

ROMANIA

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Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) Civil Section 1, Decision no 1147 of 29 March 2018: Tort Liability; Victim by Ricochet; Moral Damages

For the first time we analyse a case concerning compensation for moral damage **not of the direct** victim of a traffic accident, but of a “victim by ricochet”.

“Victim by ricochet” – any person who has an interest relation (economic or non-economic) with the immediate victim and who bears an economic loss or her feelings towards the immediate victim are harmed, as a result of the accident.

Brief Summary of the Facts

As a result of a traffic accident, the following claimants requested compensation:

- a.** The direct victim of the accident (who suffered significant physical injury and remained with a long-lasting disability)
- b.** His spouse, who requested Eur 250,000 as moral damages for her having suffered psychologically due to the accident

Spouse's suffering: she had to completely give up her previous usual life in order to be with her husband permanently; she could not fully enjoy motherhood, no longer being able to take care of their two children as she had done before; extra efforts needed to take care of her husband

Judgment of the Court

- Bistrița-Năsăud Tribunal: partially granted spouse's request, awarding her Eur 150,000 as moral damages
- Cluj Court of Appeal reduced the amount to Eur 40,000
- High Court of Cassation and Justice granted the review of the insurance company, overturned the contested decision in part, and sent the case for retrial to the same appellate court, arguing, in essence, that moral damages are not due to the spouse of the direct victim of an accident.

In order to comment upon the Supreme Court's Decision, two preliminary issues must be clarified:

- a. The provisions of Art. 1391 of the Civil Code;
- b. Decision no 12/2016 on the interpretation of the provisions of art 1391 pa-ra 1 of the Civil Code, its consequences and, in particular, the scope of its application

a. First issue: Art. 1391 of the Civil Code

Para (1): “In cases of the violation of physical integrity or health, compensation may also be granted for diminished opportunities for a family life or social life”.

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”.

We underline that moral damages are awarded for the suffering of the victim’s relatives only in the case when the victim died.

b. The second issue: the scope of application of the interpretive Decision issued by the High Court with respect to this rule.

Explanation: The current Romanian Civil Procedure Code provides for a procedure in order to refer cases to the High Court of Cassation and Justice with the purpose of rendering a preliminary ruling concerning certain legal matters.

Since the High Court's decision expressly refers to criminal cases concerning crime of bodily injury, it is clear that it is binding only in criminal proceedings (therefore the reasoning of the Cluj Court of Appeal is partially correct).

In the Decision discussed now, the High Court mentions the following:

However, the principle of reparation for damage caused by an unlawful act (which may or may not be a crime) is the same, irrespective of whether the civil claim is joined with the criminal proceedings or is independent from them. The reasoning underlying the legal ruling in Decision no 12/2016 is fully applicable also in a civil case based on the provisions of art 1391 of the Civil Code.

Question:

Why does the High Court refer to criminal cases when it actually interprets an article in the Civil Code?

Answer:

The High Court refers to criminal cases concerning a crime of bodily injury, but where a civil claim for compensation of damage was joined with the criminal proceedings. And the civil claim relies upon art. 1391 of the Civil Code.

The interpretive Decision of the High Court:

The New Civil Code distinguishes between:

- a. reparation for bodily damage caused by injuries to health and personal integrity and
- b. the damage caused in the case of the victim's death
 - a. In the first case, the compensation must cover both
 - the economic component and
 - the moral component of the damage (with the purpose of compensating or at least alleviating the pain and physical suffering that was caused to the victims concerned)
 - b. In the second case, when the victim died, we distinguish between:
 - pecuniary and non-pecuniary damage caused to the immediate victim who died after the event,
 - and pecuniary and non-pecuniary damage caused by ricochet or by reflection to the indirect victims

The victim is the only individual entitled to compensation for “recreational damage” (diminished opportunities for a family life or social life) – art. 1391, para 1 of the Civil Code.

Only **when the victim dies**, are the persons mentioned in art. 1391, para 2 of the Civil Code (**indirect victims**) entitled to compensation.

The reparation of the damage caused by ricochet, in the case of the death of the victim, has been accepted by Romanian legal literature and by Romanian case law ever since the Old Civil Code was in force.

Traditionally Romanian doctrine has been influenced by French doctrine.

The New Civil Code recognises the reparation of the moral damage caused by ricochet only in the case of the death of the victim.

Whether or not it is fair that the new Civil Code does not recognise the right to compensation to persons close to the victim for their psychological suffering due to the fact that the victim remained disabled or suffered severely, but did not die, may be the subject of a long debate.

There are already critical opinions expressed in the current Romanian legal literature.

In the light of the provisions of the New Civil Code, the judgment of the High Court analysed here is correct.

The opinions expressed in the doctrine might be considered in a possible future regulation of this topic.