

## COMPENSATION FOR ECONOMIC LOSSES: PERSPECTIVES AND AMBIGUITIES

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### **Abstract**

*This paper examines the complex legal framework surrounding compensation for economic losses, focusing on the balance between fundamental rights and tort liability. The study analyzes the application of the proportionality test in cases where fundamental rights conflict with general interests, particularly in disputes involving dignity rights versus freedom of expression. Through examination of European case law and Moldovan Civil Code provisions, the research explores the distinction between direct and indirect economic damages, and the emerging recognition of purely economic losses as compensable harm. The paper investigates the "rule of exceptions" that traditionally limits compensation for pure economic losses and examines evolving judicial approaches to financial harm in commercial relationships. The analysis reveals significant ambiguities in determining when economic losses should be compensated, particularly in cases involving informational services and contractual relationships. The research contributes to understanding the evolving landscape of tort liability and economic damage compensation in European legal systems.*

**Keywords:** *economic losses, tort liability, fundamental rights, proportionality test, compensation*

**JEL Classification:** K13, K41

### **1. LEGAL REASONING AND THE BALANCING TEST**

The resolution of legal disputes is generally done through judicial reasoning in the form of a syllogism, where the major premise is the applicable legal norm, the minor premise is the factual situation, and the conclusion, contained in the court's judgment, is the sanction or the effect of the norm upon the established facts. In the case of disputes concerning fundamental rights, a different type of

sylogism is applied, called the "balancing test", or the test of proportionality of conflicting rights, particularly when one or more rights are in conflict with the general interest. The court performs a balancing of the specific circumstances of the civil case.

Criteria for assessing the "balancing" process or the exercise of the proportionality test in case of conflicting rights must rely on the reasoning specific to the engagement of tort liability, according to the provisions of Articles 1998-1999 of the Civil Code of the Republic of Moldova.

A tort action based on the violation of a fundamental right, such as the right to dignity, allegedly violated through the intentional dissemination of false information, must be weighed against the corresponding rights of the persons who caused the damage to dignity, claiming that they themselves were exercising a fundamental right – the right to freedom of expression.

Under Article 2003 of the Civil Code, "The obligation to repair damage is excluded if it was caused in order to protect fundamental values in a democratic society, especially if the damage was caused through the disclosure of information via mass media." According to Article 3 of the Constitution of the Republic of Moldova, "Human dignity, his rights and freedoms, the free development of the human personality, justice and political pluralism are supreme values and are guaranteed."

## **2. EUROPEAN COURT STANDARDS AND PROPORTIONALITY**

In analyzing the protection of the private life of the Claimants, the European Court of Human Rights considered the following factors: contribution to a debate of general interest; the notoriety of the person concerned; the subject of the report; the prior behavior of the person concerned; the content, form, and repercussions of the publication (*Fuchsman v. Germany*, para. 34).

When resolving such disputes, the court must apply the balancing of the proportionality of the competing rights. The negative effects that may result from the press-related tort shall not constitute a measure of the damage caused to the Claimant, but will serve as arguments to weigh the scale in favor of either freedom of expression or the right to dignity.

From the perspective of European case law regarding special torts, we support the position of Professor Ion Deleanu, who argued that "Objective liability must be acknowledged; not as a speculative or sterile legal fiction, but as the only solution in certain circumstances" (Deleanu, 2005, p. 298).

## **3. RELATIONSHIP BETWEEN TORT AND CONTRACTUAL LIABILITY**

According to Article 1999 of the Civil Code of the Republic of Moldova, the relationship between tortious and contractual liability is governed by the principle

of subsidiary applicability of tort liability, under the following provisions: (1) The provisions of this chapter apply also to damage caused in contractual relationships, except in cases where legal provisions regarding non-performance of obligations apply; (2) The provisions of this chapter do not apply where their application contravenes other legal provisions; (3) The provisions of this chapter do not preclude the application of legal remedies on other legal grounds.

The wording of Article 1399 of the Civil Code prior to the 2019 amendments expressly referred to liability between contracting parties and stipulated that: "The provisions of this chapter shall also apply to damage caused in contractual relationships, except in situations where provisions regarding the liability of the debtor for non-performance of the contract and special regulations for certain contractual relationships apply."

### **3.1. Theoretical Foundations in Moldovan Legal Science**

The scientific analysis of the correlation between tort liability and contractual liability, as well as with other similar institutions, was developed for the first time in the legal science of private law of the Republic of Moldova by Dr. Andrei Bloşenco in the work entitled "Tort Civil Liability" (Bloşenco, 2002). This work is of special interest to civil legal science as it analyzes the theory and practice of civil liability before the adoption of the Civil Code of the Republic of Moldova on 06.06.2002. Based on the analysis, and using comparative legal methods, the author predicted the development of civil liability institutions, including bodily injury converted into biological damage, recreational damage later categorized as non-pecuniary damage, aesthetic damage as a component of biological damage, damage to the affective personality which became part of moral damage in law, and damage to social personality involving violations of non-patrimonial personal rights such as honor, dignity, reputation, name, and commercial name.

At the level of pecuniary damage, which may manifest as actual damage and loss of profit, the same author supports and develops the legal grounds and conditions for the recovery of lost benefits. This perspective might also affect the areas form the field of climate change (Plotnic, 2020).

## **4. INDIRECT MATERIAL DAMAGE AND CAUSAL LINKS**

Regarding the possibility of recovering indirect material damage, Dr. Andrei Bloşenco held in his reference work that "it should not be compensated, as there is no sufficient causal link between the wrongful act and this damage" (Bloşenco, 2002, p. 56). Unfortunately, in his work on civil liability or in other reference works, there is no doctrinal analysis of what constitutes a "sufficient causal link" that would justify the exclusion of the possibility to recover indirect damages.

In practice, the legislator excluded special regulations for certain contractual relationships as exceptions from the application of tort law provisions to wrongful acts. The logic behind this exclusion lies in the appearance, at legislative and sub-

legislative level, of various named and unnamed contractual types, for which adequate mechanisms of liability suited to the legal essence of the contractual or quasi-contractual construction have not been developed.

## **5. PURELY ECONOMIC LOSSES: RECOGNITION AND COMPENSATION**

The study of the category of purely economic losses shows that these should be considered compensable damage, even in the absence of initial personal or property damage. In this context, the legal term "pure/exclusive" in judicial determinations plays a crucial role, as it strictly defines the financial losses of the injured party.

It should be considered that if economic losses are related to minor damage to health or property, then they are classified as "indirect economic damage" and must be compensated by the liable person without specific restrictions, in accordance with paragraph 3 of Article 19 of the Civil Code of the Republic of Moldova.

In the scientific evaluation of the grounds for recovery of economic damage, one may ask: Why are purely economic losses compensated to a lesser extent than physical/material damages that are explicitly listed in Article 19 of the Civil Code? In response, it should be noted that indirect economic damage is compensable in European legal systems, regardless of the source of the damage – intentional or negligent behavior, or actions subject to strict liability. All this illustrates a European legal trend to recognize financial losses as a category eligible for compensation as economic damages.

### **5.1. The Rule of Exceptions**

Legal literature discusses cases of limiting compensation for pure economic losses, commonly referred to as the "rule of exceptions." Professor Willem H. Van Boom notes that: "Today, pure economic losses are probably the central problem in the expansion of tort law. In some countries, they are associated with uncontrolled and unpredictable compensation demands, which could become limitless. These arguments have been used as reference points against compensating pure economic losses and have supported the development of the 'rule of exceptions' in doctrine, aimed at keeping the gate open selectively" (Van Boom, 2004, p. 3).

## **6. COMMERCIAL RELATIONS AND ECONOMIC DAMAGE**

Commercial economic relations are highly complex from the perspective of the interweaving of the legal, economic, and patrimonial interests of the participants in these relationships. From this perspective, it is natural to conclude that causing damage to the interest of one participant in the commercial

relationship can spread directly or indirectly to the interests of various other subjects involved in the relationship, by reducing the economic assets' potential to generate capital gains in the form of income.

These circumstances and the conditions of mutual influence on the economic interests of the subjects of commercial relations fall within the magnitude of the potential of each participant in these relations, which can be disrupted by the harmful actions of their counterpart. The size of the economic potential of an asset can be measured by the asset's capacity to bring certain benefits/income to its owners or beneficiaries. This potential value is usually set by the holders in the market price of the asset, which is why the potential compensation for purely financial damage tends to double the amount of material damage compensation.

Conversely, in certain situations, the economic interests of contractual parties, arising from the provision of informational services, are not dependent on any material assets held by the asset holders. In the absence of the possibility to compensate exclusively economic losses, the injured party who suffers damage to a right or interest loses the right to compensation for those economic losses.

## **7. EUROPEAN JURISPRUDENTIAL APPROACHES**

The distinction between "indirect" financial losses caused by minimal material damage and "pure" (or exclusively) financial losses, which may arise without any damage to the person or their property, has been recognized only at the level of the jurisprudence of European countries. These jurisdictions consider the essential link between economic damage and material/patrimonial damage sustained primarily by the injured person. Thus, European courts may rule that in the absence of material/patrimonial damage, it is impossible to claim economic/financial damage.

However, this rule concerning the priority of compensating patrimonial and economic damage categories is not uniformly applied across European courts. Some courts may decide that losses caused by low-quality informational services are not "exclusive" – that is, strictly financial – but rather "indirect," and therefore qualify as compensable under the law by the responsible party.

Therefore, we observe a lack of positive legislative argumentation regarding the factor that determines the "order of succession" in applying liability for the provision of substandard informational services and the causation of financial losses depending on the presence of patrimonial damage. In such situations, the rationale behind the rule must be analyzed – that is, the idea that in the absence of actual material/patrimonial damage, the "rule of exceptions" applies, which excludes liability for financial losses. Conversely, the existence of actual patrimonial damage can serve as a precondition for engaging liability for financial losses, i.e., pure financial damage.

What is certain is that the rule establishing the order in which liability arises for causing financial losses depending on the existence of patrimonial damage is

aimed at limiting the number of potential lawsuits based on such grounds. It maintains a positive level of deterrence for potential perpetrators of this type of harm.

## 8. CONCLUSIONS

The analysis of compensation for economic losses reveals significant complexity in balancing fundamental rights with tort liability principles. The proportionality test emerges as a crucial tool for courts when adjudicating conflicts between dignity rights and freedom of expression. The evolution from traditional tort concepts to recognition of purely economic losses reflects broader changes in European legal systems toward acknowledging financial harm as compensable damage.

The distinction between direct and indirect economic damages, while theoretically sound, creates practical challenges in determining compensation eligibility. The "rule of exceptions" serves as a necessary limitation mechanism but requires careful application to avoid unfair outcomes. Future legal development should focus on establishing clearer criteria for determining sufficient causal links and developing more precise standards for evaluating purely economic losses in commercial relationships.

The research demonstrates that while European legal systems are moving toward greater recognition of economic losses, significant ambiguities remain in determining when such losses should be compensated, particularly in cases involving informational services and complex commercial relationships.

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