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Damages for the infringement of human rights in Romania*

I. Sources of law applicable to the repair of the damages caused by the infringement of human rights

A. In Romania, human rights are enshrined by the Constitution of 1991, revised in 2003¹, as well as by the international and European rules applicable to the Romanian State.

According to the constitutional provisions, the relationship between the conventional international rules in the field of human rights to which Romania acceded and the domestic rules are governed by the principles of direct applicability, of superiority and of subsidiarity. These international rules are part of the national legal order (they have a *self-executing* nature), creating rights directly for the subjects of the national legal order, which can be invoked directly before the national authorities and jurisdictions. In the domestic law, they have a supra-legal power and an interpretative constitutional value, being integrated in the constitutional block. The domestic rules contrary to the international one are inapplicable, unless they are more favorable to the human rights.

The constant case law and in principal of the Constitutional Court (a special and a specialized jurisdiction, external to the judicial power, which ensures the supremacy of the Constitution and exercises the control over the constitutionality of laws) and of the High Court of Appeals and Justice (the supreme court of the judiciary jurisdictional order, the only jurisdictional order existing in Romania) establishes that the international case law – based on which the conventional rules with respect to human rights are interpreted – are integrated in the domestic legal order on the same position and on the same characteristics as the conventional rules. Thus, *in concreto*, in the Romanian legal system, the European Convention of Human Rights and in the case law of the European Court of Human Rights (which, according to the principle of solidarity, create a conventionality block) are domestic legal sources directly applicable, having a force superior to the domestic rules and in compliance with the principle of maintaining the more favorable domestic rules.

Furthermore, according to the constitutional provisions, all the rules of the European Union Law regarding the fundamental rights which have a directly applicable nature are a source of the positive Romanian law; they have a supra-legislative power (the conventional and the case law application rules also having an interpretative constitutional value) and make the principle of subsidiarity applicable.

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¹ Constitution of Romania, revised, republished in the Official Journal of Romania, part I, no. 767 of October 31st, 2003.

B. Besides the Constitution and the international conventional rules, the main enactments (laws and other norms having the same legal force as the law) which concern the compensation of the damage suffered by the victims whose human rights were infringed are: the Civil Code; the Civil Procedure Code; the Criminal Procedure Code; the Law no. 554/2004² on administrative disputes; the Fiscal Procedure Code; the Labor Code; the Law no. 188/1999³ on the statute of civil servants; the Law no. 303/2004⁴ on the statute of judges and prosecutors; the Government Emergency Ordinance no. 195/2005⁵ on environmental protection.

If human rights are infringed by a public law person (the State, a local territorial community, a State authority, a local authority, a public institution, a structure dedicated to the public service), the compensation of the damage suffered by the infringement of human rights is mainly governed by the public law, namely, as the case may be, by the Constitutional Law, by the Administrative Law (including the Administrative Disputes Law, the Civil Servants Law and the Local Autonomy Law) or by the Judiciary Law. In all cases and if compatible, these public law rules are supplemented with the relevant Civil Law rules that represent the common law.

If human rights were infringed with respect to the relationships between the private law subjects, then the private law norms, especially the Civil Law rules, are applied.

In all cases in which the infringement of human rights is a criminal offense or an administrative misdemeanor, the public law is mainly applicable (the Criminal Law and the Criminal Procedural Law, the Administrative Offences Law respectively), supplemented as common law with the Civil Law.

II. Common law in the field of compensating the damage suffered because of the infringement of human rights

A. The international and the domestic rules in the field of human rights have a vertical effect (in the relationships between the public authorities, on the one hand, and the individuals, on the other hand), as well as a horizontal effect (in the inter-individual relationships between private persons).

As a result, human rights must be complied with not only by the public authorities but by the private persons as well, having the consequence that not only the public authorities, but private (natural or legal) persons are also responsible for the infringement of human rights.

In principle, except for the existence of special derogatory rules, when human rights are infringed by a public authority, by a public institution or by a structure dedicated to the public service, in order to ensure the compensation of the damage suffered by a person by infringement of human rights, it can trigger the civil liability of the public law legal person and the civil liability of the natural person (civil servant or contractual employee) who acted in the name and on its behalf.

² Law no. 554/2004 on administrative disputes, published in the *Official Journal of Romania*, part I, no. 1154 of December 7th, 2004, as subsequently amended.

³ Law no. 188/1999 regarding the statute of civil servants, republished in the *Official Journal of Romania*, part I, no. 365 of May 29th, 2007, as subsequently amended.

⁴ Law no. 303/2004 regarding the statute of judges and prosecutors, republished in the *Official Journal of Romania*, part I, no. 826 of September 13th, 2005, as subsequently amended.

⁵ Government Emergency Ordinance no. 195/2005 on the environmental protection, published in the *Official Journal of Romania*, part I, no. 1196 of December 30th, 2005, as subsequently amended.

B. The main form of legal liability, having a compensatory nature, in case of infringement of the human rights, is the civil liability in tort.

The civil liability in tort exists for one's own action, as well as, in the cases specifically provided by the law, for somebody else's action, for the things or for the animals under the legal care of the person or for the building's collapse.

In order to trigger the civil liability in tort of a (natural or legal) person, for one's own action, the following conditions must be cumulatively met: the existence of an illegal fact (commission or omission); the person's guilt, as intention or fault; the existence of damage, material or moral; the causal link between the illegal fact and the damage.

The illegal fact consists of the action or of the inaction by which the duty to comply with the rules of conduct imposed by the law or by the custom of the land is breached and other person's rights or interests are damaged. Therefore, the infringement of human rights (enshrined by the Constitution or by international treaties) is an illegal fact.

As a general rule, the civil liability in tort is triggered only in case of guilt, which can be an intention or a fault. The fact is intentionally when the author foresees the result of his action and intends to produce it through the action or, although he does not intend to perpetrate it, he accepts the possibility that this result might be produced. The fact is committed by fault when the author foresees the result of his act, but does not accept it, believing without any grounds that it will not be produced, or does not foresees the result of the action, although he should have. The fault is serious when the author acted with negligence or with an imprudence that the most deprived of skill person would not have shown to his own interests. The author of the damage is responsible for the lightest fault. In order to appreciate the guilt, the circumstances not related to the person of the author of the action under which the damage was caused, and, if the case may be, the fact that the damage was caused by a professional in the exploitation of an undertaking are taken into consideration.

The damage caused may be material or moral. The civil liability in tort triggers the obligation to compensate the damage caused. The compensation concerns all damages caused, the compensation obligation being a total one.

In order to trigger the civil liability in tort, there must be a causal link between the illegal fact, committed with guilt, and the damage caused.

C. The causes for discharge of liability are: the force majeure; the fortuitous case; the fact of the victim or of a third party; the exercise of rights; the benefit for the victim; self-defense; state of emergency; lack of judgment.

The force majeure is any external, unforeseeable, totally invincible and unavoidable event.

The fortuitous case is an event unforeseeable and unavoidable by the person who would have been held liable unless the event had occurred.

The action of the victim himself and the action of a third party discharges from liability although they do not have the characteristics of the force majeure, but only those of the fortuitous event, when, according to the law, the fortuitous case discharges from liability.

The person who causes damage by the exercise of his rights does not have the obligation to compensate it, unless the right is abusively exercised.

The victim cannot obtain the compensation of the damage caused by the person who helped him selflessly or by the thing, the animal or the building that he used free of charge, unless the intention or the serious fault of the person who, according to the law, had been held liable for his actions is proved.

The person who caused to the aggressor in self-defense a damage does not owe any damages. However, the court can order the person who committed a criminal offence by exceeding the limits of the legitimate self-defense to pay an adequate and fair compensation.

The person who, in state of emergency, destroyed or deteriorated other persons' goods in order to defend himself or his own goods from an imminent damage or danger has the obligation to repair the damage caused, according to the rules applicable to the unjust enrichment. Therefore, in this case, there is no civil liability in tort.

The minor who did not reach the age of 14 or the person against whom an interdiction order was issued for mental incapacity is not responsible for the damage caused, unless his judgment at the date the fact was committed is proved. The minor who reached the age of 14 is responsible for the damage caused, unless it is proved that he lacked judgment at the date the fact was committed. The person who caused damage is not responsible if, when he committed the damaging fact, he was mentally ill – even temporarily – and this situation made him unaware of the consequences of his action. However, the person who caused the damage is responsible, if the temporary mental illness was caused by him, by the intoxication caused by alcohol, drugs or other substances. As a subsidiary obligation for granting damages to the victim (and not based on civil liability in tort), the lack of judgment does not exempt the author of the damage from the payment of a compensation to the victim whenever the liability of the person who will have, according to the law, the duty to supervise him is triggered; the compensation is set in a total fair amount, taking into consideration the parties' assets.

As far as the liability-related clauses are concerned, the liability for the material damage caused to another person by a willfully committed fact or by an action due to serious fault cannot be excluded or limited by agreements or unilateral acts. The clauses that exclude the liability for the damages caused to the victim's goods, by mere imprudence or negligence, are valid. The liability for the damages caused to the physical or mental integrity or health cannot be removed nor reduced unless according to the law. The declaration for the acceptance of the risk that a damage was caused does not constitute, by itself, the victim's renunciation to the right to obtain compensations.

D. The persons who are liable for a harmful event are jointly held liable to pay damages to the injured person.

If the damage was caused by the simultaneous or by the successive action of several persons, without being able to determine that it occurred or, as the case may be, that it could not have been caused by a particular person, all these persons are jointly liable towards the victim.

The person who pushed or determined another person to cause a damage, that helped that person in any way to cause it or deliberately hid goods resulted from an illegal action or obtained benefits from other person's damage, and the person who prevented or delayed in any way the summoning before court of the author of the illegal fact is jointly liable with the author of the action.

The duty to pay damages is proportionally divided between the jointly liable persons to the extent to which each of them participated in causing the damage or according to the intention or to the seriousness of each person's fault, if this participation cannot be determined. If the duty to compensate the damages cannot be divided using this method, each contributes equally to the compensation of the damage.

The law stipulates the right of recourse. If the damage was caused by several persons, the person who, being responsible for the action of one of such persons, paid the compensation,

can file legal actions against the other persons who contributed to the damage or, if the case may be, against those responsible for such damages. The right of recourse is limited to what exceeds the part resting with the person for whom he is responsible and it cannot exceed the part of the damage to be paid by each of the persons against which the right of recourse is exercised. The person who exercises the right of recourse cannot recover his share of the damage corresponding to his own contribution to the damage.

In case of common guilt, namely, when the victim contributed willfully or by fault to the occurrence of to damage, to its increase or did not avoid them in full or in part, although he could have, the person summoned before court will be held liable only for his share of the damage he caused. The solution is the same in the situation of the plurality of cases, namely, the case in which the fact committed by the author willfully or by fault, and the force majeure, the fortuitous event or the action of the third party for which the author does not have the obligation to be held liable contributed to the occurrence of the damage.

E. For civil liability in case the human rights are infringed, the matter of the liability of the legal person, as well as the matter of the liability for somebody else's action, under the form of the principal's liability for the agent's action, are important.

The legal or the illegal facts committed by the bodies of the legal person binds the legal person itself, however, provided that they have any connection with the duties or with the purpose of the functions entrusted. Illegal facts trigger also the personal and joint liability of those who perpetrated them, towards the legal person as well as towards third parties.

If the law does not provide otherwise, the public legal persons are bound for the legal or the illegal facts of their bodies, under the same circumstances as the private law legal persons.

As far as the civil liability of the State and of the local territorial communities are concerned, unless the law stipulates otherwise, the State is not liable but in subsidiary for the obligations of the bodies, of the authorities or of the public institutions that are legal persons and none of these legal persons is liable for the obligations of the State. The same solution applies to the local territorial communities, which are not responsible but in subsidiary for the obligations of the bodies, of the institutions and of the public services under their suborder when they have legal personality. In the civil relationships in which it presents itself directly, in its name, as titleholder of rights and obligations, the State participates through the Minister of Public Finances, unless the law establishes another body to this effect. The local territorial communities participate to the civil relationships in their own name, through their own bodies.

The principal has the obligation to compensate the damage caused by his agents whenever the fact perpetrated by the same is related to the duties or to the purpose of the functions entrusted. Principal is the person who, by virtue of an agreement or under the law, exercises the direction, the supervision and the control over the person who fulfils certain functions or duties in his interest or in the interest of a different person.

The principal is not responsible if it is proved that the victim knew or, according to the circumstances, could have known, at the date of the harmful fact that the agent acted without any relation to the duties or to the purpose of the functions entrusted.

In case of the principal's liability for the agent's action, the law stipulates the right of recourse. The person responsible for another person's fact can file legal actions against the person who caused the damage, unless the latter is not responsible for the damage caused. When the person responsible for another person's fact is the State, the Ministry of Public Finances must file legal actions against the person who caused the damage, if the latter is responsible, according to the special law, for having caused that damage.

If a public authority or a public institution, in capacity of principal, paid damages to third parties, under a final court decision, and a civil servant is responsible, his civil liability is triggered towards the respective public authority or institution, the damages suffered by the public authority or institution being compensated based on a final court decision.

If the damage was caused to a public authority or institution (which had to pay damages to a third party) by a contractual employee, the latter is held liable with his assets according to the rules of the contractual civil liability.

F. With respect to the object, the extent and the forms of the compensation, the law stipulates that any damage entitles to compensation. The compensation can be patrimonial or non-patrimonial.

The damage is fully compensated, unless the law stipulates otherwise. Compensations can also be granted for a future damage if its occurrence is certain. The compensation must include the loss suffered by the injured person, the income that he could have obtained under usual circumstances and of which he was deprived, as well as the costs that he suffered in order to avoid or to limit the damage. If the illegal fact also caused the loss of the opportunity to obtain an advantage or to avoid a damage, the compensation will be proportional with the probability to obtain the advantage or, as the case may be, to avoid the damage, taking into account the circumstances and the real situation of the victim.

With respect to the forms of the compensation, the compensation of the damage will be in kind, by restitution to the prior situation, and if it is not possible or if the victim is not interested in the compensation in kind, by the payment of damages, established with the parties' agreement or, in absence, under a court decision. At the determination of the damage, the date of the occurrence of the damage is considered, unless the law stipulates otherwise. If the damage is continuous, the damage is granted as a periodical performance. In case of the future damage, regardless of the form under which it was granted, the compensation can be increased, reduced or cancelled, if, after its determination, the damage increased, was reduced or cancelled.

In case of harming the bodily integrity or the health of a person, the damage must include the equivalent of the income obtained from work of which the injured person was deprived or that he is prevented to obtain, by the effect of the loss or of the reduction of his capacity of work. Besides this, the compensation must cover the health care expenses and, if the case may be, the expenses caused by the increase of the needs of life of the person damaged, as well as any other material damages. The compensation for the loss or for the non-obtaining of the income from work is granted as periodical pecuniary performances, taking into account the increase of the needs of life of the person damaged. At the request of the victim, for grounded reasons, the compensation can be granted as a global amount. In all cases, the injured person can be granted a temporary compensation covering the urgent needs.

The compensation for the loss or for the non-obtaining of the income from work is determined based on the monthly net income from work of the injured person obtained in the last year before losing or reducing his capacity of work or, in absence, based on the net monthly income that he could have obtained, taking into consideration the professional qualification that he had or that he could have had at the completion of the training he was to receive. However, if the injured person proves the possibility to obtain a higher income from work based on an agreement concluded in the last year, and such agreement was not enforced, such income will be taken into consideration in the determination of the compensation. If the

injured person did not have a professional qualification and he was not about to obtain it, the compensation will be determined based on the national net minimum salary.

If the person whose bodily integrity or health was harmed is a minor, the compensation for the loss or for the non-obtaining of the income from work is due from the date when the minor had normally completed his professional education. By that date, if the minor was earning an income when he was bodily injured, the compensation will be determined based on the income of which he was deprived.

The compensation for the damages caused by the death of a person is due only to the persons entitled, according to the law, to support from the deceased. However, taking into account the circumstances, compensations can be also granted to the person that the victim was currently supporting, without being obligated by the law. At the determination of the compensation, the needs of the injured person, as well as the income that the deceased had obtained over the period when the compensation was granted, are taken into consideration.

In order to compensate the non-patrimonial damage, if the bodily integrity or the health is affected, compensation can be also granted for having limited the possibilities of the family and social life. In addition, compensations can be granted to the predecessors, the descendants, the brothers, sisters and the spouse, for the suffering due to the victim's death, as well as of any other person who, in his turn, could have proved the existence of such damage. The right to compensation for the damages to the rights inherent to the personality of any legal subject may be assigned only if it was determined under a settlement or under a final court decision. The right to compensation, acknowledged for the compensation of the non-patrimonial damage, is not inherited by the heirs; however, they can exercise it, if the legal action was initiated by the deceased.

The person who incurred costs for taking care of the victim's health or, in case of his death, for his funeral, is entitled to the money spent from the person responsible for the fact that caused such costs.

If the social insurance acknowledged the right to aid or to a pension, the compensation is due only provided that the damage suffered by bodily injury or death exceeds the aid or the pension. As long as the aid or the pension was actually granted or, as the case may be, refused to the damaged party, the court can force the person held liable only to a temporary compensation.

G. Distinct from the patrimonial compensation, in order to defend the non-patrimonial personal rights, the natural person whose rights were breached or threatened may obtain: the prohibition to commit the illegal fact, if it is imminent; the cessation of the breach and the prohibition for the future, if it still lasts; the finding for the illegal nature of the fact committed, if the trouble he produced subsists. At the same time, the person who suffered a breach of such rights can obtain the obligation of the action's author to fulfill any measures deemed necessary by the court in order to re-establish the right affected, such as: ordering the author, at his cost, to publish the conviction court decision; any other measures necessary for the cessation of the illegal fact or for the compensation of the damage caused. In addition, the injured person can claim compensations or, as the case may be, a patrimonial compensation for the damage, even non-patrimonial, caused to him, if the damage is attributable to the author of the harmful fact.

The legal action for the reestablishment of the non-patrimonial right breached can be continued or initiated, after the death of the injured person, by the surviving spouse, by any of

direct relatives of the deceased, as well as by any of his collateral relatives up to the fourth rank inclusively. The legal action for the reestablishment of the integrity of the memory of a deceased can be initiated by the same persons.

For the defense of the personal non-patrimonial rights, the adoption of temporary measures is also possible. If the person considered injured brings the credible proof that his non-patrimonial rights form the subject matter of an illegal, actual or imminent action and that this action risks to cause a damage difficult to compensate, it can ask the court to take temporary measures, especially: the interdiction to breach or temporarily cease; the taking of the measures necessary to ensure the preservation of evidence.

The non-patrimonial rights of the legal persons are defended the same way as for the natural persons.

H. The action filed in order to obtain a patrimonial compensation for the damage suffered (the damage is material or moral) is, in principle, barred by the statute of limitation, the general statute of limitation being of 3 years.

The right to action for the compensation of the moral or of the material damage caused to a person by torture or barbaric acts or, as the case may be, of the person caused by violence or sexual aggressions committed against a minor or a person found in the impossibility to defend himself or to express his will is prescribed within 10 years.

In all cases in which the compensation results from a fact subject by the criminal law to a statute of limitation longer than the civil statute of limitation, the statute of limitation of the criminal liability is also applied to the right to action for civil liability.

The statute of limitation of the right to action for the repair of a damage caused by an illegal fact starts to run from the date when the victim knew or had to be aware of the damage as well as of the person responsible for it.

The right to legal action is not subject to the statute of limitation in case of the action concerning the defense of a non-patrimonial right, except for the patrimonial compensation, which is subject to the statute of limitation.

I. As a general rule, the courts of law adjudicate on the compensation of the damage suffered by infringement of the human rights, by the triggering of the civil liability in tort, as a patrimonial or non-patrimonial compensation.

If special norms do not attribute the jurisdiction to certain specialized sections (such as the administrative and the fiscal disputes sections), it belongs to the civil sections of the courts.

At the request of the person concerned, the court may take any measures necessary to prevent or to cease any illegal harm to the bodily integrity, as well as to order the patrimonial and/ or non-patrimonial compensation of the material damages or moral harm suffered by the victim.

If the fact causing damages is also a criminal offense, the victim, in order to obtain civil compensations, can choose between filing a civil claim at the civil section of the court and becoming a civil party in the criminal trial. In this second case, the criminal section of the court also solves the criminal and the civil side of the case. The material damage and moral harm are compensated by the criminal court according to the provisions of the civil law, which represents the common law in the field.

III. Specific aspects with respect to the compensation of the damage caused by the governing activity

A. In case of the Government ordinances (government acts having the same legal force as a law, issued based on a legislative delegation), if they were declared unconstitutional by the Constitutional Court, compensations may be granted to the victims for the damages caused by such unconstitutional ordinances.

The persons whose rights or lawful interests were affected by the ordinances or by the provisions of the ordinances may file a legal action at the administrative and fiscal disputes sections of the courts, accompanied by the plea (the exception) of unconstitutionality, if the main subject matter is not the finding for the unconstitutionality of the ordinance or of an ordinance provision. The legal action can be filed at any time.

If it considers that the plea of unconstitutionality is admissible, the court notifies the Constitutional Court and suspends the resolution of the case on the merits. After the Constitutional Court renders a decision, the court reinstates the case on the trial docket and, if the ordinance or its provision was declared unconstitutional, it resolves the merits of the case, granting compensations for the damages caused.

If a decision of the Constitutional Court to hold a Government ordinance unconstitutional is the result of an exception raised in a different case, any person affected may directly file the claim for damages to the administrative and fiscal disputes section, within 1 year from the publication of the decision of the Constitutional Court in the *Official Journal of Romania*, the term representing a limitation period.

B. Damages are granted according to the Civil Code, the common law in the field, special derogatory rules not existing.

IV. Specific aspects regarding the compensation of the damage caused by the administrative activity

A. There are special rules regarding the compensation of the damage if human rights are infringed due to the administrative activity (the issuance of an illegal administrative act - individual or normative, the conclusion of an illegal administrative agreement, the accomplishment of an illegal administrative operation, the unlawful refusal to issue an administrative act, to conclude an administrative agreement or to conduct an administrative operation) of the public authorities, of the public institutions and of the structures dedicated to the public service.

The person whose right or lawful interest was affected must address first of all to the public authority with an administrative complaint against the illegal administrative act, within 30 days from its communication. If the answer of the public authority is negative or it doesn't answer within 30 days, the victim can file an action at the administrative and fiscal disputes section of the court, within 6 months from the date the answer was received or from the date the answer term was fulfilled (statute of limitation), term which may be extended up to 1 year in grounded situations (limitation period). Unlike the individual administrative acts and the administrative agreement, as far as the normative administrative acts are concerned, the administrative complaint and the legal action can be filed at any time.

The legal action can have as subject matter both the annulment of the illegal administrative act or the obligation to issue or amend it (claim for annulment or injunction), as well as the

compensation of the damage, including compensations for the moral harm – therefore, the court of law is able to grant compensations for material damages as well as for moral harm (claim for compensations).

The claim for compensation can be filed not only together, but also after the claim for annulment as well, in this last situation within 1 year from the date the victim knew or had to know the extent of the damage.

The claim for compensations for the prejudice caused, including by delay – regardless if it is filed at the same time with the claim for annulment, or is filed afterwards, can be filed against the public authority only or jointly against the public authority and against the person who contributed to the preparation, issuance or conclusion of the act or, as the case may be, against the person guilty of having refused to resolve the claim regarding a subjective right or a lawful interest. The natural person summoned before the court can summon before the court as guarantor his superior in line, from which he received a written order to prepare the act or not. If the claim is admitted, the obligation of the public authority and of the natural person to pay compensation is a joint one.

B. In the absence of any specific derogatory rules, the damage is compensated according to the common law rules of the Civil Code.

V. Specific aspects regarding the compensation of the damage caused by the fiscal activity

If the State or the local territorial communities unfairly cashed in taxes or charges, as a result of having incorrectly applied the legal rules, of certain calculation errors or for other reasons, the respective amounts must be returned to the tax payers.

For the amounts to be returned from the budget, the tax payers are entitled to an interest, the interest being granted at the tax payers' request. The interest represents the equivalent of the damage caused to the tax payer as a result of the non-restitution of the taxes or charges not due and is calculated for each day of delay. The interest level is the same as the interest cashed in by the State or by the local territorial communities in case of the late payment by the tax payers of the taxes and charges due, namely, 0.03% for each day of delay.

In case of the tax payer's claim resulted from the annulment of a fiscal administrative act which determined the fiscal payment obligations, the tax payer may choose to claim compensations, according to the administrative disputes legislation, i.e., according to the civil law.

VI. Specific aspects regarding the compensation of the damage caused by judicial errors

A. The State is patrimonial responsible for the damages caused by judicial errors

The liability of the State is established according to the law and it does not discharge from liability the judges and the prosecutors who exercised their function in bad faith or with serious negligence.

B. In the criminal trials, the right to compensate the material damage or the moral harm exists in case of a judiciary error or in case of unlawful deprivation of freedom

The person who was finally convicted, regardless whether the punishment applied or the education measure depriving of freedom was enforced or not, is entitled to the compensation by the State of the damage suffered if, further to the re-trial of the case, after the annulment or after the termination of the conviction decision for a new or for a recently discovered fact proving that a judicial error occurred, a final acquittal decision was rendered, inclusively in case the criminal trial with respect to the convicted judged in absence was reopened, if after the re-trial a final acquittal decision was rendered. The person convicted is not entitled to the compensation of the damage if, by false statements or in any other way, he determined his own conviction (unless such person was forced to act as such) or if the non-discovery of the unknown or recently discovered fact is fully or partially attributable to him.

He is entitled to the compensation of the damage also the person who, during the criminal trial, was unlawfully deprived of freedom. The unlawful deprivation of freedom must be established, as the case may be, by a prosecutor or by a judge.

At the determination of the extent of the compensation, the duration of the unlawful deprivation of freedom, as well as the consequences produced over the person, over the family of the person deprived of freedom or over the person unfairly convicted will be taken into consideration. The compensation consists of the payment of an amount of money or of the determination of a life annuity or of the obligation that, at the expense of the State, the person unlawfully retained or arrested should be entrusted to a social and medical assistance institution. When choosing the type of the compensation and its extent, the situation of the person entitled to the damage and the nature of the damage caused are taken into consideration. For the persons entitled to the compensation of the damage, who before being deprived of freedom or being incarcerated as a result of the enforcement of a punishment or of an educational measure depriving of freedom were employed, their length of service is calculated according to the law as well as the period for which they were deprived of freedom.

The claim for compensations may be initiated by the person entitled to them, and after his death it can be continued or initiated by his dependents at the time of the death. The claim can be filed with 6 months from the date the judiciary act remained final, under which the judiciary error or the unlawful deprivation of freedom was found. In order to obtain the compensation of the damages, the person entitled can address the court, bringing a civil case against the State, summoned through the Ministry of Public Finances. The claim is exempt from the payment of the judicial stamp duty. In all cases, the compensations are incurred by the State, through the Ministry of Public Finances.

The State can file a legal recourse for the recovery of the amount paid against the person who, in bad faith or due to serious fault, caused the damage triggering situation or against the institution where such person was insured for compensations in case of damages caused in the exercise of the profession. The State must prove in the legal recourse, based on the prosecutor's ordinance or the final criminal court decision, that the person insured caused in bad faith or due to a serious professional fault the judicial error or the unlawful deprivation of freedom that caused the damages.

C. In the trials other than criminal trials, the right of the person affected to compensations for the material damages caused due to judicial errors cannot be exercised unless a final decision retained before the criminal or the disciplinary liability, as the case may be, of the judge or of the prosecutor for an action committed during the adjudication of the case and if this action is of nature to determine a judicial error. The person who, during the trial,

contributed in any way to a judicial error committed by the judge or by the prosecutor is not entitled to compensations.

For the compensation of the damage, the injured person can file an action with the court only against the State, represented by the Ministry of Public Finances. After the damage was covered by the State based on the court decision, the State can initiate a claim for compensations against the judge or against the prosecutor who committed the judicial error causing damages in bad faith or due to serious negligence. The statute of limitation of the right to a legal action is of 1 year.

VII. Specific aspects regarding the compensation of the damage caused to the environment

By derogation from the common law, the liability for the damage caused to the environment has an objective nature, regardless of the fault.

By way of exception, the liability may also be subjective, for the damages caused to protected species and to natural habitats, according to the special legislation.

In case there are several authors, the liability is a joint one.

VIII. The correlation between the international and the national proceedings regarding the compensation of the damage caused by the infringement of human rights

A. In the criminal field, the final court decision rendered in the cases in which the European Court of Human Rights found for a breach of the fundamental rights or freedoms or ordered the removal of the case from the list as a result of the friendly settlement of the case between the State and the claimant, may be subject to review, if one of the serious consequences of the breach of the European Convention of Human Rights or of its additional Protocols continues to produce and it cannot be remedied but by the review of the decision rendered.

The person whose right was breached and the members of the convicted person's family may request the court to review the case even after his death, provided that the claim was filed in favor of the person convicted, as well as the prosecutor.

The claim to review the case will be filed with the court that rendered the decision whose review is requested, within 3 months from the publication date in the *Official Journal of Romania* of the final judgment rendered by the European Court of Human Rights.

When the court finds that the request is grounded, it either partially cancels the decision contested with respect to the right infringed, it re-trials the case and it removes the consequences of the infringement of the right, or it cancels the decision and, when the production of evidence is necessary, it orders the re-trial by the court before which the infringement of the right occurred.

If the Romanian State was convicted by an international court for an unfair criminal conviction or for an unfair deprivation of freedom, the State can file a legal recourse for the recovery of the amount paid against the person who caused in bad faith or due to serious fault the situation generating damages or against the institution where he was insured for compensations in case of damages caused during the exercise of the profession.

B. In the fields other than the criminal law, the review of any court decision may be requested from the court that rendered the decision, when the European Court of Human Rights found an infringement of the fundamental rights or freedoms caused by such court decision, and its serious consequences continue to produce.

The term for filing a request for review is of 3 months as of the publication of the judgment rendered by the European Court of Human Rights in the *Official Journal of Romania*.

If the court approves the request for review, the court fully or partially changes the decision contested.

IX. Conclusions

In conclusion, according to the Romanian law, the prejudices caused by infringement of the human rights must be compensated regardless whether the infringement is made by a public law subject or by a private person.

In principle, the liability is based on guilt, taking the form of intention or of fault, the prejudice covered is both material and moral, and the damage must be fully compensated.

The compensation is patrimonial (in kind or in equivalent) or non-patrimonial.

The human rights are usually protected – by the way of compensation of the damage – by the judicial branch of power, the courts of law.