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Moral Damage Resulting from Digital Violations: Limits of Compensation under Algerian Civil Law

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Abstract
The widespread use of digital media has given rise to new forms of infringement of personal rights, whose effects are no longer confined to financial losses but extend to violations of honour, reputation, standing, privacy and psychological well-being. Such violations raise specific issues in the field of civil liability, relating to the legal characterisation of digital non-pecuniary damage, proof of its occurrence and attribution to a harmful act, identification of the persons liable for it, and assessment of compensation in circumstances where content spreads rapidly and may be reposted or retained in copies even after its removal from the original source.
This article examines whether the general rules of civil liability under Algerian law are sufficient to redress non-pecuniary damage arising from digital violations. It analyses the basis and conditions of liability and explains the particular features of proof and compensation in the digital environment. It also considers the extent to which the provisions of the Civil Code may be relied upon in light of the constitutional protection of privacy and honour and the legislation governing the protection of personal data, while proposing practical mechanisms to strengthen civil protection without unjustifiably infringing freedom of expression or the right to disseminate information.

Keywords: non-pecuniary damage; digital violations; civil liability; compensation; digital privacy; Algerian Civil Code.

Introduction

Digital media have become a primary space for communication, the exchange of information and the expression of opinions. However, their technical characteristics have created new conditions for infringing personality rights. Electronic publication may make content accessible to a wide audience within a short period, while storage, copying and redistribution may allow the effects of an infringement to persist even after the original post has been deleted. Such infringement may take the form of publishing private information without the consent of the person concerned, circulating personal photographs or conversations, disseminating allegations that damage reputation, fabricating misleading content, or using personal data for purposes other than those permitted by law.
The seriousness of these acts is not limited to the financial or professional losses they may cause. They may also give rise to non-pecuniary damage in the form of injury to dignity, standing or privacy, or psychological suffering resulting from defamation, humiliation and loss of control over personal information. The distinctive nature of such damage becomes more pronounced when content is accessible to an indefinite audience, may reappear in search results, or remains associated with a person's name and digital identity for a prolonged period. The issue, therefore, is not merely whether non-pecuniary damage is compensable in principle, but rather the conditions and limits of compensation where the infringement occurs in an environment characterised by a different scale of dissemination, persistence and difficulty in identifying the source of content.
The Algerian legal system is based on general rules of civil liability, foremost among them Article 124 of the Civil Code concerning harmful acts, together with Article 182 bis, which provides for compensation for non-pecuniary damage resulting from an infringement of liberty, honour or reputation. These provisions are complemented by constitutional guarantees protecting privacy, honour and the confidentiality of correspondence and communications, as well as the specific rules

governing the protection of natural persons with regard to the processing of personal data. These texts provide an important foundation for protection, but raise questions as to their ability to respond to the specific features of digital violations, particularly with regard to evidence, the assessment of compensation and the multiplicity of parties involved in disseminating content.

The significance of this subject lies in moving the discussion beyond the mere recognition that non-pecuniary damage is compensable, towards examining the effectiveness of such compensation in cases of digital infringement. This requires distinguishing presumed damage from damage that must be proved; the infringement of the right itself from the non-pecuniary consequences resulting from it; and the liability of the original perpetrator from that of persons who contributed to the continuation or republication of the content.

Accordingly, the study addresses the following central question:

> *To what extent do the general rules of civil liability under Algerian legislation ensure effective compensation for non-pecuniary damage resulting from digital violations, in view of the difficulties involved in proving the damage, identifying the person liable and determining appropriate compensation?*

This question gives rise to further inquiries concerning the adequacy of the existing legal basis to accommodate the various forms of digital non-pecuniary damage; the conditions for proving such damage and the causal link; the criteria that may be adopted in assessing compensation; and the limits of combining monetary compensation with measures intended to halt the infringement and mitigate its effects.

The study adopts an analytical approach by interpreting the relevant legal provisions, and a critical approach to assessing the strengths and shortcomings of civil protection mechanisms. It also uses hypothetical practical examples to illustrate operational difficulties without attributing them to undocumented judicial cases. The study is divided into two main sections: the first examines the legal framework governing non-pecuniary damage resulting from digital violations and the basis for compensation; the second addresses the difficulties of proving the damage, identifying the liable party, assessing compensation and developing protection.

Part One: The Legal Framework of Non-Pecuniary Damage Resulting from Digital Violations and the Basis for Compensation

A study of compensation for digital non-pecuniary damage requires identifying the interests protected by law and determining whether the traditional concept of non-pecuniary damage encompasses the effects arising from violations committed through digital media. It is also necessary to identify the legal basis of liability and the extent to which the general rules of the Civil Code may be relied upon alongside the specific provisions protecting privacy and personal data.

Section One: The Concept of Digital Non-Pecuniary Damage and Its Legal Forms

Digital non-pecuniary damage is among the most significant legal consequences of violations committed in the digital environment, given their potential impact on personal rights and non-material interests, such as honour, standing, privacy and reputation. In view of the specific nature and varied forms of these violations, defining digital non-pecuniary damage requires examining its nature and characteristics, and then identifying its principal legal forms that may constitute grounds for a claim for compensation under the Algerian Civil Code.

Subsection One: Definition and Specific Characteristics of Digital Non-Pecuniary Damage

Non-pecuniary damage means harm affecting an injured person's non-financial interests, thereby impairing their dignity, standing, honour, reputation or privacy, or causing them significant psychological suffering. The existence of such damage does not depend on a reduction in the person's assets: an individual may be defamed or have their privacy violated without directly losing income or property, while the infringement nevertheless affects their personal and social position. Article 182 bis of the Algerian Civil Code indicates that the legislature recognises compensation for non-pecuniary damage and expressly includes infringements of liberty, honour or reputation within its scope.[1]

Describing damage as "digital" does not mean that a separate category of damage has emerged outside the general rules. Rather, the term indicates that the harmful act is connected to an electronic medium or digital environment, and that this connection may entail characteristics affecting proof of the damage and assessment of its consequences. The infringement may occur through a social-media post, an electronic message, an audio or video recording, the circulation of personal data, or the manipulation of an image or other content to portray a person in a situation that never occurred. For legal characterisation, the decisive factors remain the nature of the interest infringed and the consequence resulting from the act, rather than the mere technical means used.[2]

The description of damage as digital in this context follows from applying the general rules to acts committed through electronic media; it does not derive from the existence of a separate statutory definition of such damage. The distinctive features of digital non-pecuniary damage include the rapid dissemination of content, the possibility of copying and

[1] Ordinance No. 75-58 of 26 September 1975 promulgating the Civil Code, published in the Official Gazette of Algeria, No. 78, 30 September 1975, as amended and supplemented.

[2] Djamal Brahimi, "Combating Cybercrime under Algerian Legislation," Critical Review of Law and Political Science, Vol. 11, No. 2, 2016, pp. 125, 127.

republishing it, the difficulty of controlling its audience, and the possibility that its effects will remain after the original post has been removed. Damage may recur or intensify whenever the content is redistributed or linked again to the injured person's identity. These characteristics do not, however, automatically give rise to a presumption of damage in every case. Rather, they are factual elements that the court may consider when assessing the extent, seriousness and consequences of the infringement, provided that their connection with the dispute has been established.[3]

A distinction must be drawn between non-pecuniary damage and mere displeasure with the content of a post. Freedom of expression requires that every criticism, disagreement or unwelcome opinion should not become a basis for a claim for compensation. It is instead necessary to establish an unlawful infringement of an interest protected by law, the occurrence of damage or the possibility of proving it, and a causal link between that damage and the act attributed to the defendant. This distinction is particularly important in the digital environment, where personal opinions may overlap with factual allegations about individuals, and legitimate criticism may be confused with insult, defamation or the disclosure of private information.

Subsection Two: Forms of Non-Pecuniary Damage Arising from Digital Violations

The first form consists of injury to honour and reputation, such as where a person publishes false allegations attributing disgraceful conduct to another, or circulates content liable to undermine that person's standing in their social or professional environment. The infringement may take the form of republishing an unsubstantiated accusation, taking a statement out of context in order to alter its meaning, or manipulating an image to suggest that an event occurred when it did not. In such cases, damage is not determined merely by the existence of the post. Regard must be had to the nature of the content, the extent to which it identifies the injured person, the audience it reached, the circumstances of publication and the consequences that followed. A distinction must also be drawn between facts whose truth can be verified and opinions or assessments, which must be evaluated in light of the context and legal limits of the expression concerned.[4]

The second form is the violation of privacy through the publication of photographs, conversations, recordings or personal information without a lawful justification. Content may be factually accurate and yet its publication may constitute an infringement of privacy because of the nature of the information, the circumstances in which it was obtained or the absence of a lawful basis for its dissemination. Accordingly, the truth of the information alone is insufficient to establish that publication was lawful. It is necessary to examine the interest served by publication, its connection with a matter of public concern, the limits of necessity and proportionality, and the rights of the person concerned. In this context, the right to privacy must not be confused with the right to the protection of personal data: the two fields overlap, but are not identical in their legal basis or scope.[5]

The third form consists of injury to personal and psychological well-being resulting from repeated online harassment, the publication of humiliating messages, the creation of accounts impersonating the injured person, or organised campaigns intended to humiliate or socially isolate them. The effects of such conduct may go beyond a transient insult and impair psychological tranquillity and the sense of security, particularly where the infringement continues or moves from the digital sphere into the workplace, educational environment or family. Nevertheless, damage must be assessed in light of the circumstances of each case. A psychological disorder or health injury should not be presumed without adequate support where the claim specifically relies on such a consequence.

Proof of particular health or psychological consequences depends on the nature of the incident and the forms of evidence admissible by law. The general characterisation of an act as an infringement does not, by itself, prove every alleged consequence.[6]

Violations targeting minors or using their photographs and personal information raise additional issues, given the nature of the interests requiring protection and the possibility that the effects of published content may persist into later stages of their lives. The legal approach must take account of the child's best interests and privacy, while distinguishing the child's right to protection from the legal requirements governing representation when judicial proceedings are brought. It is also necessary to avoid republishing the offending content while documenting or submitting it as evidence, where doing so would unnecessarily extend the harm.[7]

Non-pecuniary effects are not necessarily confined to the person whose name or image appears in the content. Other persons may also be affected where the infringement directly harms their personal interests. However, kinship or a social relationship with the primary injured person is not, by itself, sufficient to establish entitlement to compensation. Each claimant must identify the personal interest affected by the act, the damage suffered and the causal connection between them. This requirement helps prevent an uncontrolled expansion of compensation claims while preserving protection for anyone who establishes that they have suffered distinct damage.

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[3] Majed Al-Mazmi, "Civil Liability Arising from Infringement of the Right to Digital Forgetting," Revue critique de droit et sciences politiques, Vol. 20, No. 1, 2025, p. 539.
[4] Djamal Brahimi, op. cit., p. 128.
[5] Majed Al-Mazmi, op. cit., pp. 539–541.
[6] Nassima Hachoud, "Judicial Assessment of Compensation for Non-Pecuniary Damage under Algerian Legislation," Journal of Comparative Legal Studies, Vol. 7, No. 2, 2021, pp. 1416–1418.
[7] Djamal Brahimi, op. cit., p. 151.

Section Two: The Legal Basis of Civil Liability for Digital Non-Pecuniary Damage

Civil liability for digital non-pecuniary damage is founded on the general rules of civil liability, which recognise the injured person's right to compensation where an infringement of a right or legitimate interest giving rise to reparable damage is established. The specific features of digital violations nevertheless raise questions as to whether these rules are sufficient to accommodate the non-pecuniary damage arising from them. It is therefore necessary to identify the legal basis of civil liability in this field, explain the conditions for its establishment, and examine the applicability of contractual and tortious liability to harmful acts committed in the digital environment.

Subsection One: The General Rules of Civil Liability

Article 124 of the Algerian Civil Code constitutes the general basis for liability arising from one's own act, as it requires a person who, through their fault, commits an act causing damage to another to provide compensation. It follows that a claim for compensation in respect of a digital violation generally requires proof of an act attributable to the defendant that satisfies the conditions of liability, damage suffered by the claimant, and a causal link connecting the act to the damage. The fact that the act was committed using a telephone, computer or online platform does not alter this conclusion. The digital medium does not eliminate the legal elements of liability, although it may make them more difficult to prove.[8]

Fault in digital violations takes various forms, including publishing content that the publisher knows to be false, disclosing private information without justification, republishing harmful material without verifying the circumstances where such verification is required, or using personal data in breach of legal obligations. Nevertheless, liability should not be imposed on everyone who has technically contributed to the transmission of content without examining their conduct, actual role and the basis of their obligations. Civil liability does not arise merely because a person is connected with the incident or has benefited from a digital service. The act or omission legally attributable to that person, and its connection with the damage, must be identified.[9]

Damage has independent significance as a necessary element of liability. The existence of unlawful conduct does not relieve the claimant of the obligation to identify the damage for which compensation is sought, except to the extent that a specific provision provides otherwise or the consequence may be inferred from the nature of the infringement in accordance with judicial assessment. A distinction must be drawn between establishing an infringement of a personal right, identifying the consequences resulting from it, and determining the amount of compensation due. An infringement of privacy may be established by the publication of confidential information, while the extent of its dissemination and the resulting psychological or social consequences may still require a separate assessment in light of the circumstances of the case.[10]

Causation requires the damage for which redress is sought to result from the act attributed to the defendant. Difficulties arise where content is republished by several persons, where damage results from the accumulation of different acts, or where the injured person alleges that a particular post caused the loss of a professional opportunity or the deterioration of social relationships. In such cases, it is not enough to establish that the post and the damage existed during the same period. Evidence must be produced that makes it possible to connect the consequence to the act in issue. This may require examining the sequence of publication, the timing of the emergence of the damage, the extent of dissemination, and the existence of other independent or contributing causes.[11]

Where several persons may be liable, a distinction must be drawn between the person who created the content, the person who first published it, those who republished it and any person who provided a related technical service. Article 126 of the Civil Code provides for joint and several liability among persons responsible for a harmful act where there is more than one liable person, and regulates the relationship between them in accordance with its provisions. However, applying this rule presupposes that the liability of the persons concerned has been established on an appropriate legal basis. It does not justify treating all intermediaries or platforms as automatically liable for every item of content published by users. Identifying each party's role and degree of contribution to the damage remains essential to avoid an unjustified expansion of liability.

Subsection Two: The Complementarity of Civil Protection with Constitutional Guarantees and Special Legislation

The protection of individuals against digital violations extends beyond the scope of the Civil Code to include constitutional guarantees and specific legislative provisions. Article 47 of the Algerian Constitution enshrines the right to protection of privacy and honour and the confidentiality of private correspondence and communications, and recognises the protection of individuals in the processing of personal data as a fundamental right. Accordingly, the interpretation of civil liability rules in digital disputes must take these rights into account. The assessment of damage should not be confined to financial loss, nor should an infringement of privacy be reduced to a merely formal breach where it has produced personal consequences capable of compensation.[12]

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[8] Majed Al-Mazmi, op. cit., pp. 539–541.
[9] Djamal Brahimi, op. cit., p. 128.
[10] Fatima Zahra Mesaaour, "The Specific Nature of Compensation for Non-Pecuniary Damage under Algerian Civil Law," Al-Baheth Journal of Academic Studies, Vol. 11, No. 2, 2024, pp. 746–748.
[11] Majed Al-Mazmi, op. cit., p. 541.
[12] Presidential Decree No. 20-442 of 30 December 2020 promulgating the Constitution, published in the Official Gazette of Algeria, No. 82.

Law No. 18-07 on the Protection of Natural Persons in the Processing of Personal Data plays a complementary role, as it regulates aspects of the lawfulness of data collection, processing and use. This Law was amended and supplemented by Law No. 25-11 of 24 July 2025, which requires researchers to rely on the updated text rather than the original 2018 version alone. A breach of a specific obligation relating to data processing may be an important element in determining the unlawfulness of conduct. It does not, in itself, dispense with the examination of the conditions for civil compensation, particularly damage and causation, unless a specific provision prescribes a different legal effect.[13]

A distinction must also be drawn between civil liability and criminal liability. A digital act may constitute an offence where it satisfies the elements of an applicable criminal provision, and may at the same time cause civil damage capable of compensation. However, its criminal characterisation does not remove the need to identify the civil damage for which redress is sought. Likewise, the absence of a criminal conviction should not automatically and in the abstract be treated as excluding every possibility of a civil claim. The effect of the criminal judgment and the conditions of civil liability must be determined in accordance with the procedural and substantive rules applicable in each case.[14]

The resulting complementarity means that civil protection is neither a substitute for privacy guarantees nor for the criminalisation prescribed by law. Rather, it is a means of redressing the damage suffered by the individual. Suspending publication, removing content or restricting its circulation may be necessary to prevent the infringement from continuing, while monetary compensation remains due where its conditions are satisfied. Assessment should therefore not be confined to the amount awarded; it should also consider the suitability of the available measures for stopping the damage and limiting its continuation, subject to the jurisdiction and procedures prescribed by law.

Part Two: Difficulties in Proving Digital Non-Pecuniary Damage and Determining the Scope of Compensation

The effectiveness of civil protection does not depend solely on the existence of a legal basis for compensation. It also depends on the injured person's ability to prove the infringement and the resulting damage, identify the person who may be held liable, and obtain compensation proportionate to the nature of the harm suffered. These matters become more complex where human conduct interacts with the characteristics of online publication, where several accounts redistribute the content, where the true identity of its owner cannot be established, or where the effects of the infringement continue after the original post has disappeared.

Section One: Difficulties in Proving Digital Non-Pecuniary Damage and Identifying the Person Liable

Digital violations create practical difficulties in proving non-pecuniary damage and identifying the person liable, given the non-material nature of the damage and the difficulty of identifying those responsible. This raises issues concerning proof of damage, causation and the establishment of civil liability.

Subsection One: Proving the Infringement and Damage in the Digital Environment

The first difficulty lies in distinguishing proof of the digital act from proof of the non-pecuniary damage resulting from it. A claimant may be able to submit a screenshot of a post containing offensive statements or private information. However, that screenshot does not necessarily establish the identity of the person who created or published the post, nor does it always establish the date of publication, the integrity of the content or the absence of alteration. Similarly, proving that content existed is not, by itself, sufficient to determine the extent of its dissemination or duration, or whether it reached particular persons. A distinction must therefore be drawn between evidence establishing the existence of digital material, evidence enabling it to be attributed to a specific person, and elements supporting the assessment of the resulting damage.[15]

A range of means may contribute to proving a digital violation, including saved screenshots of posts, electronic messages, communication logs, hyperlinks, available account data, records of inspection and, where appropriate, technical expert evidence. The evidentiary value of each means should not, however, be presumed absolutely. Its connection with the incident, the possibility of verifying its source, the integrity of its preservation and the possibility that it has been altered or taken out of context must be examined. The legal rules governing the lawful acquisition of evidence must also be observed; the desire to prove an infringement cannot justify committing a separate infringement of another person's privacy.[16]

Technical expertise becomes particularly important where the defendant disputes the authenticity or attribution of the content, alleges that the account was hacked, or claims that a recording was edited or fabricated. Depending on the available data and the scope of the judicial mandate, an expert examination may assist in analysing digital files and their technical metadata, identifying certain indicators of alteration or manipulation, and examining links between accounts and the materials in dispute. It cannot necessarily resolve every issue, particularly where data have been deleted, lost or rendered inaccessible. Expert evidence is therefore a means of clarifying technical facts, not a substitute for the court's overall assessment of the evidence.

Proving non-pecuniary damage raises a different difficulty, since psychological harm or injury to personal standing does not necessarily appear in a separate material document. Its existence may be inferred from the nature and seriousness of the

[13] Law No. 18-07 of 10 June 2018 on the Protection of Natural Persons in the Processing of Personal Data, as amended and supplemented by Law No. 25-11 of 24 July 2025, published in the Official Gazette of Algeria, No. 48, 24 July 2025.
[14] Fatima Zahra Mesaaour, op. cit., pp. 746–748.
[15] Majed Al-Mazmi, op. cit., p. 541.
[16] Djamal Brahimi, op. cit., p. 153.

content, the circumstances of publication, the number of persons who received it, the continuation of its circulation and the effects observed in the injured person's life. Testimonial evidence and professional or medical documents may be relevant depending on the nature of the claim. However, a medical report should not be made a mandatory condition for every form of non-pecuniary damage: an infringement of honour or reputation does not necessarily correspond to a medical condition capable of diagnosis.[17]

A further distinction must be drawn between proof of the infringement of a right and proof of the extent of the resulting damage. Evidence that a private photograph was published without justification may establish an infringement of privacy, but does not by itself identify all the consequences that followed or the appropriate amount of compensation. Conversely, the injured person should not be required to prove every psychological effect through direct material evidence where the nature of the infringement and the surrounding circumstances allow the court to infer non-pecuniary damage. What is required is a reasoned judicial assessment that balances the evidence submitted against the specific nature of the interest infringed, without presuming damage that has not been established or denying damage merely because it cannot be measured precisely in monetary terms.[18]

Proof becomes more difficult where the infringement is repeated or continues over time. A person may publish harmful content and then delete it after it has reached a limited number of followers, while others republish it through different accounts. In such a situation, deletion of the original post does not necessarily bring the damage to an end. It does not, however, automatically establish that the original publisher is liable for every subsequent circulation, regardless of its independence. The appropriate approach requires examining the causal connection between the original act and subsequent consequences, whether those consequences were foreseeable, and whether the intervention of a third party created an independent cause or contributed to aggravating the damage.

Subsection Two: The Problem of Identifying the Person Liable for a Digital Violation

The difficulty of identifying the person liable is not limited to concealed identities or the use of pseudonymous accounts; it also encompasses the multiplicity of roles that may contribute to the occurrence of damage. A person may have created the content, first published it, redistributed it, modified it by adding misleading information, or used it to obtain a benefit. A digital platform or technical service provider may also become involved in certain circumstances, but the nature of its involvement and its obligations differ from the conduct of the user. These parties should not be grouped under a single description or subjected to the same degree of liability without identifying the legal basis for holding each of them accountable.[19]

Liability becomes clearer where it is established that a person created false content with the intention of harming another, published information that they knew would infringe the subject's privacy without justification, or redistributed harmful content in circumstances that make fault attributable to them. Nevertheless, a specific intention to cause harm should not be presumed to be a necessary condition for every form of civil liability. This depends on the legal basis relied upon and the nature of the act and the obligation breached. Liability may arise under the general rules where fault, damage and causation are established, even if it is not proved that the perpetrator acted with the specific purpose of causing injury.[20]

Identifying the person liable raises a particular problem where publication occurs through an account impersonating another person or through a hacked account. In such cases, the appearance of an account name is insufficient to prove that its registered owner committed the act. Technical indications and the circumstances surrounding publication must be examined, including the possibility that the account was used by a third party and whether evidence is available linking the person concerned to the act. Care must therefore be taken not to base liability solely on ownership of an account or its association with a person's name, as this may result in holding someone liable for an act they did not commit.[21]

The liability of digital platforms should be assessed in light of the nature of the service, the applicable legal obligations, the platform's knowledge of the harmful content, the nature of any action taken or omitted, and whether the law imposes a specific duty in the circumstances concerned. Absolute liability should not be imposed merely because content appeared on a platform operated by a particular entity. Conversely, liability should not be excluded in general terms where the entity is shown to have breached a legal or contractual obligation whose observance could have prevented or limited the damage. The relevant duty and the connection between its breach and the resulting harm must be identified, rather than relying on general statements about the role of platforms in disseminating content.

In this context, access to data that may help identify the publisher presents a further problem, particularly where such data are held by a service provider or technical entity. The injured person may need to rely on judicial procedures available under the law to obtain the necessary information, subject to the confidentiality of communications, the protection of personal data and the conditions governing disclosure. Difficulty in accessing data should not justify broad requests for information

[17] Ibid., p. 153.
[18] Fatima Zahra Mesaaour, op. cit., p. 747.
[19] Mohamed Mokhtar El-Sayed El-Sayed, "Civil Liability Arising from Electronic Damage over the Internet: An Analytical Study," International Electronic Journal for the Publication of Legal Research, 2023, p. 128.
[20] Nassima Hachoud, op. cit., p. 1418.
[21] Mohamed Mokhtar El-Sayed El-Sayed, op. cit., pp. 134–136.

unrelated to the dispute. Equally, privacy protection should not obstruct lawful evidentiary measures available to the competent authorities.

A practical approach requires the roles of the relevant authorities to be allocated without confusing civil liability with criminal or regulatory competences. The competent authorities may investigate conduct constituting a criminal offence, while the injured person seeks compensation before the competent judicial body in accordance with the applicable procedures. Issues may also arise concerning contractual obligations or the protection of personal data. The effectiveness of protection is therefore not measured solely by the number of legal provisions, but by the extent to which they can be used in a coordinated manner to identify the liable person and redress the damage without undermining the legal safeguards afforded to the parties.

Section Two: Limits of Compensation for Digital Non-Pecuniary Damage and Mechanisms for Its Development

Compensation for digital non-pecuniary damage raises the problem of determining its scope, given the difficulty of assessing its non-material effects and the varying ways in which they affect the injured person. This requires examining the limits of compensation under the general rules of civil liability and the extent to which its mechanisms need to be developed to ensure effective protection of rights infringed in the digital environment.

Subsection One: The Court's Discretion in Assessing Compensation for Digital Non-Pecuniary Damage

The assessment of compensation is one of the most problematic issues in the field of non-pecuniary damage, since the court is faced with harm that cannot be measured directly by reference to a fixed monetary standard. An infringement of reputation or privacy has no market price by which the amount of compensation can be determined, and individuals may not be affected by the same incident to the same degree. The difficulty of assessment does not, however, preclude compensation. It instead requires the adoption of objective criteria capable of achieving a reasonable degree of proportionality between the seriousness of the infringement and the amount awarded.

Under Article 131 of the Civil Code, the Algerian legislature has granted the court discretion to assess compensation, taking the surrounding circumstances into account. This discretion makes it possible to consider the nature of the right infringed, the seriousness of the act, the duration of its effects, the circumstances in which it occurred, the extent of its dissemination and the established consequences. Judicial discretion does not, however, mean freedom to determine an arbitrary amount. The assessment must be based on objective elements drawn from the case file, and the compensation must be connected to damage that has been shown to result from the harmful act.

The nature of the right infringed is one of the essential elements in the assessment. An invasion of the confidentiality of a personal communication or the publication of an intimate photograph without justification may have consequences different from those resulting from a passing disagreement in an online discussion. Similarly, the publication of a false allegation affecting a person's professional reputation may cause non-pecuniary damage distinct from any financial loss claimed. It is therefore necessary to distinguish non-pecuniary damage from pecuniary damage, so that compensation for one does not cause the other to be overlooked or the same damage to be compensated twice under different labels.[22]

The extent to which content has been disseminated is an important factor in assessing digital damage, but it is not an independent or exclusive criterion. A post may be available to a limited number of people yet contain highly private information or reach a professional circle connected to the injured person's interests. Other content may be widely disseminated without proof that everyone who viewed it attributed it to the injured person or that it had the effects alleged. The size of the audience must therefore be considered together with the nature of the content, the context of publication and the evidence establishing the actual consequences of the infringement.

The continuation or repetition of the infringement should also be taken into account when assessing compensation. If the defendant republishes the content after being asked to stop, or deliberately keeps the material available despite its established unlawfulness, these facts may be relevant to assessing the seriousness of the conduct and its consequences, where they are proved. Nevertheless, compensation should not be increased automatically merely because publication was repeated. It is necessary to determine whether the repetition caused additional damage or aggravated the original damage, and whether the subsequent acts can be attributed to the same person.[23]

The assessment also concerns whether monetary compensation alone is sufficient to redress the damage. The injured person may receive a sum of money while the offensive content remains available online or continues to circulate through other accounts. In such cases, monetary compensation may not achieve the intended practical purpose unless, where a legal and procedural basis exists, it is accompanied by appropriate measures to stop the infringement, remove its effects or correct the published information. A distinction must be drawn between compensation for damage that has already occurred and measures intended to prevent the damage from continuing or becoming more serious.[24]

This issue also highlights the need for courts to give reasons for judgments awarding compensation for digital non-pecuniary damage. The more clearly a judgment identifies the factors relied upon in assessing the damage—such as the nature of the

[22] Nassima Hachoud, op. cit., p. 1418.
[23] Ibid., p. 1419.
[24] Majed Al-Mazmi, op. cit., p. 540.

infringement, the extent and duration of its dissemination, and the established consequences—the more transparency and comparability may be enhanced. This does not require all awards to be standardised at a single amount, since differences in the facts and the rights infringed justify different outcomes. The objective is instead to develop clear criteria of assessment that prevent unjustified disparities between comparable cases.

Subsection Two: Mechanisms for Strengthening Civil Protection against Digital Violations

Effective civil protection requires the development of means of proving digital violations while safeguarding other rights and freedoms. Possible mechanisms include greater reliance on technical expertise to examine content and its data, facilitating the reliable preservation of digital evidence, and developing judicial practices for assessing photographs, messages and electronic posts. These measures should be implemented through legal procedures that guarantee the integrity of evidence and respect privacy, while avoiding the assumption that every technical means is more reliable than traditional forms of evidence merely because it is digital.[25]

It is also desirable to strengthen access to the evidence necessary to identify the person liable, within the limits permitted by law. The injured person's inability to identify the owner of an account or obtain publication data may weaken the claim despite the existence of serious indications that an infringement occurred. This difficulty may be addressed by activating lawful judicial procedures for obtaining relevant data, while observing proportionality between the information requested and the purpose of the request, and respecting the confidentiality of communications and the protection of personal data. Such a mechanism should not become a means of unjustified surveillance or of obtaining information unrelated to the dispute.[26]

Practical criteria for assessing compensation for digital non-pecuniary damage should also be developed. These criteria may include the nature of the interest infringed, the seriousness of the content, the extent of its dissemination, the period for which it remained available, the frequency of republication, the possibility of removing its effects, and the personal or professional consequences established. It is proposed that these elements be adopted within a flexible guiding framework rather than as a rigid monetary tariff. Absolute standardisation may disregard differences between infringements, whereas judicial guidance may achieve greater consistency without undermining the court's discretion to assess the circumstances of each case.[27]

Greater coordination should also be achieved between the Civil Code and the special legislation governing the protection of personal data. Law No. 18-07, as amended and supplemented by Law No. 25-11 of 2025, provides an important legal framework for addressing violations arising from the use or disclosure of personal data in unlawful circumstances. Reliance on this framework nevertheless requires identifying the provisions applicable to the incident, the legal status of the parties, the nature of the processing and the obligations that have been breached. The mere existence of a violation of data-protection rules is not sufficient to conclude automatically that all the elements of civil liability have been established or to determine the amount of compensation without a separate examination.

Effective protection also requires a balance between redressing damage and safeguarding freedom of expression. Compensation claims must not become a means of silencing legitimate criticism or preventing the dissemination of information whose publication is justified by the public interest. Equally, freedom of expression cannot be invoked to justify an unlawful infringement of honour or privacy. Achieving this balance requires consideration of the nature of the content, its connection with a matter of public concern, the basis on which the publisher relied, the manner of expression and the personal right that the injured person claims has been infringed. The assessment of unlawfulness remains dependent on the circumstances of the case and the applicable legal provisions, not merely on the person's displeasure with the content of a post.

One proposal worthy of consideration is the development of judicial or professional guidelines to assist courts in giving reasons for compensation awards in digital infringement cases and in identifying the elements to be examined in each case, without undermining judicial independence. Specialised training in digital evidence may also be supported, practices for preserving electronic content may be developed, and public awareness of individuals' rights and obligations when publishing data, photographs and correspondence may be strengthened. These proposals remain dependent on practical implementation and compliance with legal safeguards, but may help narrow the gap between the theoretical recognition of a right to compensation and the injured person's ability to obtain effective protection.

Conclusion

The study of non-pecuniary damage resulting from digital violations demonstrates that the general rules of civil liability under Algerian legislation provide an important legal basis for protecting personal interests infringed through electronic media. Article 124 of the Civil Code establishes liability for harmful acts, Article 182 bis confirms that non-pecuniary damage is compensable, and Article 131 grants the court discretion to assess compensation in light of the surrounding circumstances. These provisions operate alongside the constitutional guarantee of privacy and honour and the special

[25] Mohamed Mokhtar El-Sayed El-Sayed, op. cit., p. 147.
[26] Majed Al-Mazmi, op. cit., p. 540.
[27] Fatima Zahra Mesaaour, op. cit., p. 748.

legislation governing the protection of personal data and the prevention of offences connected with information and communication technologies.

Nevertheless, legal recognition of the right to compensation does not mean that practical protection is complete. Digital violations raise difficulties in proving the authenticity of content and attributing it to its source, determining the extent of its dissemination and the persistence of its effects, establishing damage and causation, and distinguishing the publisher's personal liability from the potential liability of other parties involved in circulating or processing the content. The assessment of compensation also remains delicate because non-pecuniary damage is non-financial in nature and there is no uniform mathematical standard that accounts for differences between infringements and the rights affected.

First: Findings

1. The general rules of civil liability are applicable to digital violations. The use of electronic means does not require the creation of a separate liability regime in every case; rather, it requires the application of the general rules while taking account of the technical characteristics that affect proof and the assessment of damage.
2. Article 182 bis provides an express basis for compensation for non-pecuniary damage. Its application to digital violations nevertheless requires identification of the personal interest infringed and the nature of the damage resulting from the act.
3. A distinction must be drawn between proving the infringement and proving the damage. The existence of a post or message does not necessarily establish the identity of the publisher, the extent of dissemination or all the consequences alleged by the injured person.
4. The multiplicity of persons involved does not automatically entail the liability of all parties. The act attributable to each party, the legal basis of their liability and its connection with the damage must be identified, while taking account of Article 126 of the Civil Code where its conditions are satisfied.
5. Monetary compensation may not be sufficient on its own. The nature of the infringement may require legal measures to stop its continuation or limit its effects, depending on the applicable procedural basis and judicial jurisdiction.
6. Law No. 25-11 of 2025 requires legislative references to be updated. It is not appropriate to rely on the original version of Law No. 18-07 without reviewing its amendments and the provisions currently in force.

Second: Recommendations

1. Develop guiding criteria for assessing compensation for digital non-pecuniary damage, taking account of the nature of the right infringed, the seriousness of the act, the extent of dissemination, the duration of its effects and the consequences established in the proceedings.
2. Strengthen the training of those responsible for adjudicating civil disputes in matters relating to the examination of digital evidence and technical expertise, while maintaining the distinction between technical issues and legal issues.
3. Improve mechanisms for preserving and documenting digital evidence and verifying its integrity, and facilitate access to the data necessary to identify the person liable through proportionate legal procedures.
4. Strengthen coordination between the rules of civil liability and the special legislation governing the protection of personal data, while determining the effect of specific violations on the establishment of civil liability without presuming that damage or causation has been established in every case.
5. Examine whether legislative clarification or judicial guidance is needed concerning appropriate civil measures to stop continuing digital violations and limit their effects, without unjustifiably infringing freedom of expression and fundamental rights.
6. Support empirical studies based on published judicial decisions in order to assess the trends of Algerian courts in awarding compensation for non-pecuniary damage resulting from online publication and to derive practical criteria capable of further development.

In conclusion, the central challenge is not to establish in principle that digital non-pecuniary damage is compensable, but to ensure that protection moves from legal recognition to effective redress. This requires precise application of the elements of civil liability, objective assessment of evidence, clear identification of the person liable and reasoned determination of the amount of compensation, together with the use of such measures as the law permits to stop the infringement and limit its effects.

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