

Compensation for Non-Pecuniary Damage in European Jurisdictions

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Abstract

The paper addresses the issue of non-pecuniary damage, as an essential element of tort civil liability, and the ways in which its compensation takes place, in Romania but also in other European jurisdictions. The protection of rights that do not have a pecuniary equivalent, including the rights of personality, takes place through instruments anchored in the fundamental and primary legislation of each state. However, due to the universal nature of these values, protection is also achieved at the supra-state level, through legal instruments such as the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union. The varieties of manifestation of non-pecuniary damage, with forms such as biological, moral or social damage, also involve various means of proof, so as to comply with the principle of full reparation while avoiding double compensation. Using comparative research methods results the importance of establishing at the normative level criteria that ensure a uniform compensation for non-pecuniary damage and thus give a unitary character to the jurisprudence in the field. Although Romanian law does not provide for such criteria, the practice of the courts tries to offer benchmarks to prevent arbitrariness and lack of predictability.

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1. Protection of Non-Patrimonial Rights in Romanian Law and at the European Level

The Romanian Civil Code, adopted by Law No. 287 of 2009 and entered into force on October 1, 2011, regulated the non-patrimonial civil rights regard-

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ing the human person as well as the means of their protection, as a novelty compared to the provisions of the previous Civil Code, in Book I "On Persons", Title II – The Natural Person, Chapter 2 "Respect due to the human being and his inherent rights"

The express and distinct regulation of these rights represent an evolution of the Romanian civil legislation in the sense of guaranteeing the observance of the provisions in the field of human rights protection established by the European Convention on Human Rights to which Romania has acceded since June 20, 1994. Most of the rights provided for in the European Convention on Human Rights are conditional rights, which means that they allow interference, which are nevertheless subject to certain conditions, taking into account the essential nature of the freedoms protected.

Therefore, the Romanian Civil Code expressly mentions a series of non-patrimonial rights, such as personality rights (the right to life, health, physical and mental integrity, dignity, self-image, respect for private life). At the same time, the identification attributes of the person, freedom of expression and the right to dispose of the processing of personal data are protected.

Although international conventions very rarely regulate non-pecuniary damage, at European level, the Union recognizes, through Article 6(1) of the Treaty on European Union (TEU),² rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the European Union³, which is considered to have the same value as that of the Treaties.

In view of the limited legislative powers of the European Union in the field of private law regulations, which mainly concern matters relating to the functioning of the internal market, in accordance with Article 114 TFEU, the establishment of a general framework on tort liability at European level, without recourse to the rules of national law, is not yet possible in view of these limitations of the Union's competence⁴.

The Charter of Fundamental Rights of the European Union explicitly protects the right of everyone to respect for private and family life, home and secrecy of communications, together with personal data, freedom of expression and information.

However, the rights protected are not absolute, since in application of the principle of proportionality, restrictions may be imposed only if they are necessary and only if they actually meet objectives of general interest recognised by

² Consolidated Version of the Treaty on European Union, art. 6(1), 2016 O.J. (C 202) 13, 19, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016M006> (accessed April 19, 2026).

³ Charter of Fundamental Rights of the European Union, 2016 O.J. (C 202) 389, https://eur-lex.europa.eu/eli/treaty/char_2016/oj/eng (accessed April 19, 2026).

⁴ Katri Annikki Havu, "Damages Liability for Non-Material Harm in EU Case Law," *European Law Review* 44, no. 4 (2019): 492–514, <https://researchportal.helsinki.fi/en/publications/damages-liability-for-non-material-harm-in-eu-case-law/> (accessed April 19, 2026).

the European Union or the need to protect the rights and freedoms of others. As regards the scope of the Charter and the link with the protection afforded to fundamental rights by the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 52 (3) of the Charter provides that, in so far as the object of protection is identical, the meaning and scope of the rights governed by the Charter are the same as those provided for in the Convention.

Moreover, even if the case-law of the European Court of Human Rights on the protection of fundamental human rights cannot be easily systematized, the doctrine revealed certain principles regarding the conditions and effects of that protection, starting from a consistent practice of the Court in the sense of recognising a right of the injured person to bring legal action for compensation for the damage suffered by the infringement of a fundamental right⁵.

The European Court of Human Rights, through its case-law, has often led to legislative changes within national legal systems (for example, the judgment in *von Hannover v. Germany App No 59320/00*), after which Germany needed to reconsider the regulation of the protection of personality rights in relation to the protection of private life⁶.

In Romanian civil law, the protection of non-pecuniary rights is most often achieved through tort civil liability, which imposes, by virtue of Article 1349 of the Civil Code, the obligation of the person who has caused, through an unlawful act, a damage, to ensure its reparation.

The increased protection offered to the rights inherent to the human being, called personality rights, as non-patrimonial rights, is also highlighted by the provisions of Articles 253-257 of the Civil Code, which regulated for the first time in the Romanian legislation specific means of protecting these rights, some of which having an urgent nature, even intended, where possible, to prevent the harm rather than repairing it.

Thus, under this text of the law, the natural person who claims that his personality rights have been violated or is in imminent danger of being harmed, may request the court to take measures to delay the commission of the unlawful act, to cease the violation and to prohibit the commission of that act in the future, with the finding of the unlawful nature of the act committed.

Enshrining the possibility for the victim to claim compensation for the non-pecuniary damage suffered, the Romanian legislator provided in Article 253 paragraph 4 of the Civil Code that compensation for the negative consequence suffered by means of a non-pecuniary nature may also be requested, such as, by way of example, and not limitation, the publication of the conviction decision.

⁵ Bénédicte Girard, *Responsabilité civile extracontractuelle et droits fondamentaux* (Issy-les-Moulineaux: LGDJ, 2015), 115.

⁶ Hannes Rösler, "Personality Rights," *Max-EuP 2012*, accessed April 19, 2026, https://max-eup2012.mpipriv.de/index.php/Personality_Rights; *Von Hannover v. Germany*, no. 59320/00, ECHR 2004-VI, <https://hudoc.echr.coe.int/eng?i=001-61853>.

Of course, when taking any of these measures, the court will also take into account the general rules applicable to tort civil liability, namely Article 1349 of the Civil Code, and those regarding the repairing by equivalent of obligations, enshrined in Articles 1527-1548 of the Civil Code.

At the same time, when the factual situation requires it and at the request of the victim, the court may take urgent measures, on a temporary basis, by means of a procedural mechanism of an injunctive relief and which involves the resolution of the case in a speedy procedure, on the basis of less extensive evidence, the purpose being to take provisional measures to prevent serious damage from occurring or to limit its consequences, if it has already occurred. Of course, the special nature of this procedure also presupposes the provision of guarantees for the defendant, in the sense that the plaintiff may be obliged by the court to pay a security and he will be required to cover all the damages caused to the defendant if the action is dismissed.

These legal provisions, which are new in Romanian law, were inspired by the provisions of Articles 28c-28f of the Swiss Civil Code.

The issue of compensation for non-pecuniary damage has aroused doctrinal discussions but has also generated concern among the courts, as long as the imperative of full reparation of the damage and the need to avoid an unjust enrichment of the victim have imposed classifications of the non-pecuniary damage, the establishment of specific means of proof as well as, in some jurisdictions, the use of an algorithm for fixing the amounts awarded to the victim.

In the present study we have analyzed the situation in Romanian law, where the law does not provide criteria for classification or compensation of this type of damage, but also, comparatively, the situation in other European jurisdictions, showing the importance of using means to objectify the victim's compensation, avoiding arbitrariness and offering predictability to this operation.

2. Compensation for Non-Pecuniary Damage in Romanian Law

The damage is the central element of the institution of tort liability, in the absence of this harmful consequence, from a material or moral point of view, the reparation mechanism cannot be triggered. Only the unjust damage is to be repaired⁷, and by virtue of the prevailing function of civil liability, namely the reparatory function, and of the principles governing the reparation of damage, it can be said that the existence and extent of the negative consequence called damage is not only an element of civil liability, but is its very measure⁸.

Distinguishing between pecuniary damage, which involves the injury of

⁷ Philippe Malinvaud, *Droit des obligations*, 10th ed. (Paris: Litec, 2007), 361.

⁸ Liviu Pop, Ionuț-Florin Popa, and Stelian Ioan Vidu, *Tratat elementar de drept civil: Obligațiile* (Bucharest: Universul Juridic, 2012), 412.

rights with economic content, and respectively non-pecuniary damage, which refers to rights that cannot be pecuniarily equivalent, and considering the variety of forms that the latter can take, repairing this type of damage involves some particularities. The victim's compensation for the non-pecuniary loss suffered does not have the role of restoring the situation prior to the occurrence of the damage, as this can no longer be possible in most situations, but rather aims to generate an economically favorable context for the victim, so that he can experience some positive life experiences.

However, along with the possibility of compensation by granting a sum of money to the victim, the Romanian Civil Code, in articles 253-257, also provides for other means, of a non-patrimonial nature, to try to repair the damage, as we have previously shown.

The fact that the consequences of a non-patrimonial nature of the unlawful act manifest themselves less in the sphere of the material world, but rather in the level of the psycho-affective life of the victim gives a more difficult character to the task of proving this damage. However, in order to be able to attract civil liability and indemnity, it is necessary to prove these negative consequences, and this will be done by using certain means of proof, related to the specifics of the consequence caused.

That is why various categories of non-pecuniary damage operated in the Romanian doctrine and which distinguish mainly between the damage materialized by physical suffering – biological damage, the affective or moral damage, respectively the one that affects the social life of the victim and the possibility of fully enjoying life and expressing his/her personality⁹. They also have a practical applicability because they offer the possibility that, by analyzing and proving each of these non-patrimonial valences by specific means, the possibility of global compensation for all these consequences is generated.

However, the lack of clear legal criteria for the assessment and granting of these compensations generates non-unitary practice among the courts, thus determining a less predictable nature of the act of justice.

The Romanian Civil Code does not operate with criteria for classifying non-pecuniary damage, also lacking clear and detailed criteria or parameters on the basis of which to compensate the victim, and thus the decisions of the courts of law do not always have the necessary unitary character in this respect.

As far as the proof of biological damage is concerned, it is generally done by presenting medical documents (forensic expertise or medical certificate), but

⁹ For the different categories of non-pecuniary damage, see Florin I. Mangu, *Răspunderea civilă: Constantele răspunderii civile* (Bucharest: Universul Juridic, 2014), 179–86; Călina Juguștru, *Prejudiciul: Repere românești în context european* (Bucharest: Hamangiu, 2013), 167; Ioan Albu and Victor Ursa, *Răspunderea civilă pentru daunele morale* (Cluj-Napoca: Dacia, 1979), 77–79; and George-Marius Mara, *Prejudiciul nepatrimonial cauzat prin eroarea judiciară* (Bucharest: Universul Juridic, 2020).

it is not always limited to these documents, as long as the existence of this damage is sometimes obvious to any reasonable observer (for example, the situation in which a person loses his locomotor capacity or loses one of his limbs, or in the event of aesthetic damage). However, the use of parameters, in the form of grids for evaluating this damage, is useful to ensure a uniform judicial practice and to maintain a fair relationship between the negative consequence suffered by the victim and the amount of money to which the responsible person is obliged.

Moral damage is an unjust disorder of the psycho-emotional state of the victim, as a result of the unlawful act, this disorder taking the form of anguish, of strong inner suffering. The disorder that forms the content of the moral damage must not be a lasting one, it must not become permanent, otherwise it will enter the perimeter of the biological damage.

Given the manifestation of this negative consequence exclusively in the sphere of the person's inner life, the evidence can be made with medical documents or witness statements, which can show how the negative consequence on the victim's psycho-affective life manifested itself externally, under certain states, moods, attitudes, observable even for a non-specialist (anguish, anxiety, fear).

Social damage groups all the negative consequences suffered by the victim and which do not fall within the scope of biological or moral damage. Thus, the way in which the victim is affected by the illicit act, respectively the way in which his relationship with the outside world is disturbed, restricting his possibility to fully express his personality represent valences of social prejudice.

The proof of the social damage, which manifests itself exclusively on the external plane of the victim's life, can be made by any means of proof, aiming to demonstrate the change in the living conditions of the victim, who is thus obliged to take other decisions than he/she would have taken if the unlawful act had not occurred, and to modify the daily habits. For example, if as a result of an unlawful act the victim, aged 25, remains immobilized, it is certain that the interpersonal relationships will be damaged, the impossibility of carrying out the same activities as before, of practicing a sport, and others.

The importance of using the concepts of biological damage, moral damage and social or existential damage is important in the context of ensuring a fair and equitable compensation for the victim.

From an evidentiary point of view, the use of the aforementioned distinct concepts contributes to a better configuration of the admissibility and usefulness of the means of evidence. Thus, if it is unanimously accepted that the biological damage (injury to the physical or mental integrity of the person) is necessarily proven with medical documents (certificate or forensic expertise report) that prove the existence, the intensity of the injury as well as the duration of the negative effects of the unlawful act, the testimonial evidence or the interrogation only completes and circumstances this state of affairs.

As regards moral damage, given the fact that we are in the presence of a

disorder of the psycho-emotional balance that manifests itself mainly on the level of the person's inner life, less visible on the outside, testimonial evidence is of increased importance, but the rest of the means of proof are also useful, including the use of presumptions (such as the one regarding the feeling of affection between parents and their children, for example).

The existential or social damage is to be proven by any means of proof, and the changes in the behavior shown by the victim in relation to the outside world are more visible, so that they are easier to prove than the inner transformations that characterize the moral damage.

The compensation of non-pecuniary damage is a manifestation of the reparatory function but also of the sanctioning function that governs the effects of tort civil liability.

And the determination of the amount of compensation granted is an operation in which it is necessary to resort to equity, as a legal notion that aims to ensure the full reparation of the damage suffered, taking care to prevent the victim from obtaining too high, unjustified compensation, in relation to the negative consequence suffered.

Equity, however, does not mean arbitrariness, and, although the judge's discretion is, in these cases, a very extensive one, in order to prevent an unpredictable decision and outside the broader context of compensation granted for similar acts and consequences, it is useful to establish criteria and parameters regarding the granting of compensatory amounts.

In Romania, the vast majority of court decisions issued on the compensatory amounts established for the compensation of the victim of an unlawful act and which invoked a non-pecuniary damage took into account the principle of equity, and the negative consequences were analysed globally, without distinguishing between the different types of non-pecuniary damage.

The judicial practice of the supreme court in Romania also noted the absence of objective criteria for establishing these compensatory amounts, an operation left entirely to the discretion of the judge:

"When establishing the amount of moral damages, which generically consists in the attainment of the values that define the human personality, the negative consequences suffered on the physical and mental level are taken into account; the importance of moral values damaged; the extent to which those values were harmed and the intensity with which the consequences of the injury were perceived by the plaintiff.

In that situation, the determination of the amount of compensation awarded to the applicant for compensation for non-material damage, in the absence of objective criteria, is made solely on the basis of the personal and professional quality of the judge in the case, in compliance with the principle of

proportionality of the damage to the compensation awarded".¹⁰

However, there have been attempts to implement a model that uses certain parameters as anchors for determining the compensatory amount awarded for compensation for non-pecuniary damage.

Thus, in 2012 a "*Guide for the settlement of moral damages*" was developed in Romania¹¹ under the aegis of the Fund for the Protection of Street Victims. The material aimed to provide criteria for quantifying the compensatory amounts granted to those who claim a non-pecuniary damage caused as a result of the bodily injury or death of the victim, referring to the average values of the compensations granted at the level of the courts of law (courts of appeal) two years before the drafting of the guide, as well as by implementing a scoring system related to 1/10 of the value of the average income in the economy.

However, the strictly indicative value and which cannot acquire a binding character of this guide was confirmed by the High Court of Cassation and Justice by Decision number 130 of January 2019 of the First Civil Section¹² by which it was shown that the respective material "*contains statistical data extracted from decisions of the courts, it was elaborated, as a recommendation, for the use of insurance companies, by the Fund for the Protection of Street Victims*."

These are not a legal criterion for the judicial assessment of non-pecuniary damage, but a working tool available to insurers in the administrative procedure, having no normative force and, therefore, binding on the courts."

More recently, a jurisprudence study was developed¹³ at the level of the Court of Appeal of Iași which aimed to analyze the amounts awarded by the courts of law in the district of the Court of Appeal of Iași as monetary compensation for the damages of a non-patrimonial nature suffered as a result of road accidents. The analysis was circumstantial to this area of judicial practice, in the

¹⁰ High Court of Cassation and Justice of Romania, First Civil Division, Decision No. 4166/2010, accessed April 21, 2026, <https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=58668>.

¹¹ Sorin Greceanu and Mihai Necrelescu, *Ghidul pentru soluționarea daunelor morale: Studiu privind practica națională și europeană în materie, sinteză și recomandări pentru soluționarea daunelor morale suferite ca urmare a vătămării sănătății și a integrității corporale ori a decesului persoanelor produse prin accidente de vehicule*, ed. Georgiana Hene (Bucharest: UNSICAR, 2012), https://www.baar.ro/wp-content/uploads/2017/11/Ghid_pentru_soluționarea_daunelor_morale_ed_2012.pdf (accessed April 21, 2026).

¹² High Court of Cassation and Justice of Romania, First Civil Division, Decision No. 130, January 23, 2019, discussed in "ÎCCJ. Ghidul pentru soluționarea daunelor morale emis de Fondul de Protecție a Victimelor Străzii nu reprezintă un criteriu de evaluare a prejudiciului moral," *JURIDICE.ro*, <https://www.juridice.ro/629216/iccj-ghidul-pentru-soluționarea-daunelor-morale-e-mis-de-fondul-de-protectie-a-victimelor-strazii-nu-reprezinta-un-criteriu-de-evaluare-a-prejudiciu-lui-moral.html> (accessed August 30, 2026).

¹³ Diana-Mihaela Cheptene-Micu, Alina Ene, and Maria-Cristina Popa, *Daunele morale în accidente rutiere: Tablele Curții de Apel Iași—10 ani de jurisprudență* (Bucharest: Hamangiu, 2025).

field of road accidents, given the increased frequency with which requests for compensation for non-pecuniary damage are encountered in such situations, certainly also due to the imposition by the state of concluding a motor civil liability insurance contract, which determines the victim to request these compensations from the insurance company that has resources for their payment.

Even if in the Romanian legal system, the judicial practice is not a source of law, the importance of such jurisprudence studies is undeniable, given the desire to unify the practice of the courts in similar cases.

It was concluded that there is a very large variation in the amounts awarded as non-pecuniary damages in the case of bodily injury caused by road accidents, given that it is not possible to establish a direct and strict relationship between the number of days of medical care and the amount of non-pecuniary damages awarded. Sometimes, even if the number of days of medical care is lower (for example, less than 25 days), the consequences are so serious (for example, loss of a sense or organ) that it is necessary to award larger amounts of money as compensation.

The aforementioned study also concludes that it is useful to use both a fixed element – the average value of a day of medical care – but also a variable one, which would allow the court to assess the particularities of each case and to adapt the amounts awarded in concrete terms, taking into account elements such as the age of the victim, the negative consequences suffered and their duration.

The efficiency of using such a mixed system, which combines fixed and variable elements, has been discussed in Romanian doctrine before, proposing the use of a score that should be related to the value of the average net income in the economy, with a margin of appreciation of the judge of approximately 50% of the value of the amount awarded, a margin that will be related to the particularities of each case¹⁴.

In relation to the judge's discretion, the study organized at the level of the Iasi Court of Appeal showed that it was surprisingly found the inversely proportional relationship between the average value of the amount granted/day of medical care, with the duration necessary for healing, in the case of injuries whose care lasted less than 180 days. For injuries with a duration of care between 90-120 days, the average value of the amounts granted was 287 euros/day, and for injuries with a duration of care less than 30 days, the value was much higher, of 634 euros/day of care. Therefore, in order to avoid arbitrariness, it also follows from these data the importance of establishing criteria/parameters for the courts, fixed elements from which to start the determination of the final amounts awarded to the victim of the unlawful act.

As for the variable element, more important than the fixed one, situations such as the severity and number of injuries, the suffering felt, their duration in

¹⁴ Mara, *Prejudiciul nepatrimonial*, 381–87.

time, young age and the permanent or important impairment of lifestyle, opportunities to fully express one's personality in the world are to be taken into account.

In relation to the current situation of the Romanian law system, we consider that the establishment of minimum and maximum ceilings, of fixed elements in the process of establishing the compensatory amounts granted, although it may seem to be a limitation of the court's powers in sovereignly assessing these amounts, is in fact a mechanism to avoid arbitrariness in decision-making and to standardize the practice of the courts. As long as the fixed element is related to an average of the damages awarded at national level, and considering that a margin of appreciation of 50% is sufficient for the court to particularize the value of these amounts to the factual situation resulting from the evidence, the goal of reducing the discrepancies currently registered in judicial practice can be achieved, being a step forward to respect the guarantees of a fair trial.

In fact, similar mechanisms have been implemented in other European law systems.

3. Compensation for Non-Pecuniary Damage in Other European Jurisdictions

The doctrine and jurisprudence of other European states recognize the existence and necessity of compensation for non-pecuniary damage.

Thus, in the French system of law, the existence of such damage, manifested in various forms, including physical or mental suffering following a blow received or following the transmission of a disease, goes so far as to recognize such negative non-patrimonial consequences for the unlawful possession of a person, including the state of fear felt in those circumstances¹⁵.

Italian doctrine also¹⁶ uses a distinct classification of the varieties of non-pecuniary damage, with the aim of better compensating it, avoiding double reparation, by resorting to some specific means of proof. Since the non-pecuniary damage harms rights without economic content, when the courts grant a sum of money to the victim, they establish this amount in equity, and the negative consequence suffered cannot be compensated in kind¹⁷.

From an evidentiary point of view and as regards the liquidation of non-pecuniary damage, Italian case-law, using its tripartite classification into biological damage, non-pecuniary damage and social or existential damage, also lays down different modalities for compensating the victim.

Thus, with regard to biological damage, which harms the physical or

¹⁵ Philippe le Tourneau, *La responsabilité civile* (Paris: Dalloz, 1972), 140.

¹⁶ Gianluca Pascale, *I danni non patrimoniali: Alla luce del decalogo di San Martino 2019* (Santarcangelo di Romagna: Maggioli Editore, 2020).

¹⁷ Marco Rossetti, *Il danno non patrimoniale: Cos'è, come si accerta e come si liquida* (Milan: Giuffrè, 2010), 35.

mental integrity of the victim, disability or reduced capacity to work, or an aesthetic damage suffered by the victim, the victim's compensation is based on reference values established in indicative tables that provide for the attribution of an increasing amount for each degree of disability and which also establish different amounts in relation to the age of the victim¹⁸.

In this context, it should be noted that the main means of proof of biological damage is the forensic certificate or forensic expertise that is to certify the injury to the physical or mental integrity of the victim.

The compensation criterion must be sufficiently flexible to allow the compensatory amount to be adapted to the specific situation of the case, achieving the desire of uniform case-law in similar cases.

These legal systems not only recognise the existence and necessity of compensation for non-pecuniary damage, in particular that resulting from road accidents, but also use certain algorithms to facilitate the assessment of the amounts awarded¹⁹.

In Italy, a tabular calculation system is used based on the degree of permanent disability suffered by the victim and assessed by a forensic doctor, but the application is not limited only to the damage resulting from a traffic accident. Taking into account the default value awarded to each disability point, the amount awarded was obtained by multiplying the number of points by the value of each point. Thus, the Tables of the Court of Milan gradually established themselves and came to be used by about 80% of the Italian courts. Magistrates, forensic doctors, jurists and lawyers who represented the rights of insurers and victims collaborated in their realization. The value of the single disability point was determined in a progressive manner, in relation to the severity of the disability, but also regressively, in relation to the age of the victim. Biological and moral damages were compensated, and the value of the amounts awarded decreased by up to 60% from the youngest groups to the older groups.²⁰

If, in individual cases, the claimant can prove suffering beyond that level, then the judge is free to adjust the compensation within fixed percentage parameters (up to 25% for serious injuries).

On March 5, 2025, Italy introduced another way of calculating this type of non-pecuniary damage, regulating a National Table of Compensation for Non-pecuniary Damages²¹. And this calculation algorithm follows similar principles to the Milan Tables, in the sense that compensation increases with the severity of

¹⁸ Pascale, *I danni non patrimoniali*, 128–40.

¹⁹ Cheptene-Micu, Ene, and Popa, *Daunele morale în accidente rutiere*, 11–20.

²⁰ Bogdan Ioniță, “Evoluții și perspective în reglementarea daunelor morale în cazul asigurării obligatorii de răspundere civilă auto (RCA),” *Studia Universitatis Babeș-Bolyai Iurisprudentia* 65, no. 2 (2020): 27–76, [https://doi.org/10.24193/SUBBiur.65\(2020\).2.2](https://doi.org/10.24193/SUBBiur.65(2020).2.2).

²¹ Italy, Decreto del Presidente della Repubblica 13 gennaio 2025, n. 12, *Gazzetta Ufficiale della Repubblica Italiana*, Serie Generale no. 40 (February 18, 2025), Ordinary Supplement no. 4, <https://www.gazzettaufficiale.it/eli/id/2025/02/18/25G00019/SG>.

the disability and decreases with age, and there is also a variable of moral suffering.

Spain uses a similar mechanism for determining the amount of compensatory amounts, called Baremo. It has been binding since 1995 and is used not only to determine the compensation awarded in the event of a road accident, but also for other types of non-pecuniary damages. There are tables with compensation in case of death, permanent disability or temporary bodily injury. For each of the three hypotheses, the compensation is established for 3 categories, namely basic non-pecuniary damage (calculated according to the age of the victim and a score related to the severity of the permanent injury suffered), specific non-pecuniary damage (a social damage, which refers to the impairment of the victim's family life, interpersonal relationships or the like) and a pecuniary damage, broken down into the loss actually suffered (*damnum emergens*) and the unrealized profit (*lucrum cessans*).²²

In France, tables are prepared by individual courts or groups of courts in the case of larger jurisdictions. Following the report by Dintilhac, President of the Second Civil Section of the French Court of Cassation, published in 2005, these tables have a similar structure in all jurisdictions. The report, which describes the individual debt items (economic and non-economic losses) in a uniform and detailed manner, has not yet been enshrined in a law, but is seen as the basis of the French compensation system. The nomenclature capitalizes on all types of bodily injuries susceptible to compensation, both permanent and non-permanent, patrimonial and non-patrimonial.

The assessment of the bodily injury will be made on the basis of a medical expertise, which includes all types of damages, patrimonial or non-patrimonial, for which the victim is entitled to compensation according to the Dintilhac nomenclature. In favor of indirect victims, the right to compensation for an exceptional non-pecuniary damage is also recognized, and in the event of the death of the victim as a result of the unlawful act, the right to compensation for the accompanying damage²³.

The most important element in the French tables is *permanent functional deficit* (DFP), representing a non-economic component for impairments of the injured party's mental and physical integrity. It is quantified as a percentage on a scale of 1 to 100. Each Court of Appeal assigns a monetary value that increases according to the degree of disability and decreases with the age of the victim. Also, based on the Dintilhac nomenclature, the tables prescribe compensation ranges (usually on a scale of 1 to 7) for quantifying the sum for pain and suffering and aesthetic damage.

²² Ioniță, "Evoluții și perspective," 51.

²³ Ioniță, "Evoluții și perspective," 53–57.

Many cases concerning compensation for non-pecuniary damage are settled amicably in France, which is encouraged by the French State. This is another benefit that a clear system of establishing parameters for victims' compensation leads, as a result of standardization, to the possibility of quickly solving compensation claims, amicably, without resorting to the intervention of the court.

4. Conclusions

As regards the compensation of non-pecuniary damage, the Romanian law system does not provide for objective criteria and fixed elements that allow a predictable assessment of these amounts. Depending on the circumstances of the case, the judge will analyze as a whole the negative consequences suffered by the victim on a personal, non-patrimonial level, and will award a global amount meant to ensure the compensation of all these consequences.

Analysing the way in which other European law systems (French, Italian, Spanish) have tested and implemented the use of algorithms for establishing these compensations, it follows that such a regulation at the legal and jurisprudential level is welcome, allowing both the victim claimant and the person called to answer, or the insurer, to understand the minimum and maximum limits between which, using the margin of appreciation, the court will concretely fix this amount of compensation.

Of course, no system is perfect and it is constantly subject to improvement, in order to compensate fairly, equitably, in full for the non-pecuniary damage, while keeping in balance both the rights of the victim and the interest of the person called to pay for the compensation.

The assessment carried out by a court cannot be completely replaced by any calculation algorithm, because in each case it is necessary to analyze in concrete terms the particular aspects related to the nature, extent and nature of the negative consequences, and the way in which they restrict the victim's life possibilities. Therefore, a mixed system, which uses both a fixed and a variable element, left to the discretion of the judge, seems to confirm both the need for fair compensation and the imperative of preserving the discretion of the court, vested by the State with the authority to apply the legal rules to the factual situations brought before it.

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