

# **ROMANIA**

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## **Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), Decision no 366 of 22 February 2017. Traffic accident. Death of the victim. Assessment of the amount of moral damages**

The case is important because, in the absence of legislation providing for clear and objective criteria for assessing moral damage, the role of case-law in this matter becomes decisive.

## **Facts of the case:**

The claimants A, B and C filed a lawsuit to Ilfov Tribunal, against the defendant D. SA (insurance company), requesting pecuniary and moral damages following the death of their son, respectively their brother, in a traffic accident.

Both first instance and appeal court (Bucharest Court of Appeal) granted pecuniary and moral damages to the claimants, but the amounts differed.

Below the amounts granted by the two courts:

	Tribunal	Court of Appeal
Claimant A (mother)	€ 219,780	€ 18,681
Claimant B (father)	€ 219,780	€ 18,681
Claimant C (brother)	€ 54,945	€ 8,791

Pecuniary damages: 2,490 RON (approx € 500) in both courts.

The High Court dismissed the reviews for procedural reasons. The review is an extraordinary remedy and its reasons are limited to the application of law (points 1 to 8 of Art. 488 of the Civil Procedure Code), and do not cover an assessment of the facts, of the evidence or of the amount of damages.

The **reasoning of the Court** is important because it presents the **criteria for assessing moral damages in Romanian private law**.

The **old Civil Code** (1864) did not provide anything with respect to moral damage.

The **new Civil Code** (applicable since 2011): a few express provisions concerning pecuniary and moral damage in the case of the death of the victim.

**Only one paragraph** deals with moral damage in the case of death - Art. 1391, para 2: "The court may also grant compensation to ascendants, descendants, brothers, sisters or a spouse for pain and suffering caused by the death of the victim, and to any person who can prove the existence of such pain or suffering".

The **Code does not provide clear and precise criteria to assess moral damage.**

High Court reasoning:

The criteria to be considered when assessing moral damage - those set out by doctrine and case-law:

1. the severity of the damage;
2. the importance of the injured values;
3. the duration of the harmful consequences;
4. the nature of the suffering and its intensity.

The court has discretion in assessing the amount of moral damages, since non-pecuniary damage cannot be assessed by clear evidence.

The assessment of moral damages *in concreto*:

The amounts shall be determined in each individual case in relation to the actual circumstances of the case, the values of the claimant that were affected, their importance for the person concerned and the intensity of suffering by the claimant.

**Under no circumstances** should the courts quantify those damages to the **amounts set by other courts, in other cases**, which may be similar but not identical



The conclusion of the High Court:

It is essential to ensure a **reasonable proportionality** between compensation and damage - the ultimate criterion for determining the amount of moral damages

Courts must primarily refer to what the applicants have lost from a psychological, social and family perspective, related to the degree of kinship with the deceased, to what would have meant a normal, peaceful, and happy life for them in present and in future.

The case presented at ACET 2017: High Court took over the criteria for determining moral damages from the **settled case-law of the ECtHR** (*Tolstoy Miloslavsky v. The United Kingdom* and other cases).

The case presented in 2017: moral damages for personal injury. The case presented this year: moral damages for death of a close relative.

The reasoning in the previous case (2017) emphasised an additional principle: **unjust enrichment of the person claiming moral damages should not be achieved.**

The Romanian classic doctrine, following the French one, classified moral damage in relation to the personality traits affected:

- damage caused to one's **physical personality**: non-pecuniary damage arising from physical injuries, disabilities or diseases; in a broader sense: aesthetic damage, loss of amenities, juvenile damage;
- damage caused to one's **emotional personality**: suffering caused by death, or the disability of individuals to whom one is bound by a strong affection bond;
- damage caused to one's **social personality**: honesty, honour, reputation, etc.

The moral damages granted by the High Court in the present case would be included in the second category (damage caused to one`s **emotional personality**), a category that includes **psychological suffering caused by the death of a person**.

**Conclusion:** it is useful to analyse new decisions of the High Court, even though on well-known topics, because the complete picture of the criteria for assessing moral damages only results from correlating these decisions, absent express legal provisions.