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ORIGINAL PAPER

About the possibility of awarding non-pecuniary damages in the activity of passenger and luggage transport

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Abstract:
Regarding the possibility of awarding non-pecuniary damages in the activity of passenger and luggage transport, the Romanian Civil Code establishes regulations concerning the compensation for damages and promotes the idea of full compensation thereof, in the sense of repairing both pecuniary and non-pecuniary damages. The regulations of the Romanian Civil Code on the aspects aimed at repairing non-patrimonial damages, i.e. those damages that compensate for physical pain, mental suffering, aesthetic damage, damage to reputation, are found in different regulatory areas of the Code. In this sense, there are the provisions of art. 252-257 of the Civil Code or the provisions of art. 1531 para. 3 which promotes the creditor's right to reparation of non-pecuniary damage. The principle of full compensation concerns the entire matter of civil liability, regardless of the type of liability—contractual or tortious. Considering the common law character of tort civil liability, the provisions of Article 1391 of the Civil Code can also apply in the matter of compensating non-pecuniary damage caused to the creditor through the non-fulfillment of contractual obligations by the debtor. In the matter of non-pecuniary damages, practice and doctrine consider that compensation for non-pecuniary damages resulting from an extra-contractual unlawful act is undeniable and serves as a rule. The one with a more restricted domain of granting and application is compensation for non-pecuniary damages in the domain of contractual liability. Here, only in certain contracts and for the non-fulfillment or improper fulfillment of certain contractual obligations can such compensations be awarded. Examples in this regard are contracts for the transport of passengers and luggage, contracts for the exploitation of copyright and inventor rights, and, in general, those contracts that include obligations to protect persons—hotel contracts, organization, and viewing of performances or sports games. Regarding transport law, the awarding of moral damages can have a dual application: the awarding of moral damages resulting from the improper exercise of transport activity – in the domain of tort liability, or, as the case may be, the awarding of moral damages in contracts for the transport of passengers and luggage – in the domain of contractual liability.

Keywords: *moral damages, passenger transport, luggage.*

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Legal Aspects Concerning Liability and Damage in Civil Law. The Romanian Civil Code does not explicitly define the notion of civil liability. Establishing the content of the notion of civil liability is the prerogative of specialized doctrine. The element of specificity of this type of liability and, at the same time, the differentiation from any type of legal liability—criminal, disciplinary, or contraventional - lies in the obligation to repair damage. In other words, to be liable in civil terms means to repair the harm caused to another.

Civil liability represents a legal institution that, in terms of its legal regime, manifests in two forms: one delictual, considered of common law, and another contractual, special, and derogatory.

Delictual civil liability represents the obligation of any person to fully repair all damages caused to another by breaching the obligation to respect the rules of conduct imposed by the law or the customs of the place and to not infringe upon the rights and legitimate interests of others (Romanian Civil Code: art. 1349, para. 1 and 2). Contractual liability is the obligation of any person, in their capacity as a party to a contract, to repair the damage caused to the other party by failing to fulfill the obligations they have assumed (Romanian Civil Code: art. 1350 para. 1 and 2).

Between the two forms of liability, contractual and delictual, there are numerous points of interference regarding their conditions, ways of realization, and purposes. Thus, the fundamental idea dominating both forms of liability is that of repairing a patrimonial damage, caused by the illicit and culpable acts of a certain person. Between the two forms of liability, there are no essential differences, their elements being the same: the existence of damage, the existence of an illicit act, the culpable commission of this act, and a causal relationship between the illicit act and the damage. However, the two types of liability also present a series of differences in terms of source, forms of fault, calculation of damages, etc.

Two principles govern the right and, at the same time, the obligation to repair the damage: the principle of full compensation for the damage and the principle of restitution in kind of the damage (Pop, 2010: 189).

Non-Pecuniary Damage – Development. According to doctrine (Pop, Popa, Vidu, 2012: 412), damage represents the harmful results, of a patrimonial or moral nature, consequences of the violation or harm of the rights and legitimate interests of a person.

Based on various criteria, damages are classified into several types. Those that have been established in doctrinal analysis are: the classical classification, considered traditional, and the modern classification. The classical classification divides damages into two categories: pecuniary damages and non-pecuniary damages or moral damages; and the modern classification is more nuanced, imposing three categories of damages: pecuniary damages, bodily damages, and moral damages or non-pecuniary damages.

Non-pecuniary damages are harmful consequences, without an economic value, consisting of psychological pain caused by the harm to the physical integrity or health of a person or by the infringement upon the rights associated with the personality of an individual or a legal entity (Baias, Chelaru, Constantinovici, Macovei, 2012: 1470).

The Romanian Civil Code enshrines regulations in the matter of repairing damages, promoting the idea of their full repair, in the sense of repairing both pecuniary and non-pecuniary damages.

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The regulation of the possibility of awarding moral damages is considered a proof of the modernity of the current Romanian Civil Code, and although the doctrine considers that this regulation is perfectible—in the sense that there are aspects that should be regulated in more detail and areas where additions are necessary—the existence of these regulations is appreciated in relation to the old regulation, which was lacking in this respect.

The current Romanian Civil Code is an improvement over the old regulation by enshrining in Art. 1391 the possibility of awarding moral damages, but the downside is that there is no explicit definition of them. The regulation should highlight the legal aspects that differentiate moral damages from material ones and not just list a few rules applicable only in the case of certain moral damages (Baias, Chelaru, Constantinovici, Macovei, 2012: 1470). Moreover, the focus of this regulation is on the awarding of compensation for the restriction of family and social life possibilities in the case of harm to the physical integrity or health of the person and on promoting the right to compensation for infringements on the rights inherent to personality (Romanian Civil Code: art. 1391). However, the spectrum of moral damages is, in reality, much broader.

An inventory of articles on this issue indicates that the issue of moral damages is revisited in several regulatory areas of the Code. Thus, in art. 1531 para. 3 of the Romanian Civil Code, the creditor's right to the repair of non-pecuniary damage is expressly enshrined. This type of damage targets physical pain, psychological suffering, aesthetic damage, and harm to reputation and honor.

The Romanian Civil Code enshrines Title V for the protection of non-pecuniary rights, through the provisions of Articles 252-257. In this regulatory sector, restitution in kind can occur, in particular cases, even in the case of non-pecuniary or moral damages. These are situations that consist of a certain act or fact of nature to restore the previous situation of the violated non-pecuniary rights, rights that protect human personality. In this regard, the provisions of Art. 253 promote non-pecuniary means through which the possibility of restitution in kind of non-pecuniary damages resulting from the violation of rights related to the protection of human personality is ensured (Romanian Civil Code: Art. 252). At the request of the injured person, the court may order: the immediate cessation and future prohibition of the violation of the victim's right, obliging the author, at his expense, to publish the conviction decision, obliging the author to perform any necessary measures to cease the illicit act, repairing the damage, to restore the violated right.

However, sometimes the repair of non-pecuniary damages through means of the same nature is insufficient for the victim to be restored to the previous situation. Therefore, art. 253 para. 4 expressly provides that the victim can also request a pecuniary compensation for the damage, even if non-pecuniary, that was caused, but only if the harm is attributable to the author of the damaging act. The pecuniary compensation aims to compensate, mitigate, or soothe the physical pains and psychological sufferings of the victims.

The principle of full compensation applies to the entire matter of civil liability, regardless of the type of liability—contractual or delictual.

Considering the common law character of delictual civil liability, the provisions of Art. 1351 of the Civil Code can also be applied in the matter of repairing non-pecuniary damage caused to the creditor by the debtor's non-performance of contractual obligations.

Moreover, in the matter of non-pecuniary damages, practice and doctrine consider that the repair of non-pecuniary damages resulting from an extra-contractual illicit act is unquestionable and has the value of a rule.

The one with a more restricted domain of granting and application is the repair of non-pecuniary damages in the field of contractual liability. Here, only in certain contracts and for the non-fulfillment or improper fulfillment of certain contractual obligations, such compensations can be granted. Examples in this respect are contracts for the transportation of persons and luggage, contracts for the exploitation of copyright and inventor rights, and generally, those contracts that include obligations to protect persons—hotel contracts, organization, and viewing of shows or sports games (Scarlat, 2019: 396-399).

Structurally, bodily damages have a dual composition (Jugastru, 2020: 127–133): an economic, pecuniary component, and another moral, non-pecuniary one.

Bodily injury also includes damage consisting of physical or psychological pains, aesthetic damage, juvenile damage, and enjoyment damage. The health and physical and psychological integrity of the person are promoted and recognized as the most important social values protected by legal norms and are defended in all legal systems on several levels of the legal system: in the field of civil liability of the perpetrator, the service provider, in the field of administrative liability of health institutions, in the field of criminal liability for offenses that have produced such consequences, the liability of insurers based on concluded insurance contracts, the liability of the manufacturer or supplier for defective products, etc. Victims claim such damages produced either through criminal acts of aggression (assault, bodily harm), or on the occasion of events, such as work accidents, traffic accidents, medical accidents, etc.

By engaging civil liability for the production of bodily harm, the aim is to sanction an illicit, culpable conduct, to restore the destroyed balance, and, implicitly, to repair it. The impact of these on the lives and health of the victims, but also on their close ones, demands that the methods of evaluation and payment of compensations to be clearly regulated.

Every case has its own specific elements and raises a series of specific problems for the awarding of such damages, depending on the mechanism of occurrence, their severity, the consequences produced in the life of the victim, their relatives being forced to provide assistance, etc. However, most decisions for the awarding of bodily damages are established through lump sums, as moral damages, without considering that, in the case of harm to a person's bodily integrity, a clear distinction between pecuniary and non-pecuniary damages cannot be made, and special evaluation methods are necessary for full repair (Boilă, 2012: 53–56).

Why can't such a distinction be made? Because repairing such damage presupposes, first and foremost, its classification within a broader sphere—that of damages caused to a person. In the broader sphere of damages caused to a person, are included all those infringements of rights that protect moral values: dignity, freedom of expression, the right to private life, etc. But in the category of bodily damages must be included both material consequences, such as expenses for medication, care, treatment, etc., and moral ones, physical, psychological suffering, etc. In other words, alongside "determined and immediately assessable damages" - such as medical expenses, loss of income, etc., there can also exist other damages, such as "loss of amenity" consisting of the impossibility to participate in social life and enjoy it as before the event occurred.

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Loss of amenity refers to the victim's deprivation of the possibility of carrying out activities they previously engaged in. According to doctrine, the victim, through the suffering they were exposed to, was deprived of the joys of a normal life, in all its sectors: family life, professional life, the ability to travel, etc.

Natural repair or full repair are not possible, but rather it is about compensation, because what the victim receives is an indemnity with the role of moral satisfaction. The judge plays an essential role because the ultimate assessment belongs to them regarding the evaluation of the damage and the determination of the amount of the indemnity (Jugastru, 2020: 152). Full repair has a different application in the issue of bodily damages, in the sense that lump sum monetary compensations, as well as periodic compensations, can be awarded. A significant weight is given to monetary equivalent compensations, by obliging the responsible person to pay a compensatory value for the physical and psychological sufferings of the victim.

Another special category of moral damages is represented by ricochet damages, or damages of affection. Regarding the compensations related to moral damage by ricochet, damages consisting of the moral damages suffered by the parents, spouse, children, or siblings of the deceased victim, or fiancé, it was considered that an indirect moral damage is caused to the indirect victim, through the suffering caused to them by the loss of a loved one. Such compensation is awarded only if the condition of a sufficiently strong affective connection between the close person, who claims the repair of the moral damage, and the deceased victim, is verified in the case brought to court.

The existence of ricochet damage does not always presuppose the death of the direct victim, their close ones can obtain compensation even when the victim's condition is such that the severity of the injuries to their physical integrity or health deeply affects their living conditions; meaning that there have been dramatic changes in their conditions of existence, and the direct and constant contact with the victim they must care for has caused them severe emotional shocks or trauma (Mangu, 2017: 125–128).

In the practice of Romanian courts, the awarding of moral damages has been the prerogative of cases concerning individual rights. However, legal entities can also suffer non-pecuniary damage, as they can be harmed through various forms of civil wrongdoing. Thus, legal entities can suffer at least an image damage or an infringement of their right to a name, which necessitates its repair through material means. The one who has suffered a violation of such rights may ask the court to oblige the author of the act to undertake any measures deemed necessary by the court to restore the infringed right, such as: obliging the author, at his expense, to publish the conviction decision; or any other necessary measures to cease the illicit act or to repair the caused damage. Moreover, the injured party may request compensation or, as the case may be, a pecuniary repair for the damage, even if non-pecuniary, that was caused, if the harm is attributable to the author of the damaging act.

Besides the principles of delictual civil liability predictably applicable to such cases, there are decisions of the European Court of Human Rights in the matter, where it is explicitly shown that the possibility for a legal entity to receive compensation for non-pecuniary damage cannot be excluded. The Court considered that factors such as the company's reputation, uncertainty in decision-making, and disturbance in the administration of the company should be taken into account as types of damages, but that there are no determined criteria for quantifying moral damages (Nicolcescu, 2020: 63–64).

Regarding Liability and Damage in Transport Law. Non-compliance with obligations undertaken in the transport contract gives rise to civil liability for both the carrier and the sender, respectively the passenger.

Regarding the liability of the sender, respectively, the recipient, the rules that apply are those of common law, while, concerning the carrier, we note in terms of the legal regime of his liability and aspects that are distinct from the rules of common law. Also, regarding the legal regime of the carrier's liability, two types of liability are to be analyzed: the contractual liability of the carrier and his tortious liability. In other words, the liability of the carrier, viewed as a whole, can be extra-contractual (tortious) or contractual.

The legal regime of the carrier's liability is ensured, at the level of general norm, through the provisions of the Civil Code on the matter: art. 1350 regulates the contractual liability along with provisions of articles from Chapter II – "Enforced execution of obligations" from Title V - "Execution of obligations", Book V "About obligations"; and tortious civil liability regulated through art. 1349 paras. 1 and 2, art. 1357 – liability for one's own act, art. 1349 para. 3, art. 1372 para 1 and 2, and art. 1373 - liability for the act of another person, art. 1376 - liability for damages caused by things under his legal custody.

Liability and Damage in the Transport Contract. The carrier's liability is also ensured, at the level of the general norm in transport law, by the provisions of Art. 1959 and Art. 1984-2002 of the Civil Code in the case of the goods transport contract and by Art. 2004-2008 of the Civil Code.

The tortious liability of the carrier is subject to the provisions of common law (the norms of the Romanian Civil Code), and his contractual liability is subject, primarily, to the provisions of special laws in this matter and, only in the absence of special provisions, is subject to common law—the norms of the transport contract and the norms of contractual liability from the Romanian Civil Code. The contractual liability of the carrier, as derived from special laws, generally follows the general principles of contractual liability established by the Civil Code.

The legal regime of the carrier is considered by doctrine to be more severe than the contractual liability under common law. This is due to the commitment assumed by the carrier, namely to deliver the transported goods into the hands of the recipient in the case of the goods contract. Therefore, his obligation is one of result, and any deficiency in execution can be assimilated with a tortious act. Regarding the transport of passengers, Art. 2002 para. 2 stipulates that the carrier is obliged to bring the passenger on time, unharmed, and safely to the destination. Thus, we are dealing with an obligation of result regardless of the remunerated or gratuitous nature of the transport, and the content of this obligation not only includes the movement of passengers but also an obligation considered in the specialized literature (Pop, Popa, Vidu, 2012: 33–34) as being a security obligation, that of bringing the passengers unharmed and safely.

Security obligations do not have an explicit legislative consecration; they are considered to be a species of obligations to act, having a contractual nature in most cases and, sometimes, a legal one. It is about a contractual or legal duty that one party has to guarantee the other party and even third parties against the risks threatening their bodily security (Pop, Popa, Vidu, 2012: 33).

If we look at the legislation as a whole, we notice that security obligations are encountered, especially in consumer law (Law no. 240/2004, Law 245/2004) and in

transport law, when it comes to the transport of persons. Therefore, the tortious acts of the carrier represent the legal basis for engaging his liability.

Liability and Damage in the Goods Transport Contract. According to Art. 1984 of the Civil Code, the carrier, in the case of goods transport, is liable for the damage caused by: total or partial loss of the goods, alteration or deterioration thereof, occurring during transport and delay in delivering the goods. These three tortious acts, expressly enumerated by the law, can lead to the engagement of the carrier's contractual liability in the goods transport contract.

Regarding the method of calculating the damage for the loss of the good, the express provisions of the law (Romanian Civil Code: Art. 1985) establish the principle of repairing the damage at the real value of the good. The determination of the real value of the good is established by relating it to the place and moment of delivery for transport. Thus, in the case of the loss of goods, the carrier must cover the real value of the lost goods or the lost parts of the transported goods.

The carrier must also refund the price of transport, the cost of ancillary services, and the transport expenses, proportionally, as appropriate, to the value of the lost goods or to the diminution of value caused by their alteration or damage (Romanian Civil Code: art. 1986).

Art. 1987 of the Civil Code establishes the possibility for the parties of the transport contract to include in the contract a declaration regarding the value of the goods subject to transport. The effect of such a declaration is that compensations for alteration and loss are no longer calculated by referring to the real value of the goods, but to the value established by the parties. If the value of the good was declared at the time of delivery, compensation is calculated in relation to that value.

However, Art. 1987 of the Civil Code limits the freedom of the contracting parties regarding the determination of the amount of the declared value. Thus, if the real value of the good at the place and moment of delivery is lower, the compensation is calculated in relation to this latter value. In other words, the sanction for inserting a declared value greater than the real value is its reduction to the real value of the goods at the place and moment of their delivery for transport.

In case of damage to the good, Art. 1985 of the Civil Code establishes the principle of repairing the damage at the real value of the goods. The determination of the real value of the goods is established by relating them to the place and moment of their delivery for transport.

Therefore, in case of alteration or deterioration of the goods, the carrier must, according to civil norms, cover their decrease in value, which is related to the real value of the good. The carrier must also refund the price of the transport, the cost of ancillary services, and the transport expenses, proportionally to the diminution of value caused by their alteration or damage (Romanian Civil Code: art. 1986).

According to Art. 1992 of the Civil Code, the carrier's liability is also engaged for the damage caused by the failure to perform the transport or by exceeding the transport term.

Special legislation concretely establishes, for each type of transport, the conditions for engaging liability for failure to perform or for delay in transport and the limits within which this liability operates. At the level of the general norm, the principle is: the carrier is liable for the damage caused by the failure to perform the transport or by delay. Although not expressly provided, from the entirety of the regulations, it is

understood that the refund of the transport price and the transport expenses will be made only for the loss and damage of goods, not for delay.

Liability and Damage in the Passenger and Luggage Transport Contract. Regarding the legal regime of the carrier's liability for passenger transport, the Civil Code stipulates that he is liable for: the death of the passenger, injury to the bodily integrity or health of the passenger, non-performance of the transport, its execution under different conditions than those established, delay in the execution of transport.

The carrier's liability is, by its legal nature, contractual, and according to the legal regulation, any clause that removes or restricts the carrier's liability for damages provided for in the general law is considered unwritten.

Clauses considered unwritten are null and void by law. In doctrine (Nicolae, 2012: 27–29), it has been emphasized that they were established in our domestic law under the influence and impulse of community regulations, found in the domestic law of several European Union states, such as French, Belgian law, and that these are the clauses inserted in a legal act, that the legislator considers as non-existent because they contravene the nature and normal legal effects of that act and are replaced by law with the mandatory legal provisions.

The carrier is also liable for the damage caused by the means of transport used, its state of health, and the state of health of its employees.

The transport contract is unique and indivisible, and the period for which the carrier's contractual liability is engaged is the one between the moment of the passenger's boarding and the moment of their disembarkation, with boarding and disembarking being part of the transport activity and attracting contractual liability. Therefore, for actions or inactions attributable to the carrier before boarding or disembarkation, his liability can only be engaged on a tort basis (Cotuțiu, 2015: 210).

Art. 2004 para. 4 C provides the situations in which the carrier's liability exemption operates. Thus, the carrier is not liable in the following situations: if it proves that the damage was caused by the passenger, intentionally or through gross negligence; if it proves that the damage was caused by the passenger's state of health; if it proves that the damage was caused by the act of a third party for which it is not held to respond; if it proves that the damage was caused by force majeure.

The passenger's state of health and the act of a third party for which the carrier is not held to respond have for the carrier the legal nature of a fortuitous case. In the matter of the passenger transport contract, the fortuitous case is not exempt from liability, and the reason why the Civil Code expressly enumerates these two situations is that they, as an exception from the situation of the fortuitous case in general, exempt the carrier from liability (Cotuțiu, 2015: 211).

The analysis regarding the carrier's liability for luggage and other goods cannot be made without specifying, as previously mentioned, that the notion of luggage, as well as that of other goods of the passenger, do not receive a definition in the general law. The definition of the notion of luggage is important because, in the case of damage to other goods than those constituting luggage, the carrier's liability will be based on the provisions of Art. 1984 and following from the matter of the goods transport contract, and not on Art. 2005, which regulates the liability for luggage and other goods of the passenger (Baias, Chelaru, Constantinovici, Macovei, 2012: 2011).

Moreover, doctrine (Popa, 2020: 678–679) attempts to define the content of the notion of luggage. Thus, luggage consists of those goods intended for the traveler's use, aimed at the purpose of the journey, or necessary for the traveler at the destination

(Nemeș, Fierbințeanu, 2020: 310–311). In other words, luggage is a set of goods that serve the traveler as necessary and usual items for the journey they are undertaking or at the destination. They are of two types: hand luggage, which is carried alongside the traveler, therefore, in the same vehicle, being throughout the journey at their disposal and under their supervision, and checked luggage, which is handed over to the carrier and is transported separately from the traveler and under the carrier's supervision. Regardless of the type of luggage, there are conditions related to its content, quantity, or volume, depending on the type of transport. Thus, these goods are usually contained in suitcases, trunks, chests, travel bags, handbags, baskets, and the like, and the notion of luggage includes for different types of transport items such as: portable or wheeled chairs for the sick, strollers for children, skis, certain musical instruments, various devices needed by the passenger, etc.

The carrier is responsible for the loss or damage to the luggage or other goods of the traveler unless it is proven that the damage was caused by their defect, the traveler's fault, or force majeure.

It is noted that Art. 2005 of the Civil Code regulates loss and damage, but not the delay of luggage. This does not mean that in the case of delay, the carrier is not liable, but that the liability for luggage delay will be based on the provisions of Art. 1959, para. 2 of the Civil Code, which stipulates that: for damages caused by the delay in reaching the destination, except in the case of a fortuitous event and force majeure, the carrier is liable. This regulation can be applicable in this matter also because Art. 2005 para. 4 allows the application of regulations in the matter of the goods transport contract if there is no contrary stipulation, in the matter of the passengers and luggage contract.

For hand luggage or other goods that the traveler keeps with them, the carrier is only liable if the intention or fault of the latter regarding their loss or damage is proven.

As for the amount of compensation, the carrier is liable for the loss or damage of the luggage or other goods of the traveler up to the declared value or, if the value was not declared, in relation to the nature, usual content of these and other such elements, as circumstances may dictate.

Mention. The aspects previously analyzed generally address the provisions of liability from the general theory of the two contracts, for goods and for persons, and the rules for calculating damages, as they are provided in the general regulation, namely the provisions of the Romanian Civil Code. However, the aspects regulated by the Code are more numerous, especially concerning the transport of goods, and they cover multiple situations such as: liability in successive or combined transport, regulations on limiting, removing, and aggravating the carrier's liability, causes that remove or exclude the carrier's liability, liability for refunds and customs formalities, etc.

Moral Damages in Transport Law. Regarding transport law, the awarding of moral damages can have a dual application: awarding moral damages resulting from the improper exercise of transport activity - in the field of tort liability, or, as the case may be, awarding moral damages in the contracts of transport of persons and luggage - in the field of contractual liability.

Moral damages concern the activity of passenger transport and the transport of luggage and contracts related to this activity, not the activity of goods transport. The reasons for which moral damages can be awarded in the case of passenger transport are

evident, considering, in the general context of civil law regulating moral damages, and they undoubtedly arise from the situations provided by the Civil Code for which the transport liability is engaged: the death of the passenger, injury to the bodily integrity or health of the passenger, non-performance of the transport, its execution under different conditions than those established, delay in the execution of transport.

Also, the type of obligation in passenger transport - of result and security. Security obligations need legislative consecration, with the passenger transport contract being a classic example of this type of obligation. The non-fulfillment of such an obligation has an evident potential for claiming moral damages. Whether we are talking about a definition and consecration in the regulations that target the classification of obligations of the Civil Code or an express consecration in the area of regulation reserved for the passenger transport contract, it needs to benefit from the definition and conditions for establishing liability and benchmarks for calculating the compensations it triggers and specifying the type of compensations—pecuniary and moral.

According to the doctrine (Boilă, 2012: 44–47), bodily injuries for which the carrier's liability is engaged—the carrier being contractually responsible for injury to the bodily integrity or health of the passenger—represent a distinct category of compensable damages, within the broader sphere of damages caused to a person.

As previously mentioned, the Romanian Civil Code promotes the principle of full compensation for the damage, and, as a result, in the sphere of these damages, it does not only cover those non-pecuniary consequences regarding physical and psychological pain, aesthetic, social, leisure damages, etc., but also introduces the economic losses suffered by the victim - expenses made with medication, medical care, applied treatments, a special diet, supervision of the patient by other persons, transportation of the patient to be hospitalized or treated on an outpatient basis, diminuation or loss of income, etc., all of these having the nature of pecuniary damages.

An analysis of the regulations in the current Romanian Civil Code regarding the repair of bodily injuries highlights the fact that, in its regulations, it makes a distinction between the physical person, in their capacity as a holder of rights and obligations, and the human being, as a biological existence. A summary of the regulations in the current Civil Code regarding the repair of bodily injuries indicates that in the matter of repairing bodily injuries, this distinction between the physical person, viewed as a subject of rights and obligations, and the human being, in the materiality of their biological existence, referring to their right to life, physical integrity, and health, has a different impact on calculating compensations. Thus, art. 58 para. 1 of the Civil Code included "the right to life, to health, to physical and psychological integrity, to honor and reputation, the right to respect for private life, as well as the right to one's own image"; in art. 61 para. 1 of the Civil Code, dedicated to guaranteeing the rights of the human being, it is provided that "the life, health, and physical and psychological integrity of any person are guaranteed and protected equally by law"; the principle of the inviolability of the human body is regulated in art. 64 of the Civil Code, in close connection with "the person's right to their physical and psychological integrity"; through the regulation in art. 66 of the Civil Code, the sanction of absolute nullity was established for "any acts whose object is the conferment of a patrimonial value to the human body, its elements or products", except in cases expressly provided by law. The Romanian Civil Code enshrines Title V for the protection of non-pecuniary rights, through the provisions of Art. 252-257.

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Regarding the issue of injuries to the human body, the Civil Code, through the provisions of Art. 1387 and 1388, contains only specific rules for the repair of bodily injuries, but does not define them, leaving this task to the doctrine and, possibly, to jurisprudence.

Some authors (Boilă, 2012: 52–56) believe that distinguishing bodily injuries in relation to other types of damages is essential, and these differences consist of the following: the tortious or contractual wrongful act to have negative effects on the human being itself, referring to its material, biological existence, but also to its spiritual, intellectual, emotional, professional, or material life; the social values infringed upon to be primarily the non-pecuniary personal rights targeting life, health, and the physical integrity of the human being, but indirectly affecting pecuniary rights, through the expenses and losses they cause. The status of an injured person may belong to the victim, but also to other persons injured "by ricochet", when the consequences extend to the family or those close to them.

In the field of transport law, these damages can also be claimed for the loss, deterioration, and delay of luggage. Hence the need for the current Civil Code regulations to define the notion of luggage. Luggage is not just any good; it is a good so intimately connected to the traveler that it can cause states to justify the awarding of moral damages. There cannot be an equality sign between the transport of goods and the transport of luggage, precisely for these reasons. Judicial practice abounds in solutions for awarding moral damages for the loss, damage, and delay in delivering luggage, with air transport being the most generous in this regard.

The loss of luggage or the delay in returning luggage can cause psychological suffering to the passengers to whom they belonged because they were deprived of the necessary items, and in their capacity as claimants, they can request material damages, but also moral damages. It is known that, in the field of contractual liability, moral damages are more limited than those in the field of tort liability, and they only target certain contracts and only certain obligations within these contracts. Luggage, due to the content of its notion, is susceptible to be the subject of an obligation whose non-compliance leads to the request for moral damages, not only material ones. The judge is the one who, depending on the factual circumstances, will assess the total amount that compensates for the consequences of the defective performance of this obligation (Pap, 2016: 197- 203).

However, in various types of transport concerning the awarding of compensation for luggage, as well as in the transport of goods, we witness the introduction of limits regarding the compensation that can be awarded. Without these limits, the carrier, which is a very important economic and social factor, would be easily exposed to bankruptcy. It is a professional, and its activity is regulated by a very strict regime of legal norms that condition and constrain it in concluding contracts specific to its activity, but it is, at the same time, legally protected by introducing limits on awarding compensation.

Thus, although it is left to the discretion of the judge, who must assess whether or not to award moral damages in the case under judgment, the awarding of compensation is limited according to legal regulations.

Moreover, in the case of moral damages, regarding their proof, the court, unlike material damage where it must verify the fact that it is certain, both in terms of its existence and the extent of the said damage; in terms of awarding non-pecuniary damages, the judge needs to verify only the fact that the damage is certain in terms of its

existence. Possibly, that it has not yet been repaired. The certain character of the damage presupposes that it is certain, both in terms of existence and in terms of the possibility of evaluation, and the extent of the damage is to be established by the court depending on the circumstances of the case and the liability limitations that operate for that type of transport.

An example in this regard is the air transport of passengers and luggage, where the liability of the community air carrier for passengers and their luggage is regulated by the Montreal Convention. Article 22(2) of this Convention, ratified by Romania through OG no. 107/2000 and approved by Law no. 14/2001, stipulates that: "in the case of luggage transport, the carrier's liability in the event of destruction, loss, damage, or delay is limited to the sum of 1,000 Special Drawing Rights (SDR) for each passenger unless the passenger, at the time the checked luggage was handed over to the carrier, made a special declaration of interest in delivery at destination and paid a supplementary sum, if necessary" (Montreal Convention ratified by OG no. 107/2000: art. 23; Law no. 14/2001 for the approval of OG no. 107/2000).

The Convention does not condition the awarding of this compensation on the proof of the amount of the suffered damage. The Montreal Convention aimed to limit the compensation in such situations, without conditioning the amount and awarding of compensation on the proof of the damage, which, in such circumstances, would be almost impossible to prove.

Regarding the liability of air transport operators established by the Montreal Convention, the European Court of Justice has also ruled (in case C-63/09 Axel Walz/Clickair SA). The Court analyzed the objectives considered in the adoption of the Montreal Convention and concluded that the Convention established a strict regime of liability for air transport operators. Thus, regarding the damages that occurred in the case of destruction, loss, or damage to checked luggage, the transport operator is presumed responsible for these damages if "the event which caused the destruction, loss, or damage took place on board the aircraft or during any period in which the carrier was in charge of the checked luggage". As a counterbalance to this presumption of the carrier's responsibility, the Court deemed that such a strict regime of liability implies that a "fair balance of interests" between the interests of air transport operators and those of passengers must be maintained. This balance implies that the transport operator is obliged to respond under the Montreal Convention, but only limitedly (www.rolii.ro). In other words, the term "damage" in the Montreal Convention must be interpreted to include both material damages and moral damages. That is, combined, they cannot exceed the limit imposed by the Convention regulation. The Court of Justice of the EU showed that the compensation limits operate in favor of air transport operators and that, regarding luggage, the maximum limit of compensation cannot be automatically granted. Indeed, a limitation of compensation thus conceived allows passengers to be compensated easily and quickly, without imposing on air transport operators a very burdensome repair burden, difficult to identify and calculate, which could compromise and block, or bankrupt their economic activity.

The contractual commitment of the carrier, in their capacity as a professional and debtor in the performance of certain activities conducted within the legal relationships created, involves the assumption of a certain legal regime from which a set of rights and obligations arises. The non-compliance with professional obligations established by law gives rise to tort liability, and in case a contract is concluded between

a professional and a client establishing the framework for exercising the attributes of their specific activity – contractual liability.

In other words, being a professional engages legal liability, both extra-contractual and contractual, and this implies impeccable conduct, exercising activities with maximum diligence, so as to prevent potential damages that might be inflicted on individuals using their services (Luntraru, 2017a: 152-153).

Doctrine notes that the special obligations imposed on a professional, generally private, can be grouped into three major categories: obligations arising from contractual loyalty, obligations regarding loyalty towards the co-contracting party, and obligations arising from the principle of efficiency (Luntraru, 2017b: 153). Most of these obligations are legally based on the principle of good faith, and non-fulfillment or inadequate fulfillment of them incurs the tort liability of the professional and, as an exception, contractual liability, if it is found that by not respecting these special obligations, the objective proposed in the contract was not achieved.

At this level, the tort liability of the carrier, compensation can also be requested for both material damages and moral damages. Through the defective performance of its activity, the carrier can cause its client, the passenger, states of discomfort, stress, and frustration by the improper execution of its activities to which it was contractually committed but which must be executed respecting certain standards governing its activity or affected one of the values protected by the Civil Code regarding human personality, namely health, physical and psychological integrity, dignity, private life intimacy, etc.

In summary. Viewing the regulation reserved, in general theory, for the contract of transport of persons and luggage, we cannot help but notice that it is allocated a very limited number of articles (7 articles) and that in fact, only two aspects of the contract of transport of persons and luggage are regulated: the obligations of the parties and the transport operator's liability for the person of the traveler and for luggage and other goods. Thus, the regulation in this matter is perfectible both in terms of the aspects it needs to address and their content.

Clearly, in these brief texts, aspects regarding moral damages were not regulated, but they would have been necessary considering that, in their entirety, the regulations of the Civil Code are not sufficient on the issue of non-pecuniary damage. The Romanian Civil Code, although it provides for the carrier's obligation to transport the traveler's luggage without other payment and establishes the carrier's liability for its non-fulfillment, does not define the notion of luggage, does not establish a legal regime at the principle level for liability regarding hand luggage and checked luggage, and does not make a clear and nuanced distinction between the transport of goods and luggage. Also, Art. 2005 of the Civil Code regulates loss and damage but overlooks the liability for the delay in delivering the luggage, a liability that is engaged according to special laws on this matter.

Therefore, in this matter, the regulations of the Romanian Civil Code are incomplete, and future regulation is needed on several legal aspects concerning the contract of transport of persons and luggage, including the area of awarding moral damages in this matter. A set of rules in general theory must be established that represent clear benchmarks for awarding these types of compensation, which can be awarded, on one hand, by not performing obligations incumbent on the carrier from their professional regime, and on the other hand, when not performing or defectively performing those contractual obligations that have the potential to be remedied by also

awarding moral damages. These rules would create a uniform practice and the possibility of their award in all types of transport, especially in the case of luggage, as the field of air transport seems to be the preferred domain where they are awarded.

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