existence and define the exact price of the damage.<sup>69</sup>

This rule is mandatory because non-property losses are recoverable only in the cases precisely prescribed by law. Moral damage can exist, yet it can not be compensated, unless the law prescribes it. Moreover, according to CCG, part 2, article 413 in cases of bodily injury or harm inflicted to a person's health, the injured party may claim non-property damages as well. Non-property damages, illegitimacy, causal link and fault should exist simultaneously for monetary compensation of non-material damages. Non-material damage may occur but it will not be compensated if law does not consider any kind of

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<sup>64</sup> *Todua M., Qurdadze Sh.*, Peculiarities of Decision-making on Certain Categories of Civil Cases, Tbilisi, Association of Georgian Judges, 2005, 70 (in Russian).

<sup>65</sup> *Ibid*, 74-75.

<sup>66</sup> About theleological reduction see *Beaucamp G., Treder L.*, Methoden und Technik der Rechtsanwendung, 2, neu bearbeitete Auflage, Hamburg, 2011, 78-79.

<sup>67</sup> Decision of Januar 20, 2012 №as-1156-1176-2011 of the Chamber of the Civil Category Cases of the Supreme Court of Georgia (in Georgian).

<sup>68</sup> *Ciskadze M.*, The Problem of Compensation of Non-property Damage for Body Injury in Georgian Legislation, Journal "Justice and law", №2, 2008, 17 (in Georgian).

<sup>69</sup> *Doghonadze L.*, The Compensation of Moral Damage (Dissertation), Tbilisi, 2010, 174-175, 181 (in Georgian).

compensation for such a damage.<sup>70</sup> Hence, compensation for purely mental pain, which is not a direct result of injury to body or health, cannot be awarded. Compensation for pain and suffering may only be claimed if the shock is of such severity that it amounts to bodily injury.<sup>71</sup> Herein “victim” is the person damaged and not his or her family members. Current legislation excludes immaterial damage for death,<sup>72</sup> since the purpose of satisfy the victim cannot be fulfilled by the granting monetary compensation.<sup>73</sup>

### 3.3. Compensation for Non-property Damages in Europa

#### 3.3.1. Compensation for Non-property Damages in Germany

A Georgia took a path to Europe through Germany<sup>74</sup>, it is appropriate to briefly discuss the rule of compensation for non-property damages in Germany.

In 2002, according to changes in German Civil Code (later GCC), article 847 was excluded and completely placed in one part of the article 253. By the first part of the 253th paragraph, it was determined that non-property damage can only be granted in the amount of compensation prescribed by law. Also in case of encroachment of goods, that are enumerated in the second part, it is established the possibility of compensation for non-property damages.<sup>75</sup> Herewith, if there was determined only the tress-pass to woman in the 847th article, now non-material damages for sexual self-determination, despite the gender, is added in the 253th paragraph. In addition, non-material damages can be used for any encroachment of non-material welfare, including general personal welfare and not only for the encroachment of the rights that are listed in the second paragraph of the article 253.<sup>76</sup> It became possible to compensate for non-property damages even it is caused by fault, when the victim and violator are not in a contractual relations, also if the damage is caused by the source of increased danger. Thus, the goal of this change was to widen the cases of non-material damage compensation and to settle the issue as far as possible.<sup>77</sup>

By the formation of the general human right is provided reasonable protection of personal rights. That is why it is not necessary for any human right to be prescribed by Civil Law.<sup>78</sup> The article 253 (2)

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<sup>70</sup> Decision of May 1, 2015 №as-113-108-2014 of the Chamber of the Civil Category Cases of the Supreme Court of Georgia (in Georgian).

<sup>71</sup> *Spindler G., Reckers O.*, Tort Law In Germany, The Netherlands, 2011, 133.

<sup>72</sup> Decision of May 1, 2015 №as-113-108-2014 of the Chamber of the Civil Category Cases of the Supreme Court of Georgia (in Georgian).

<sup>73</sup> *Kropholler J.*, German Civil Code, Study Comment, 13<sup>th</sup> rev. ed., *Chechelashvili Z., Darjania T.* (Translators), Tbilisi, 2014, 636 (in Georgian).

<sup>74</sup> *Zoidze B.*, Reception of European Private Law in Georgia, Tbilisi, 2005, 105 (in Georgian).

<sup>75</sup> BGB § 253.

<sup>76</sup> *Müller S.*, Überkompensatorische Schmerzengeldbemessung? Ein Beitrag zu den Grundlagen des 253 Abs. 2 BGB n. F., Berliner Reihe - Versicherungswissenschaft in Berlin, Band 29, Berlin, 2007, 9.

<sup>77</sup> *Doghonadze L.*, The Compensation of Moral Damage (Dissertation), Tbilisi, 2010, 22 (in Georgian); *Barabadze N.*, Moral Damage and the Problem of Compensating it, Tbilisi, 2012, 32-33 (in Georgian).

<sup>78</sup> *Kereselidze D.*, The Most General Notions of Private Law, Tbilisi, 2009, 138 (in Georgian).

creates basis not only for separate requirements, but also provides the legislative obligation for damages by the obligator (debtor), such as GCC's 823th<sup>79</sup> paragraph. German court practice shows that minor non-property damage is not compensated.<sup>80</sup>

### **3.3.2. Compensation for Non-property Damages in France**

Compensation for non-material damage is not an independent sort of compensation In French legislation. Thus, pre-requisites of liability for non-property damages coincide with the ones of the general responsibility.<sup>81</sup>

Therefore, since the non-property damage comes from judicial practice, courts use old judgments when calculating damages. That is what French judicial practice has in common with German one. Neither French law nor German law limits the list of rights and goods. They allow compensation of non-property damages in many cases and this increases the level of protection of these goods.<sup>82</sup> As a result, (as well as in England) compensation for non-material damages in France are much less limited than in Germany.<sup>83</sup>

### **3.3.4. Compensation of Non-property Damages According to European Convention on Human Rights**

#### **3.3.4.1. Purpose of Article 8 of Convention**

Private life is a broad concept which is incapable of exhaustive definition. It concerns a sphere within which everyone can freely pursue the development and fulfilment of his personality. Thus, private life necessarily includes the right to develop relationships with other persons and the outside world.<sup>84</sup>

Thus, as well as the negative obligation not to interfere arbitrarily with a person's family and private life, the State may also have to act affirmatively to respect the wide range of personal interests set out in the provision. In certain circumstances, therefore, the Convention will require the State to take

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<sup>79</sup> BGB § 823.

<sup>80</sup> *Kropholler J.*, German Civil Code, Study Comment, 13th revised ed., *Chechelashvili Z., Darjania T.* (Translators), Tbilisi, 2014, 135-136 (in Georgian).

<sup>81</sup> *Barabadze N.*, Moral Damage and the Problem of Compensating it, Tbilisi, 2012 (in Georgian), 40.

<sup>82</sup> *Honore A.M. (1971)*, Causation and Remoteness of Damage. In International Encyclopedia of Comparative Law, Vol. 11, Ch. 7. The Hague: *M. Nijhoff*, 108, cit.: *Barabadze N.*, Moral Damage and the Problem of Compensating it, Tbilisi, 2012, 41 (in Georgian).

<sup>83</sup> *Wurmnest W.*, Grundzüge eines europäischen Haftungsrechts: eine rechtsvergleichende Untersuchung des Gemeinschaftsrechts, Tübingen, 2003, 288.

<sup>84</sup> *Kilkelly U.*, The Right to Respect for Private and Family Life, A Guide to the Implementation of Article 8 of the European Convention on Human Rights, Germany, 2003, 10-11; *Kilkelly U.*, The Right to Respect for Privacy and Family Life, realization of the Article 8 of Human Rights of European Convention, *Chelidze L., Bokhashvili B., and Mamukelashvili T.*(Transl.), Tbilisi, 2005, 14, 9 (in Georgian).

steps to provide individuals with their Article 8 rights and it may also require them to protect persons from the activities of other private individuals which prevent the effective enjoyment of their rights.<sup>85</sup>

The practice of the European Court on Human Rights clearly shows that the reputation is a part of a private sphere, because society's attitude toward a person is considered as an element of this person's uniqueness and psychological integrity.<sup>86</sup> Although the protection of dignity, name, image and identity in general is not directly identified in the European Convention on Human Rights, it can be said that these rights should be considered together with the physical and moral integrity and guarantee of personal identification and information with the right to respect private life.<sup>87</sup>

### 3.3.4.2. Compensation for Non-property Damages

European Court on Human Rights classifies the cases of compensation for non-material damages. They are divided into different types: bodily injury, mental harm, expression threatening someone's dignity and loss of chance (success). After the long trail process European Court provides an opportunity to be granted with fair compensation. EU Law focuses on English and French law while systematizing the compensation for non-material damages.<sup>88</sup>

A compensation for mental harm can be granted if the serious breach in German law; on the other hand in English and French law unimportant damage could be enough. That confirms the high standard to protect individuals from government that is fulfilled by the European.<sup>89</sup>

### 3.3.4.3. Conflict of Private and Public Interests

In certain cases, the private interest collides with the public interest, it gives rise to a conflict of its interests. Decisive is the public interests value, since, as big the information value is, as more patience obligation is required from the person whom about the information is spread. The less the public interests base is, the bigger becomes obligation of protecting personal life.<sup>90</sup> Accordingly, for example, while protecting personal image should be established, is there or not an entitled persons agreement and on the

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<sup>85</sup> *Kilkelly U.*, The Right to Respect for Private and Family Life, A Guide to the Implementation of Article 8 of the European Convention on Human Rights, Germany, 2003, 20-21; *Kroon v. Netherlands* [1994] ECHR, 31; *Gurgenidze v. Georgia* [2006] ECHR, 37.

<sup>86</sup> *Pfeifer v. Austria*, [2007] ECHR, 33.

<sup>87</sup> about physical and moral integrity see *Kilkelly U.*, The Right to Respect for Private and Family Life, A Guide to the Implementation of Article 8 of the European Convention on Human Rights, Germany, 2003, 14-15, 42; *Kilkelly U.*, The Right to Respect for Privacy and Family Life, realization of the Article 8 of Human Rights of European Convention, *Chelidze L., Bokhashvili B. and Mamukelashvili T.* (Translators), Tbilisi, 2005, 25-27, 58 (in Georgian).

<sup>88</sup> *Wurmnest W.*, Grundzüge eines europäischen Haftungsrechts: eine rechtsvergleichende Untersuchung des Gemeinschaftsrechts, Tübingen, 2003, 300.

<sup>89</sup> *Ibid*, 301.

<sup>90</sup> *Tcomaia N.*, Trends of Judicial Practice Regarding the Free Development of One's Own Personality and Right to Respect one's Privacy and Family Life, Journal "Justice and Law", №4, 2014, 140 (in Georgian).

other hand, represented person is a civil servant or a private individual, to determine would there be a public interest or not.<sup>91</sup>

There where the public interest is higher, the interest of protecting privacy can come into collision with the public interest, to get and examine necessary information.<sup>92</sup> Public interest is bigger toward politicians than ordinary citizens. When the public interest is high, the conflict is possible between an interest of personal welfare and public interest to get and freely discuss necessary information.<sup>93</sup> Thought the European precedent determined, that critics limits is wider towards the civil servant, than to a private man.<sup>94</sup> Also private interest is being limited while it's necessary for the democratic society. But the dignity enjoys an absolute protection, regardless of everything, especially if it's concerned with intimate sphere. Also, conflict of interests must be settled individually, by taking on discount specific circumstances, because each occasion is different.<sup>95</sup>

### **3.4. Indemnification and Functions of Non-property Damage**

Non-property damage (unlike economic damage) is being compensated not equivalence principle, but also the specific features of, in particular, the quality and nature of the damage, the duration and gravity of the fault (of course, if that responsibility is a necessary condition), taking into point the material state of party. In addition, it is important to compensate the gravity of the damage, as light as a spiritual feeling so light physical pain will not be considered.<sup>96</sup> The point is that the severity of the damage, which causes the body with spiritual and (or) a decrease in the perception of a rational, is considered as a criterion to increase the amount of non-property damage.<sup>97</sup>

In addition, non-material damages is used for specific functions. Here the main goal is not deprived rights restitution (a violation of the spirit recovery). In this case it is impossible to find out exact monetary damage. While the compensation is directed for claimants justification in the eyes of the public, facilitating physical and moral suffering and alleviate the negative emotions. In addition, the volume of non-property damage must be compensated by court at the request of the plaintiff.<sup>98</sup>

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<sup>91</sup> *Peters N.*, Zur Pressefreiheit auf dem Prüfstand des deutschen Bundesverfassungsgerichts und des Europäischen gerichtshofs für Menschenrechte, Justiz in aller Welt, Betrifft JUSTIZ Nr. 83, September, 2005, 161.

<sup>92</sup> *Freesoz and Roire v. France* [1999], ECHR, 52.

<sup>93</sup> Decision of July 18, 2001 №3/376-01 the Chamber of Civil, Industrial and Bankruptcy Cases of the Supreme Court of Georgia (in Georgian).

<sup>94</sup> *Castells v. Spain* [1992], ECHR, 28-29.

<sup>95</sup> *Bichia M.*, Conflict of Values between the Freedom of Expression and Right to Privacy, Journal "Justice and law", No3, 2013, 128-147 (in Georgian).

<sup>96</sup> *Chikvashvili Sh.*, The Responsibility for Moral Damage, Tbilisi, 2003, 105, 107, 97-98 (in Georgian); *Kropholler J.*, German Civil Code, Study Comment, 13<sup>th</sup> rev. ed., *Chechelashvili Z., Darjanian T.* (Translators), Tbilisi, 2014, 135-136 (in Georgian).

<sup>97</sup> *Erdelevsky A.*, Compensation of Morale Damage: Analysis and Commentary of Legislation and Judicial Practice, 3<sup>rd</sup> ed., revised and enlarged, Moscow, 2007, 58 (in Russian).

<sup>98</sup> Supreme Court of Georgia, Recommendations of the Supreme Court of Georgia on Problematic Questions of Civil Law Practice, Tbilisi, 2007, 70-71.

Out of functions of Liability for non-material damage is preferred stimulating and preventive role. Compensating non-property damages in legally provided cases will be used for compensating damage, recognition of trespasser's rights, private and general prevention functions.<sup>99</sup> Compensating non-material damage at the cash requirement preferably have the victims satisfying (moral) function. Encroachment on the rights the idea of compensation is playing in the background (secondary). In addition, it serves to violation.<sup>100</sup> For the Faulty liability is essential so called moral compensation of damages suffered. However, liability without fault during moral satisfaction function has shifted to the back burner.<sup>101</sup>

There should be considered the responsibility of Correctional warning impacts of the use of repression and the possibility of redress for the duty. Here one finds that the repression of the property will be treated according to the terms of prevention.<sup>102</sup>

#### 4. Conclusion

Establishing individuality and personal rights protection in Georgian private law is the one of the most important results of moving towards of European law. Georgian and European experience make it clear that protection of individuality manifests in protection of personal non-property rights and personal rights. It is true that personal non-property rights are closely linked to personal rights but there are differences between them. List of personal moral rights is based on a singular principle and personal rights are based on a basis of generalization. Personal rights are considered an inexhaustible field, which is related origination of more new human rights due to constant development of personality. This topic is urgent more so in terms of commercialization of the personality, which is well highlighted in Europe. The legislator has granted it a function of a filler by determining the 992 Article of CCG, because the Article 18 of CCG, which is a benchmark in terms of human rights protection, requires to be filled with other general rules. European experience showed that human dignity is universal, which is why they are able to cover and provide other personal rights. This ability makes it particularly broad in nature in private law. At the same time, dignity is protected in Article 18 of CCG and it is considered to be the central area of general personal right and provides the remedy for protection of other forms of detecting individuality.

Europe is based on a principal statute that any action should serve the human, as a goal. Legislation and judicial practice of European countries must be based on this principle. It is necessary to develop Georgia's legal basis in a way of European harmonization in order to achieve maximum protection of

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<sup>99</sup> *Ninidze T.*, Moral Damage in Civil Law, Journal "Soviet Law", № 2, 1978, 55 (in Georgian).

<sup>100</sup> *Ohrmann Chr.*, Der Schutz der Persönlichkeit in Onlien-Medien, Unter besonderer Berücksichtigung von Weblogs, Meinungsforen und Onlinearchiven, Frankfurt am Main, 2010, 130.

<sup>101</sup> *Kropholler J.*, German Civil Code, Study Comment, 13<sup>th</sup> rev. ed., *Chechelashvili Z., Darjania T.* (Translators), Tbilisi, 2014, 135-136 (in Georgian).

<sup>102</sup> In this connection See *Varkalo V.*, About Liability on Civil Law (compensation for damage - function, species, boundaries), translated from the Polish by *W. Zaleski*, Moscow, 1978, 38, 44-45 (in Russian).



personality. Obviously, it does not mean that characteristic features of Georgian state should be disregarded though.

In addition, the Georgian legislation moved much closer to European standards with protection of Personal Data. It would be better to establish the compensation of non-material damage for the unauthorized use of the most sensitive personal data via legislative changes because the compensation of non-property damage is limited by the law.

So, the guarantees of protection of personality are characterized with some specificities in Georgia. But the recognition of the general personal right in Georgian judicial practice will better protect personal rights. It appeared that CCG has reflected a general European approach by which non-property damages will be compensated only in cases prescribed by the law.

At the same time, Europe has imposed a principle of compensation in material form for non-material damage in order to protect individuality, as the most important value. This regulation reflected in the Civil Code of Georgia as well. The study concludes that Georgian judicial practice mostly discusses the compensation of non-property damage on the basis of teleological reduction. Seems that a universal characteristic rule “about the compensation of non-material damage in cases determined by law” is taken in developed countries, such as Germany but in Georgia there are different specific features. The Thing is that Germany took path of generalization the compensation of non-material damage on the basis of the legislative changes and the “general personality right” nowadays. In this sense, France is freer and allows a bigger opportunity for generalization. As for the judicial practice of the European Court of Human Rights, Individuality has apparent the connection with private life here and individuality is as one manifestation of private life. In this sense, in this judicial practice is not the compensation of non-property damage connected with canonizing the damage maximum seriously. Here the moral damage shall be compensated by way of determining its concrete manifestation, by which is it actually approaching English law.

It is obvious that there are attempts to extend examples of compensation of non-property damages in civil code of Germany with the help of most general article 823. Georgian approach to compensation of damage of non-property rights confirms that civil law adopts novelties difficultly. Both - the protection of the purpose of the law and extension to the examples of compensation of non-property damage using scientific knowledge are important for westernization of the judicial practice and creation of high standard of protection. The above-mentioned demonstrates that Georgia, which shares main provisions of the Civil Code of Germany, must take into account its experience and also judicial practice must encourage itself to embrace the innovative way of compensation of non-property damage.

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