

## PROTECTION OF PERSONAL NON-PROPERTY RIGHTS IN THE DIGITAL ENVIRONMENT

Gozal Huseynzade\*

### Abstract

*The rapid expansion of the digital environment has significantly impacted the protection of personal non-property rights, leading to new legal challenges related to privacy, online defamation, and identity theft. Unlike material damages, moral damage resulting from such violations is difficult to quantify, making compensation mechanisms complex and inconsistent across jurisdictions. This article examines the legal frameworks governing the protection and compensation of moral damage in digital violations, focusing on Azerbaijan, the European Union (EU), and the United States (US). A comparative analysis highlights the differences in legal approaches, including statutory regulations, judicial precedents, and the role of international courts such as the European Court of Human Rights (ECtHR). In Azerbaijan, the protection of personal non-property rights is primarily based on constitutional and civil law provisions, with increasing reliance on ECtHR jurisprudence. However, national courts face challenges in ensuring consistency in moral damage compensation, particularly in digital violations. In the EU, the General Data Protection Regulation (GDPR) provides a structured mechanism for addressing moral damage, reinforced by ECtHR case law on privacy rights and data protection. The US, in contrast, follows a common-law approach, where compensation largely depends on judicial discretion and constitutional principles such as the First Amendment. The study emphasizes the need for harmonization of legal standards to enhance the effectiveness of digital rights protection. The growing influence of ECtHR rulings and international legal instruments suggests a trend toward stronger safeguards for individuals affected by digital rights violations. The findings underscore the importance of developing clear and enforceable guidelines for compensating moral damage in the digital space.*

**Keywords:** *moral damage, personal non-property rights, digital rights, compensation, legal framework, ECtHR, online defamation, privacy violations.*

### *I. Introduction*

The digitalization of modern life has introduced new risks to personal non-property rights, particularly in areas such as privacy protection, online reputation, and digital identity security. The rapid expansion of social media, data-driven technologies, and online communication platforms has created unprecedented legal challenges, as individuals increasingly face moral damage from cyberbullying, unauthorized data collection, and defamatory online content. The lack of uniform legal mechanisms to address such harm complicates the enforcement of personal rights and the determination of fair compensation.

The relevance of this topic is growing as digital interactions become an integral part of everyday life, leading to increased cases of privacy violations, reputation damage, and online harassment. The absence of clear, universally accepted standards for moral damage compensation creates legal uncertainty and discrepancies in judicial practice. While some jurisdictions have developed robust mechanisms for digital rights protection, others lack comprehensive legal frameworks, leaving victims with limited

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\* Master's student, Baku State University

avenues for legal recourse. The challenge lies in balancing the right to freedom of expression with the need to protect individuals from moral harm in the digital space.

National legal systems vary significantly in their approaches to moral damage compensation in the digital sphere. While some jurisdictions, such as the European Union, have developed strict regulatory frameworks like the GDPR, others, including the US, rely on case law and constitutional principles, particularly the protection of free speech under the First Amendment. In Azerbaijan, legal developments have been influenced by post-Soviet civil law traditions and the growing impact of European Court of Human Rights jurisprudence. These differences raise important questions about the effectiveness of legal remedies available to victims of digital rights violations.

## *II. Legal framework and judicial practice in the protection of personal non-property rights*

The protection of personal non-property rights is a fundamental aspect of civil law, ensuring individuals' dignity, privacy, and reputation are safeguarded. As digital interactions increasingly shape social and economic relations, legal systems must adapt to address emerging risks such as unauthorized data usage, online defamation, and cyber harassment. The challenge lies in establishing clear legal standards that provide effective remedies for victims while balancing competing rights, such as freedom of expression.

Azerbaijan's legal system has gradually developed mechanisms to address moral damage, with key provisions found in the Constitution of the Republic of Azerbaijan, the Civil Code, and various national regulations. While the recognition of moral damage as a compensable harm represents a significant legal advancement, inconsistencies in judicial practice persist due to the absence of detailed statutory guidelines for assessing compensation. Courts retain broad discretion in determining compensation amounts, often leading to variability in rulings.

The Constitution of Azerbaijan, particularly Article 24, guarantees the right to dignity, while Article 32 establishes the right to privacy and prohibits unlawful interference with personal life and data. The Civil Code, in Article 1097, provides a legal basis for compensating moral damage, allowing claims for emotional distress and reputational harm. However, as noted by Allahverdiyev S., the absence of clear legislative criteria results in inconsistent judicial interpretations. He argues that introducing structured compensation guidelines would contribute to greater legal certainty and uniformity in court decisions [1, p. 274-275]. Similarly, Mehdiyev R. highlights the evidentiary challenges faced by plaintiffs in moral damage cases, advocating for courts to adopt more flexible approaches in assessing psychological and reputational harm [12, p. 126].

Judicial practice in Azerbaijan demonstrates a growing acknowledgment of moral damage, particularly in cases involving defamation, privacy breaches, and digital rights violations. The Resolution #7 of the Plenum of the Supreme Court of Azerbaijan (2008) provides general principles for awarding compensation, emphasizing factors such as the severity and duration of emotional suffering, the nature of the violation, and the financial position of the defendant [20]. However, court decisions often lack consistency, as compensation amounts vary significantly across cases.

Legal scholars argue that Azerbaijan must refine its approach to moral damage compensation to ensure greater judicial consistency and stronger protection of digital rights. Aslanov A. emphasizes the need for comprehensive legislative reforms, including codified compensation criteria and improved judicial training on non-

material damage assessment [2, p. 223-227]. Additionally, aligning domestic legislation with international best practices would enhance the effectiveness of legal remedies for victims. By addressing these challenges, Azerbaijan can develop a more robust framework for protecting personal non-property rights in the digital era.

The EU has established one of the most comprehensive legal frameworks for the protection of personal non-property rights, particularly in the context of privacy, data protection, and defamation. The EU's approach is characterized by strong regulatory mechanisms, such as the GDPR, as well as the role of national courts and the Court of Justice of the European Union (CJEU) in interpreting and enforcing these rights. The EU legal system ensures that individuals who suffer moral damage due to privacy violations, reputational harm, or data breaches have access to compensation, though the criteria for awarding such compensation vary among member states.

The foundation of personal non-property rights protection in the EU is found in Article 7 (Right to Private Life) and Article 8 (Protection of Personal Data) of the Charter of Fundamental Rights of the European Union (CFR). Additionally, Article 82 of the GDPR explicitly grants individuals the right to claim compensation for both material and non-material damage resulting from data protection violations. However, the GDPR does not define how moral damage should be quantified, leaving national courts to determine compensation amounts based on their respective legal traditions.

Several key legal scholars have analyzed the challenges of moral damage compensation in the EU. Ravenstein H. argues that the absence of uniform standards for assessing moral damage leads to discrepancies in national court rulings, as different legal systems apply varying methodologies for evaluating non-material harm [15, p. 156]. Similarly, Baglaridu M.F. emphasizes that judicial discretion plays a crucial role in determining compensation, particularly in cases where privacy violations cause significant emotional distress without tangible financial losses [3, p. 143].

EU judicial practice regarding moral damage compensation is shaped by CJEU rulings and national case law. A landmark decision in this area is *Google Spain SL v. Agencia Española de Protección de Datos* (2014, CJEU), which established the right to be forgotten, allowing individuals to request the removal of outdated or irrelevant personal information from search engine results (CJEU Case C-131/12). While the case primarily addressed data erasure, it also reinforced the idea that prolonged exposure to harmful online content can justify moral damage compensation.

When it comes to mechanisms for compensating moral damage resulting from privacy breaches in the European Union, the GDPR provides one of the most structured ones. Article 82 of the GDPR explicitly grants individuals the right to claim compensation for both material and non-material damage caused by violations of data protection rules [8]. However, the GDPR does not provide a standardized formula for assessing non-material harm, leaving national courts to determine compensation on a case-by-case basis. A significant ruling in this regard is *Österreichische Post AG*, where the Court of Justice of the European Union held that non-material damage under GDPR does not require proof of economic loss but must demonstrate actual emotional or psychological harm (CJEU Case C-300/21). This decision reaffirmed the right of individuals to seek compensation for distress caused by unlawful data processing, but also raised questions about the threshold for proving such harm.

National courts within the EU have developed different standards for awarding compensation. For example, in Germany, courts tend to apply a restrictive approach,

requiring claimants to demonstrate significant distress resulting from a data breach, while in France, courts have awarded moral damage compensation for the mere violation of privacy rights, even without substantial emotional suffering [15, p. 245]. This divergence in legal interpretations has led to inconsistencies in GDPR enforcement, prompting legal scholars to advocate for greater harmonization of moral damage compensation standards across EU member states [3, p. 194].

Despite these advances, legal scholars argue that the lack of standardized compensation criteria remains a challenge. Smithson J. suggests that EU-wide guidelines for assessing moral damage could improve consistency in judicial decisions while ensuring adequate protection for victims [16, p. 297]. The European Commission has considered proposals to further clarify compensation mechanisms under the GDPR, particularly regarding non-material harm caused by AI-driven data processing and algorithmic decision-making.

In comparison the United States follows a significantly different approach to the protection of personal non-property rights, largely due to its common law tradition and strong emphasis on constitutional freedoms. The First Amendment to the U.S. Constitution, which protects freedom of speech and the press, often limits the scope of moral damage claims, particularly in defamation and privacy-related cases. Unlike the GDPR in the EU, the U.S. lacks a comprehensive federal data protection law, relying instead on sector-specific regulations and state-level privacy laws. As a result, compensation for moral damage varies widely depending on the jurisdiction, legal context, and nature of the violation.

The legal foundation for personal non-property rights protection in the U.S. is found in constitutional law, tort law, and statutory regulations. Defamation law, for example, is largely shaped by *New York Times Co. v. Sullivan* (1964), a landmark Supreme Court case that established the "actual malice" standard, requiring public figures to prove that defamatory statements were made with knowledge of falsity or reckless disregard for the truth. This high burden of proof significantly reduces the number of successful moral damage claims by public figures.

In the area of privacy protection, the U.S. legal system recognizes four traditional privacy torts, as defined by William Prosser in *Restatement (Second) of Torts* (1977):

- intrusion upon seclusion – unauthorized invasion of one’s private affairs.
- public disclosure of private facts – dissemination of personal information that is not of public concern.
- false light – presenting an individual misleadingly in a highly offensive manner.
- appropriation of likeness – unauthorized use of a person’s name or image for commercial purposes (*restatement (second) of torts*, § 652).

Despite these legal principles, compensation for moral damage in privacy cases remains inconsistent due to the absence of federal privacy laws similar to the GDPR. However, some state-level regulations, such as the California Consumer Privacy Act (CCPA) of 2018, grant individuals the right to sue for non-material harm caused by data breaches or privacy violations.

Several legal scholars have analyzed the limitations of the U.S. legal framework in compensating moral damage. Smithson J. argues that American courts often prioritize economic harm over emotional distress, making it difficult for plaintiffs to obtain compensation unless they can demonstrate measurable financial loss [16, p. 302]. Similarly, Maleina M.N. notes that jury awards for emotional distress can be highly

unpredictable, as U.S. courts lack fixed guidelines for determining non-material damage [11 p. 217].

Looking ahead, U.S. legal scholars and policymakers continue to debate the need for stronger federal protections for personal non-property rights, particularly in the digital sphere. Lebedev V.V. suggests that the U.S. could benefit from clearer compensation standards, similar to those found in EU data protection law, to provide greater legal certainty for victims of privacy and defamation-related moral damage [10, p. 108]. While legislative efforts such as the proposed American Data Privacy Protection Act (ADPPA) aim to establish stronger privacy protections, the absence of a federal framework continues to create inconsistencies in moral damage compensation across different states.

As digital interactions increasingly shape social and professional life, online defamation, cyberbullying, and online harassment have become major threats to personal non-property rights. While all three involve harm to an individual’s dignity and psychological well-being, they differ in intent, legal classification, and enforcement mechanisms. Defamation focuses on false statements that damage reputation, whereas cyberbullying and online harassment involve persistent digital abuse, intimidation, or threats, regardless of the truthfulness of the content.

*Comparative overview of legal approaches:*

| <b>Aspect</b>              | <b>Online Defamation</b>   | <b>Cyberbullying</b>   | <b>Online Harassment</b>   |
|----------------------------|--|--|--|
| <b>Definition</b>          | False statements that harm an individual's reputation.                     | Repeated, intentional harm directed at minors through digital platforms. | Persistent digital abuse, threats, or intimidation targeting individuals of any age. |
| <b>Primary Victims</b>     | Any individual, including public figures, private persons, and businesses. | Primarily minors in school or social settings.                           | Any individual, including employees, activists, and public figures.                  |
| <b>Common Platforms</b>    | News websites, social media, blogs, forums.                                | Social media, messaging apps, gaming platforms.                          | Emails, forums, workplace communication tools, social media.                         |
| <b>Legal Response</b>      | Civil or criminal defamation laws, privacy laws.                           | Often covered by anti-bullying laws and school policies.                 | Criminalized under cybercrime, stalking, or harassment laws.                         |
| <b>Intent &amp; Effect</b> | Damages reputation and professional standing.                              | Aims to isolate, intimidate, or humiliate the victim.                    | Seeks to cause distress, instill fear, or damage mental well-being.                  |

The EU provides a structured legal framework for defamation, cyberbullying, and online harassment, balancing freedom of expression with the protection of personal

dignity. Defamation cases are handled under national laws, while the European Court of Human Rights interprets Article 10 of the European Convention on Human Rights (ECHR) to balance free speech and reputational harm [7, Article 10]. A key ruling, *Delfi AS v. Estonia* (2015, ECtHR), held that digital platforms may bear liability for defamatory or harmful content if they fail to remove it promptly [5].

In cases of cyberbullying and online harassment, the EU Digital Services Act (DSA) mandates that platforms take proactive measures to remove harmful content and provides for sanctions against non-compliant service providers [6]. Compensation for moral damage caused by digital abuse varies across national legal systems, with countries like France and Germany awarding damages for emotional distress caused by prolonged exposure to harmful content [15, p. 228].

The U.S. approach prioritizes free speech over reputational harm, making defamation claims particularly difficult to prove. *New York Times Co. v. Sullivan* (1964) established the "actual malice" standard, requiring public figures to prove that defamatory statements were made with reckless disregard for the truth [14]. For private individuals, courts apply a lower burden of proof, requiring only negligence [9]. However, jury awards for reputational harm can vary widely, often depending on public sympathy toward the claimant [16, p. 299].

Cyberbullying laws in the U.S. vary by state, with no federal law specifically addressing digital bullying. However, online harassment is covered under state-level stalking and cyberstalking laws, which allow victims to seek protection orders and, in some cases, damages for emotional distress [13].

Azerbaijan maintains both civil and criminal liability for defamation, with Article 147 of the Criminal Code allowing for criminal penalties, including fines or imprisonment, and Article 1097 of the Civil Code allowing individuals to seek compensation for reputational harm [18]. However, legal scholars such as Allahverdiyev S. argue that criminal defamation laws can suppress free speech and should be replaced with stronger civil remedies [1, p. 203].

Cyberbullying is not explicitly defined in Azerbaijani law, but Article 148-1 of the Criminal Code criminalizes online harassment, imposing penalties for threats and intimidation in digital spaces [19]. Mehdiyev R. notes that Azerbaijani courts lack a systematic approach to determining compensation for cyber harassment cases, often relying on broad interpretations of general harassment laws [12, p. 145].

The regulation of personal non-property rights in the digital space varies significantly across jurisdictions, creating challenges for legal harmonization, particularly in cross-border cases. One key issue is the variation in liability thresholds and compensation standards. While EU courts generally place a lower burden of proof on claimants, the US legal system prioritizes free speech, making defamation and harassment claims harder to prove [12]. Azerbaijan combines both civil and criminal liability, raising concerns about potential misuse of defamation laws and lack of clear civil compensation criteria [1, p. 212].

Another challenge is platform liability for harmful content. The EU Digital Services Act (DSA) mandates strict content moderation, whereas US law shields platforms from liability under Section 230 of the Communications Decency Act (CDA) [4]. Azerbaijan lacks clear regulations on platform responsibility, making content removal and victim compensation difficult [12, p. 157]. Addressing these gaps requires

stronger civil remedies, clearer liability rules for platforms, and better-defined compensation mechanisms to ensure effective digital rights protection.

Despite these challenges, there are several pathways for improving legal coherence across jurisdictions:

1. Developing international guidelines on moral damage compensation: Organizations such as the United Nations (UN) and the Council of Europe (CoE) could establish recommendations for harmonizing compensation criteria, ensuring that victims of online abuse receive equitable remedies regardless of jurisdiction.

2. Enhancing cross-border cooperation in digital law enforcement: Governments could implement mutual legal assistance agreements (MLAAs) to facilitate faster content removal, prosecution of cross-border cyber harassment, and compensation enforcement.

3. Reforming national laws to balance free speech and reputational protection: Azerbaijan, for example, could decriminalize defamation while strengthening civil compensation mechanisms, similar to EU legal models, ensuring greater predictability in damage awards and better access to justice for victims.

4. Reevaluating platform liability standards: The US could consider amending Section 230 of the CDA to increase accountability for social media companies, particularly in cases involving repeated failures to remove harmful content. Similarly, Azerbaijan could introduce specific obligations for online platforms to prevent and address cyber harassment and defamation cases.

The protection of personal non-property rights in the digital space remains a complex legal issue, as jurisdictions adopt different approaches to balancing freedom of expression, privacy, and reputational rights. As digital interactions continue to evolve, legal systems must adapt to provide more effective safeguards for personal non-property rights. By strengthening legal frameworks, refining compensation mechanisms, and fostering international legal harmonization, jurisdictions can ensure that victims of online defamation, cyberbullying, and harassment receive adequate legal protection in the digital era.

### *III. Conclusion*

The analysis of theoretical and practical aspects of moral damage compensation in the digital space has led to several key conclusions:

1. The study has shown that Azerbaijan has recently incorporated the concept of moral damage into its civil legislation. While legal norms continue to evolve, the lack of uniform compensation criteria remains a significant issue. To improve the practice of moral damage compensation, it is necessary to clarify and standardize compensation assessment criteria, ensuring greater predictability and fairness in judicial decisions. A crucial step in this direction is the development of case law that aligns with international standards, helping Azerbaijan strengthen its legal framework for personal non-property rights protection.

2. To ensure effective and fair moral damage compensation, a comprehensive and balanced system should be developed that eliminates existing legal gaps. This system must account for various factors influencing compensation assessment, ensuring both victim protection and efficiency in judicial proceedings. Courts can play a key role in developing unified compensation standards by issuing judicial guidelines and consolidated rulings on moral damage cases. Such recommendations would serve as

guiding principles for courts, contributing to a more stable and consistent legal precedent, ensuring predictable and fair outcomes for all parties.

3. The analysis indicates that continental legal systems strictly regulate moral damage compensation, focusing on protecting dignity, honor, and reputation. In contrast, the Anglo-American legal system adopts a more individualized approach, allowing punitive damages in certain cases to punish the offender and deter future violations. Integrating elements of both systems could provide greater clarity and predictability in legal norms while maintaining flexibility to consider individual case specifics. For example, introducing punitive elements into moral damage compensation could serve as an effective deterrent against digital rights violations.

4. Judicial precedents, particularly from the European Court of Human Rights, play a crucial role in shaping international standards for protecting personal non-property rights. The Court emphasizes that moral damage compensation should reflect the level of emotional suffering and uncertainty experienced by the victim. Since moral damage cannot always be quantified in precise monetary terms, courts must consider the psychological impact and severity of distress when determining compensation. ECtHR rulings have significantly influenced the formation of international legal standards, particularly in ensuring that moral damage awards are "sufficient" to restore justice but not excessive. These decisions serve as guidance for national courts in establishing reasonable and fair compensation amounts.

5. The study highlights that statutes of limitations for moral damage claims remain a debated issue, depending on whether the claim is classified as a protective or financial demand. In Azerbaijan, personal non-property rights are not subject to limitation periods, whereas claims for monetary compensation may be time-barred. This creates a balance between protecting rights and ensuring legal certainty. In common law jurisdictions, the "delayed discovery rule" allows statutes of limitations to start when the victim becomes aware of the harm, ensuring fairness in cases where the damage is not immediately evident. This approach could be a valuable solution for resolving disputes related to limitation periods, ensuring greater protection for victims of digital rights violations.

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