# Liability for Causing Damage under European Private International Law: Albanian Rapprochement Framework during the Integration Process Towards the EU

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***Abstract***

*In this paper, the responsibility for damage will be dealt with in the field of European private international law. The historical part of causing damage will be dealt with, where we will focus mainly on the provision of national legislation and what international legislation has dealt with! Responsibility will be addressed from the point of view of Regulation II of Rome, some special obligation relationships, focusing on some specific damages which this regulation deals with, and the scope of the appropriate law! The alignment of Rome II Regulation with Albanian internal legislation will be addressed. First, we will deal with the historical part of the paper, how it was treated at the time of Zog and until today, then we will continue with the treatment of the current and international legislation, bringing the comparative part and the innovation in the domestic legislation and will to conclude with some conclusions which should be in the attention of the legislators for the future. When a damage is caused, which comes as a result of human actions, a civil legal relationship arises. The damager who causes this legal relationship must be held responsible, this requires certain stages to be passed where it is determined what is the damage that has occurred, the conditions that must be met, the calculation of the facts, the legitimacy that the parties have process etc. The cause of damage is divided into two categories, contractual and non-contractual damage. That part of the law that regulates contractual and non-contractual damages recognizes the right of persons to be compensated for the damages that may have been caused to them as a result of the breach of contract or the commission of any illegal action. The other commonality between the two types of damages is the reason for exemption from responsibility for causing these damages, which can be force majeure, extreme necessity.*

***Keywords:*** *liability, regulation, contractual damage, non-contractual damage, tortfeasor, extreme need*

## 1. Introduction

Civil liability for causing damage was first materialized with legal norms in Roman law. The claim for damages was represented by the "Aquilian lawsuit". Its progress did not find stable forms, except in the era of Napoleon, precisely in the Civil Code when, not only in this area, adaptation to the developments of society, of civil law in general and of responsibility for causing damage in particular is achieved .

The Napoleonic Code served as the civil law foundation for legislation, jurisprudence and doctrine. Over the years, the efforts of jurists and legislators have only changed the appearance of the institutes, leaving the principles almost intact.

The subsequent efforts are not the change of all accepted principles, but their adaptation to the special characteristics of social development, of civil law in particular, with a major place in this development.

The change of the political system brought a new spirit and worldview in the legislation of the Eastern European countries, therefore also in Albania. The institution of causing harm, with politicized and superficial definitions began to change, adapting to the law and doctrinal heritage of continental European countries or, in a more national assessment, returned to the definitions of civil law regulated in the Code Civil of 1929.

In the historical aspect, the Civil Code of 1929 and the Civil Code of 1982 will be treated, but also an analysis from Roman law. It will be addressed how our legislation implements them and how the Rome 2 regulation provides.

In the Code, they find special regulation "Responsibility for the actions of persons learning a trade", "Responsibility for illegal actions of servants and workers", "Responsibility for damages caused by animals", "Responsibility for facts arising from objects", "Liability for damages caused by the collapse of buildings", as well as "Liability for obligations arising from illegal actions caused by many persons".

Article 1160 of the Civil Code determines the method of compensation for damages. The obligation arising from the illegal action includes compensation for the damages resulting from this action. Damages can be material and moral and the possibility of repairing material damage and moral damage is recognized.

### *1.1 Historical Part*

In ancient Roman law, there was no distinction between criminal and civil offenses (delicts). The ancient Roman law recognized the term "delict" that indicated any illegal action of the party that was sanctioned by law, and only according to the sanction that belonged to the party, the division into public and private delicts was made. Delicts, as a source of the birth of the obligation relationship, due to the unilateral actions of people, were divided into public and private. Only private delicts represent a source of obligations, since for public delicts or criminal offenses (crimes), the sanction (penalty) was given either by the injured person or by members of his family or by the state to the body of the injured person or in the form of money that was collected in favor of the state treasury.[1] In Roman law, in the case of causing civil damage, the damage was caused by the obligation to compensate the damage or multiple compensation.

However, the compensation did not have the purpose of compensating the damage, but the purpose of reconciling the injured party, so that he would not take revenge. The Romans, before the issuance of the law of the XII Tables, regulated the issue of compensation for damage based on customary rules, where the injured party gained the right to revenge against the causer of the damage or members of his family. In Roman law, the institution of debt slavery was also known, according to which persons who had any civil obligation and were unable to fulfill the debt from any contract or other legal work, then the same must either voluntarily or by forcing them from the court's decision to repay the debt by working with the creditor.

Although this sanction was aimed at paying off the debt, it still had the effects of personal punishment since the insolvent person had the status of a slave and during this entire period he lost the civil rights he enjoyed as a Roman citizen until the moment of paying off the obligations. Later, with the development of social and economic relations, the Romans, as they created a permanent surplus of products, sought to avoid the risk of revenge by insisting on the compensation of the damage with some property value for the benefit of the injured party.

This was done since the rules for compensating damages had a punitive character. As a result of this, reconciliation agreements were born in the form of contracts, which agreements were made between the members of the group that caused the damage and the members of the injured person's group, and based on the agreement, the injured person's family members undertook to withdrew from the right to revenge or corporal punishment on the body of the

[1] *Roman Law, Prof. Assoc. Dr. Arta Mandro - Year 2007, page 394*

delinquent against the reward they would receive from the members of the group of the person who caused the damage. Such agreements were optional in nature, as it depended only on the will of the parties, especially the injured party, if he agreed to waive the right to revenge.

Emperor Servius Tullius, through leges regiae, tried to make a distinction between public and private torts. However, he decided to keep the resolution of disputes of a public nature to himself, while he intended for the parties to resolve civil disputes themselves. This evolution of the rules on causing damage is clearly shown by the provisions of the law of the XII, since for any damage to property or personal values it allowed the possibility of material compensation for the same.[2] This shows a transition from the sanction of revenge to that of compensating the damage with money, but however for certain cases very draconian sanctions continued to remain in force, for example: in relation to the damage caused it says: "si membrum rupit, ni cum eo pacit, talio esto" (if someone has damaged the limbs of the body and then they do not reach an agreement on the compensation of the damage, then the talion will apply).

In connection with "frugem aratro quasitam noctu pavisse ac secuisse puberi XII tabulis capital erat, suspensumque Cereri necari iubebant, inpubem praetoris arbitratu verberari noxiamve duplionemve decerni" (if someone peels or plucks foreign fruits with a plow at night, according to the law of the XII tables for the adult guilty, the death penalty was foreseen, it was foreseen that he would be hanged and drowned in honor of the lord Ceres, while the minor, according to the opinion of the praetor, should be beaten or should be handed over to the injured person to compensate through debt slavery the damage in multiple value).

The later rules on the infliction of damage have always tended to exclude the principle of talion and to replace it with the obligation to pay compensation in money. Thus, according to the divisions made by Gaius in his institutions, four remain as illegal actions that resulted in the award of civil damages, and that: injuria (presented any violation of the material and personal values of the other person, without realizing any material benefit to the cause of damage), furtum (theft), rapina (robbery) and damnum injuria datum (involved damage to foreign property without personal benefit to the causer of the damage), which remain pure only sources of liability. In the post-classical period, Justinian, in addition to contractual obligations, also recognized obligations arising from delicts, quasi-delicts and quasi-contracts. The difference between delicts and quasi-delicts lies in the fact that the delicts did not exist without the appearance of the harmful consequence, while the quasi-delicts existed even without the appearance of the consequence.

The delict did not exist if the causer of the damage was not guilty or was not directly responsible when the damage was caused (animus nocendi), while the quasi-delict existed even without the perpetrator's fault. However, with the issuance of the Lex Aquilia, all previous provisions for the compensation of damages were abrogated, and all cases of non-contractual damage compensation were foreseen in three chapters. The first chapter provided that, if someone unjustly kills a foreign slave or four-legged animal, he is obliged to compensate the damage in the highest value that these things have had during the last year.[3] In the second chapter, the punishment is foreseen for the surety who has cheated and does not fulfill the obligation to the main creditor. In the third chapter, it is foreseen that whoever unjustly injures a slave or animal, or destroys or damages a foreign object, is obliged to pay the highest price that the object has had in thirty days.

The scope of the lex aquilia and its expansion with the inclusion of even more cases was done during the interpretation that the praetors made when applying its provisions. As for the damage caused by animals, the Romans used the special term - pauperies. This mainly applied to the damage caused by quadruped pets.

There is an obvious parallel between the Roman delict and the English common law tort, but the similarity should not go too far, since Roman law, for the delict, has a strong criminal element (the law punished the conduct of wrongdoers), also ensured that the injured party was adequately provided for. While the English tort makes a clear distinction between criminal offenses and civil wrongs. In common law, the expression "tort" is used for civil offenses, an expression which has French origins, due to the influence of the French-Normandy part in England. It is believed that the etymology of the word derives from the Latin language "tortum", which means injustice, violation of the law. By "tort" is meant the illegal actions that were taken against the person or his property, with the exception of violations of contractual obligations. In contrast to the previously known violations, today the common law tort includes more types of violations, for example: violation of privacy, injury to the child before it is born, etc[4].

Contemporary civil law has clearly made the separation from the so-called tort laws, as today in the case of causing civil damage or non-fulfillment of the contract, the causer of the damage cannot be subject to physical punishment or deprivation of liberty. Article 11 of the International Covenant on Civil and Political Rights also states that

[2] *Roman Law, Prof. Assoc. Dr. Arta Mandro - Year 2007, pg. 40*
[3] *Roman Law, Prof. Assoc. Dr. Arta Mandro - Year 2007, page 406*
[4] *Roman Law Prof. dr. Enkeleda Olldashi, year 2018, page 354*

"no one may be imprisoned for the sole reason that he is unable to fulfill an obligation arising from a contract". Based on the interpretation of the provisions of this convention and other conventions, it is clearly seen that the obligation to compensate for the damage is not intended to take revenge on the perpetrator of the damage or to penalize him, but only civil liability, which means the material compensation of the damaged values. Also, most of the contemporary legislations now do not direct the imposition of the sanction for any violation of the civil obligation against the personality of the person, but only against his property[5].

During the period of the republic, most property relations continued to be regulated on the basis of the provisions of the Ottoman Civil Code. Later, as the basic source of civil law, was the Civil Code, which entered into force on April 1, 1929. This code is presented with more progressive content than all the legal-civil regulation that was applied in our country until that time. With the new unified and common solutions for all Albanian citizens, which were defined in this code, the regulation of family relations and legal inheritance according to the religion of the parties was completely abolished. These new provisions of this code brought natural consequence of the distribution of religious courts[6].

Sources, system and content - The Albanian Civil Code was built mainly on the model of the French (Napoleonic) Civil Code. However, a number of institutions of this code were built on the basis of the relevant provisions of the Swiss Civil Code and the Swiss Code of Obligations, while some others were taken from the German Civil Code. The Albanian Civil Code consisted of the introduction, which contained some general provisions on the interpretation and application of laws, as well as four books or parts. The first book, which was called 'Persons and family', regulated the problems of citizenship and the status of natural persons. It also contained provisions on civil status acts, on marriage, on recognition of paternity and maternity, on paternal authority, on guardianship (guardianship of minors), etc. The last title of this book was dedicated to legal entities", distinguishing them into" associations and foundations.

If we look at the provisions as a whole, we notice that the Civil Code, unlike other legislations that regulate this institute, includes all the material and moral damages caused by the illegal action. The judge can assign a reward to the injured party, in the case of a bodily injury, violation of honor or fame to him or his family, violation of personal freedom, or the residence, or of a secret belonging to the injured party. It is also provided that in the event of the death of the injured person, a reward can be assigned to his wife, child, or spouse as compensation for the grief suffered. It provides as sources of obligations: contract, unilateral promise, expansion of works, non-obligated payment, enrichment without cause as well as illegal actions.

In article 1149/I of the Civil Code, the conditions that must be met for the existence of the civil legal relationship, which derives from an illegal action, are given, accompanied by the subjective element of guilt, the existence of damage and the causal link between the illegal action and the damage of came: "Any fault that causes another person a dam, obliges the betrothed to reward this."[7]

Interpreting the article literally, he has decided that the injured party is obliged to prove his fault. If he is not able to prove that the person who caused the damage acted with guilt, he cannot claim his compensation.

In addition to the general principle according to which the damage caused must be compensated, the Civil Code also provided for cases of exclusion or limitation from this liability.

Article 1149/II of the Civil Code provided: "This obligation (to compensate the damage) also has the one who, in the exercise of his own right, exceeds the limits set in good faith or by the purpose of which he is aware the right one, causes another a checker."[8]

From the assessment of the provision, it is realized that the person who caused a damage in the exercise of a legal right, is not charged with civil liability. This, as long as it does not exceed the limits allowed for the exercise of the legal right. Exceeding these limits is illegal and therefore incurs responsibility for the author of the damage.

The Civil Code of 1929 obliges any person with legal capacity to act, who illegally caused damage, to compensate the damage. However, the Code provides that even a person incapable of acting can be charged with responsibility, in cases where he was able to evaluate his own actions, i.e. when he was aware of the action he had taken. "The godless is responsible for his illegal actions, if he acted with the mental power of appreciation."

In the Code, they find special regulation "Responsibility for the actions of persons learning a trade", "Responsibility for illegal actions of servants and workers", "Responsibility for damages caused by animals", "Responsibility for facts

[5] *The Law of Obligations and Contracts, General Part, Mariana Tutulani-Semini- Year 2006, pg 256*
[6] *Adams, Michael (1989), 'Warum kein Ersatz von Nichtvermogensschaden?', in Claus Ott, and Hans-Bernd Schäfer, (eds.), Allokationseffizienz in der Rechtsordnung, Berlin, Springer-Verlag, pp. 210-217*
[7] *Article 1149/I of the Civil Code*
[8] *Article 1149/II of the Civil Code*

arising from objects", "Liability for damages caused by the collapse of buildings", as well as "Liability for obligations arising from illegal actions caused by many persons".

Article 1160 of the Civil Code determines the method of compensation for damages. The obligation arising from the illegal action includes compensation for the damages resulting from this action. Damages can be material and moral and the possibility of repairing material damage and moral damage is recognized[9].

## 2. Responsibility in the Perspective of the Rome II Regulation, Some Special Obligations!

The special rules for certain violations are defined by Articles 5-9 of the Rome II Regulation. The relevant violations are the liability related to non-contractual damage, for the product, unfair competition, environmental damage, infringement of intellectual property and industrial actions.

### *2.1 Product liability*

**Article 5**

1. Without prejudice to Article 4 (2), the law applicable to a non-contractual obligation arising from damages caused by a product shall be:

(a) the law of the country in which the person had his or her habitual residence where the damage occurs occurred, if the product was marketed in that country, or, if not,

(b) the law of the country in which the product was acquired, if the product was marketed in that country, or, if not,

(c) the law of the country in which the damage occurred, if the product was marketed in that country.

However, the applicable law shall be the law of the country in which the person alleged to be liable is a permanent resident if he or she could not have foreseen the marketing of the product, or a product of the same type, in the country in which law is applicable under (a), (b) or (c)[10].

2. When it is clear from all the circumstances of the case that the violation of the law is clearly more closely related to a country other than the one specified in paragraph 1, that law will be applied. An obviously closer connection with another country may be based in particular on a previous relationship between the parties, such as a contract, that is closely related to the tort in question.

Recital 18 explains that the conflict rule in product liability matters must meet the objectives of fairly spreading the risks inherent in a modern high-tech country, protecting the health of consumers, promoting innovation, ensuring competition and trade facilitation. He states that the creation of a system of cascading factors links, together with a predictability clause, a balanced solution in terms of these objectives.[11]

Based on the circumstances, it seems appropriate to continue, in seeking guidance in the scope of Article 5 from the EC, from the Commission's explanatory memorandum accompanied by the Original Proposal of July 22, 2003[12], and from the Hague Convention on the Law Applicable to Products Liability (1973) . Regarding the concept of a product, it seems appropriate to follow the Suggestion of the Explanatory Memorandum because this has the same meaning as Article 5 of the Regulation as in EC Directive 85/374 (with amendments), which has partially harmonized the substantive laws of Member States regarding product liability.

Thus, defined by Article 2 of the Directive, the term "product" means any movable object, even if it is included in another movable or an immovable one, and includes electricity. Therefore, the concept also extends to a material or a component which is used or parts included in a finished product[13], as well as the final product itself, and extends to an agricultural product (either primary or processed).[14] The explanatory memorandum shows that in other aspects the scope of Article 5 of the Regulation is wider than that of the Directive. In particular, Article 5 applies if the claim is based on strict liability or fault.[15] But, even though (unlike the Original Proposal) the adopted Regulation does not refer to a "defective"

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*[9] Article 1160 of the Civil Code*
*[10] Article 5 Rome Regulation 2*
*[11] American Law Institute (1991), Enterprise Responsibility for Personal Injury, volume II: Approaches to Legal and Institutional Change.*
*[12] See COM (2003) 427 final, especially at 13-15.*
*[13] See also Explanatory Memorandum, COM (2003) 427 final, at 15; Directive 85/374, Article 3 (1), and Hague Convention 1973 Articles 2 (a) and 3 (1).*
*[14] Directive 1999/34, Article 1 (amends Directive 85/374, Article 2).*
*[15] See also Hague Convention 1973 Articles 2 (a) and 3 (2).*

product, the analogy of the Directive shows that the focus is on safety and this consideration is slightly supported by the reference in Recital 18 of the Regulation for the protection of consumers' health[16]. Thus Article 5 should probably be interpreted as limited to claims related to physical injury to (or death of) a person, or physical damage to property other than the product itself, and as not extending claims to pure economic loss,arising from physical injury or damage. On the other hand, there are no reasons to limit Article 5 from requests made by a buyer or a consumer of the product, or by an individual[17].

In contrast to Directive 85/374, Article 5 of the Regulation is silent regarding the character of the defendants for the persons responsible to which it applies. It seems clear that Article 5 does not apply to claims against an actual user or possessor of a product at the time of the incident from which the claim arises. Similarly it does not extend to claims against the person's employer, or anyone else who is indirectly responsible for his conduct as a user or possessor. Thus, when a car is involved in a road accident, Article 5 does not extend to claims by injured pedestrians against the driver or his employer, even if the car was unsafe due to a defect that existed when it left the manufacturer.[18]

**Article 5** accordingly applies to claims against a manufacturer or producer of a finished product, or of a raw material used or a component incorporated into a product[19].

It also extends to claims against an importer or a supplier of a product or against other persons[20], such as the designer[21], repairer, involved in the commercial chain of preparation or distribution of the product[22].

In any case, it is clear from the inclusion of Article 5 of Chapter II of the Regulation that the responsibility must be a violation. On the other hand, even when there is a contract between the parties for the supply of the product[23], Article 5 will be applied to a breach claim between them, but in this situation we have an exception specified by Article 5 (2) where it is stated that the breach claim will be governed by the law that governs the contract, or (as the case may be) by the law that provides mandatory protection for the claimant as a consumer, based on the Rome Convention 1980. Article 5(1) provides a cascade of five rules for the choice of law , which are applied in this way. If the first rule fails to determine an applicable law, it goes to the second, and so on. All five rules are the object of an exception made by Article 5 (2) in favor of the clearly more closely related law.

The five rules and exceptions can be restated as follows:

Rule 1 - If both the victim and the defendant were permanent residents of the same place at the time the injury occurred, the applicable law is that of common habitual residence.[24]

Rule 2 - Otherwise the applicable law is that of the country in which the victim was a permanent resident when the injury occurred, if the product was marketed in that country, and if the defendant could not reasonably have foreseen the marketing of the product, or a product of the same type.[25]

Rule 3 - Otherwise the applicable law is that of the country in which the product is insured, if the product is marketed in that country, and if the defendant could not foresee the marketing of the product, or a product of the same type, in that place.[26]

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*[16] See Explanatory Memorandum, COM (2003) 427 final, at 13.*

*[17] Article 6 of Directive 85/374 specifies that a product is defective, when it does not provide the Security that a person has the right to expect, taking into account all the circumstances, including: (a) presentation of the product, (b) use that it could reasonably be expected that. The product will be placed (c) the time when the product is put into circulation.*

*[18] Somewhat similarly, Article 9 of Directive 85/374 limits the damage for which the Directive imposes liability to (a) damage caused by death or personal injury, (b) damage to, or destruction of, any property. other than the damaged product itself, with a low threshold of €500 ECU, provided that the element of property: (i) is of a common type intended for private use or consumption, and (ii) was used by the injured party mainly for his private use or consumption. He adds that this does not affect the national provisions related to damages. In contrast, Article 2 (b) of the 1973 Hague Convention defines "damage" as personal injury or property damage, as well as economic loss, but excluding damage to the product itself and significant economic loss on it, unless is accompanied by other damages.*

*[19] See Explanatory Memorandum, COM (2003) 427 final, at 15; Directive 85/374, Article 3 (1), and Hague Convention 1973 Article 3 (1) and (2).*

*[20] See Explanatory Memorandum, COM (2003) 427 final, at 15; Directive 85/374, Article 3 (2), and Hague Convention 1973 Article 3 (3) and (4).*

*[21] See Explanatory Memorandum, COM (2003) 427 final, at 15; Directive 85/374, Article 3 (3), and Hague Convention 1973 Article 3 (3).*

*[22] See Hague Convention 1973, Article 3(4).*

*[23] This contravenes the 1973 Hague Convention which claims that a claim is excluded by Article 1(2) where property in, or the right to use, the product has been transferred to the claimant.*
*by the defendant.*

*[24] See the opening phrase of Article 5 (1).*

*[25] See Article 5 (1) (a), and the last clause of Article 5 (1)*

*[26] See Article 5 (1) (b), and the last clause of Article 5 (1)*

Rule 4 - Otherwise the applicable law is that of the country in which the damage occurred, if the product was marketed in that country, and if the defendant could not foresee the marketing of the product, or a product of the same type, in that country .[27]

Rule 5 - Otherwise the applicable law is that of the country in which the defendant was habitually resident[28].

Exception - by way of exception to the above rules, where it is clear from all the circumstances of the case that the offense is clearly more closely connected with a country other than the country to which the law would be applicable under those rules, the law of that country applies. It seems appropriate to refer to the "victim", instead of the "plaintiff", as a synonym for the "person supporting the damage", since the analogy with Article 4 (1) indicates that the relevant person, on the side of the applicant of claim, it is the person who suffers the immediate injury, rather than a related person who claims for a loss. Thus, in the case of a fatal accident, the relevant person is dead, rather than the family members who claim for their grief or loss of financial support. On the part of the defendant, the relevant person is the one whose responsibility is in doubt.[29]

The definitions of permanent residence provided in Article 23 also extend to product liability. In this context, they cause special difficulties in situations where several institutions of a defendant manufacturer have been involved in the production and marketing of the product.

*2.2 Environmental damage*

Article 7 of the Rome II Regulation defines a special rule for violations "arising from injury or damage caused to persons or property as a result of environmental damage". Article 24 provides for the definition of "environmental damage" referring to adverse changes to one of the natural resources, such as water, land and air, damage to a function performed by such a resource for the benefit of one of the natural or public resources , or impairment of variability among living organisms.[30]

According to Article 7, the applicable law for a possible violation as a result of damage to the environment or damage caused to persons or property, as a result of such damage, is the law established in accordance with Article 4 (1), unless the person seeking compensation for the damage bases his claim on the law of the country in which the damage occurred. This essentially constitutes a rule of alternative reference, in favor of the law of the place of the direct injury, or the law of the place of the defendant's conduct, whichever is more favorable to the plaintiff. However, the plaintiff must choose between the two laws, at a stage of the procedure determined by the law of the forum. In any case, the normal rules provided by Article 4 (2) and (3) giving priority to the law of common residence or the law of a closer relationship are excluded. [31]

Regarding the rationale for Article 7, Recital 25 refers to Article 174 of the EC Treaty, which provides that there should be a high level of protection based on the preventive principle and on the principle of preventive action should be taken, the principle of priority for remedial action at source, and the polluter pays principle. She claims that this fully justifies the use of the discriminatory principle in favor of the person causing the damage.

*2.3 Industrial Disputes*

Article 9 of the Regulation specifies that, without prejudice to Article 4 (2) (in the application of the law of a common permanent residence), the law applicable to an offense relating to the liability of a person in the capacity of a worker or a employers or organizations that represent their professional interests, for damages caused by a strike, pending or committed, is the law of the country where the action was performed or taken.

Recital 27 explains that the exact concept of industrial action, such as strikes or lock-outs, varies from one Member State to another and is governed by the internal rules of each Member State. Recital 28 adds that the special rule for strikes in Article 9 does not affect the conditions related to the exercise of such action in accordance with national law, and brings a prejudice to the legal status of trade unions or representative organizations of workers provided for in the law of Member States.

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[27] *See Article 5 (1) (c), and the last clause of Article 5 (1).*
[28] *See the last clause of Article 5 (1).122 Ankara Law Review Vol.4 No.2*
[29] *See Article 5 (2).*
[30] *Recital 25 refers to Article 174 of the EC Treaty.*
[31] *Recital 28 adds that the special rule for strike in Article 9*

*2.4 Scope of Applicable Law*

Article 15 of the Rome II Regulation provides a broad, but not exhaustive, definition of the issues that are regulated by the appropriate law of violations, defined in accordance with Articles 4-9.[32] Thus, the issues listed in Article 15 must be treated as material and referred to the appropriate law, but other issues can be treated as procedural and referred to the law of the forum. In Article 15, the appropriate law applied to violations applies both to issues of liability and to issues related to damages.[33] Regarding the issues related to responsibility, Article 15 states for the subjects: (a) the basis and degree of responsibility, including the determination of the persons who can be held responsible for the actions performed by them, (b) the reasons for exclusion of liability, any limitation of liability and any allocation of liability; (e) the question of whether a right to seek compensation can be transferred, including inheritance; (f) persons who have the right to compensation for the damage suffered personally, (g) persons responsible for the actions of another person; (h) the manner in which an obligation may be extinguished and the rules of prescription and limitation, including rules relating to the commencement, termination and suspension of a period or limitation. In addition, Article 22(1) specifies that the appropriate law applies to the extent that, in matters of non-contractual obligations, it contains rules which increase the presumptions of law or determine the burden of proof.

The applicable law also governs the admissibility and assessment of damages. From Article 15 (c) we confirm that there is a determination of the nature and evaluation of the alleged bull. Thus the proper law must apply to all matters relating to the assessment of damages to be awarded, unless the proper law lacks some rule on the matter which is sufficiently clear to enable a court elsewhere to apply it with confidence and precision. This accords with the approach recently adopted by the Court of Appeal in Harding v Wealands[34], where the previously accepted view that the quantification of damages was governed by the lex fori as a matter of procedure was abandoned. Unfortunately the House of Lords[35] reversed the decision and reaffirmed that all aspects of the quantification of damages are procedural. Recital 33 states that, according to the current national rules for the compensation granted to victims of road traffic accidents, when quantifying damages for personal injuries in cases where the accident occurs in a state other than that of the victim's permanent residence, the court must take taking into account all relevant current circumstances of the victim in particular, including actual losses and costs of after-care and medical treatment.

With Article 15 (d) of the Regulation, the law is applied, within the limits of the powers given to the court by the procedural law, for the measures that the court can take to prevent or terminate injury or damage or to ensure the provision of compensation. This is necessary in order not to force the court to order measures which are unknown in the procedural law of the forum.

*2.5 The general meaning of non-pecuniary damage in European Tort Law*

Non-pecuniary damage, provided for in Article 625 of the Civil Code, as a broad and comprehensive category of non-contractual damages, includes any type of damage suffered from the infringement of non-pecuniary rights and interests that are part of one's values and are not subject to the assessment of directly to the market[36]. In its essence, this provision recognizes the right to compensation for any type of extra-contractual non-pecuniary damage, which is different from the property damage. The listing of cases of non-pecuniary damage in its paragraphs "a" and "b" is not intended to limit, but to regulate expressly, for the effect of distinguishing the violations, the right to the corresponding compensation and the circle of subjects that enjoy active legitimation.

More specifically, Article 625 provides: "The person who suffers a loss, other than property, has the right to request compensation when:

He has suffered an injury to his health or his personal honor has been violated;

The memory of a dead person has been insulted and it is claimed by the spouse with whom he lived until the day of his death or by his relatives up to the second degree, except when the insult was committed when the deceased was alive and the right to compensation for the insult done.

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*[32] Article 15 of the Rome II Regulation*

*[33] See also Articles 21 and 22 (2), in the laws that regulate the formal validity and the method of authentication of a unilateral act in order to have legal effect and related to this non-contractual obligation.*

*[34] (2005) 1 All ER 415 (CA).*

*[35] 2006 UKHL 32.*

*[36] Article 625 of the Civil Code*

*2.6 The right provided for in the above paragraph is non-inheritable*

From the interpretation of Article 625, we can say that it refers to several main types of moral damage:damage resulting from damage to health the damage that comes from the violation of honor and personality the harm that comes from insulting the image of a dead person[37]

In relation to the terminology used in the European context (European Tort Law), this type of damage is called "Non-pecuniary loss". But this term is not universal, we often find it with the terms "Non-material loss", "Moral damage", "Health damage" etc. They are not exactly interchangeable as terms, but they all express a basic idea that exists in every system of European countries, and most countries of the world. This basis has to do with the fact that certain matters will be considered worthy of compensation, despite the fact that they are not related to a monetary loss and cannot be evaluated scientifically, or by referring to the market. The loss of a body part, or the violation of freedom and privacy, are considered harm in the eyes of the law regardless of the economic damages they may bring. When dealing with death and personal injury, such damages are usually associated with monetary loss, lost income or medical expenses, the amounts that can be reached can be up to €500,000, in some systems. If the complaint is made for violation of freedom or a right of personality, the violation exists when these are violated and if these do not exist there is no sanction for the illegal action. As you can see, the compensation of a damage or its fulfillment takes more place than compensation. In these cases it is difficult to find similarities between different legal systems because the mechanisms they use can be used. According to the European law of violations taking into account the purpose of protection, the violation of an interest can justify the award of non-pecuniary damage. This is the case, especially when the victim has suffered personal injuries; or violations of human dignity, freedom or other personality rights. Non-pecuniary damage can be the subject of compensation for persons who have a close relationship with the victim and suffer a fatal and serious suffering from the realized damage. In general, in the assessment of such damages, the seriousness of the situation, the length of the consequences, the consequences should be taken into account. The degree of the violation is taken into account when it significantly contributed to the deterioration of the victim's situation.

In cases of personal injuries, non-pecuniary damage corresponds to the suffering of the victim and his physical or health injuries. In the assessment of the damage, the same amounts should be given for the same damage, so its assessment is done objectively.

## 3. Conclusions

In relation to issues related to responsibility, Article 15 states for the subjects: (a) the basis and degree of responsibility, including the definition of the persons who can be held responsible for the actions performed by them, (b) the reasons for exclusion of liability, any limitation of liability and any allocation of liability; (e) the question of whether a right to claim damages is transferable, including by inheritance; (f) persons who have the right to compensation for the damage suffered personally, (g) persons responsible for the actions of another person; (h) the manner in which an obligation may be extinguished and the rules of prescription and limitation, including rules relating to the commencement, termination and suspension of a period or limitation.

Non-pecuniary damage, as a broad and comprehensive category of non-contractual damages, includes any type of damage suffered from the violation of non-pecuniary rights and interests that are part of one's values and are not subject to direct evaluation in the market.

The award of a damage or its fulfillment takes more place than compensation. In these cases it is difficult to find similarities between different legal systems because the mechanisms they use can be used. According to the European law of violations taking into account the purpose of protection, the violation of an interest can justify the award of non-pecuniary damage. This is the case, especially when the victim has suffered personal injuries; or violations of human dignity, freedom or other personality rights. Non-pecuniary damage can be the subject of compensation for persons who have a close relationship with the victim and suffer a fatal and serious suffering from the realized damage. In general, in the assessment of such damages, the seriousness of the situation, the length of the consequences, the consequences should be taken into account. The degree of the violation is taken into account when it significantly contributed to the deterioration of the victim's situation.

[37] *Article 625 of the Civil Code*

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