XXIV. Romania

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In Romania, the general framework of civil tort law was established under the Old Romanian Civil Code (1864), through the case law of the Old Supreme Court. In that period, Romanian civil law acknowledged new concepts, such as objective liability, loss of amenity or ricochet damage and other nuanced concepts, such as direct/indirect damage, causal link, force majeure and fortuitous events. Most of this case law has been incorporated in the provisions of the Romanian New Civil Code, which entered into force on 1 October 2011. However, the XXI century has brought new challenges for law in general and particularly for tort law. In this respect, although the general legal framework in this field has been updated relatively recently, there are still various problems left to resolve in respect of tort liability, but there are also new questions that must be answered, and the task of offering such answers lies, mainly, within the case law. The following judgments are examples of such answers. Some of the judgments have already been analysed in our contributions to the annual reports on the evolution of tort law in Europe over the years, but there are also new judgments, which, over time, have proved to be landmark cases in civil tort case law in Romania.

1. Constitutional Court of Romania, Decision no 342 of 9 July 2024[1]

The first decision deals with the non-pecuniary loss suffered by close relatives of an injured primary victim of a tort. The judgment delivered by the Constitutional Court clarified that such non-pecuniary loss is compensable despite the unclear provision of the Civil Code in this matter, which was previously interpreted by ordinary courts as authorising compensation for such non-pecuniary loss only if the primary victim died.

This judgment was delivered following a procedure of plea of unconstitutionality raised in relation to art 1.391 para (1) of the Romanian Civil Code, which stipulates as follows: 'In cases of a violation of physical

[1] Discussed in *L Bojin/S Căileanu*, Romania, in: E Karner/BC Steininger (eds), European Tort Law 2024 (2025) 605, nos 3–17.

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integrity or health, compensation may also be granted for diminished opportunities for a family or social life.' The plaintiff, who was the spouse of the victim of bodily harm suffered as a result of a traffic accident, sought material compensation for ricochet damage, consisting in the restrictions of their own family and social life caused by the wrongful deed. The question addressed through this plea to the Constitutional Court, which in Romania is the authority facilitated by law to solve pleas of unconstitutionality, was whether it was justified that the compensation for diminished opportunities for a family or social life is limited to the direct victim or whether it should also be granted to the relatives of the direct victim, who must take care of the latter and, by this, suffer themselves a limitation of their own opportunities for a family or social life.

The Constitutional Court declared unconstitutional art 1391 para (1) of the Civil Code 'to the extent that it limits the possibility of indirect victims to obtain compensation for diminished opportunities for family or social life resulting from the harm to the physical integrity or health of the immediate victim', stressing that such limitation represents a breach of arts 22 (right to life, to physical and mental integrity) and 26 (personal and family life privacy) of the Romanian Constitution.

For lawyers, this judgment was a genuine surprise since the Constitutional Court had already found, in several decisions, that art 1.391 (1) was compliant with the Romanian Constitution. In this respect, it must also be stressed that art 1.391 (1) of the Romanian Civil Code was drafted on the basis of consistent case law of the old Supreme Court, case law which was also embraced by the High Court of Cassation and Justice in a preliminary ruling procedure,[2] namely in Decision no 12/2016 on the interpretation of the provisions of art 1.391 (1).[3] In this latter decision, as in general in the previously mentioned case law, the courts decided that a very clear distinction must be drawn between the immediate victim (who is entitled to compensation for all the material and moral damage suffered as a result of a wrongful deed, as long as there is a direct causal link between the deed and the damage), and the indirect victim (who is not entitled to compensation for the moral damage suffered as a result of the suffering of the direct victim, even if the indirect victim is a family

[2] The 'preliminary procedure rule' is a procedure regulated by art 514-518 of the Romanian Civil Procedure Code, the purpose of which is to provide a general interpretation of an ambiguous legal provision, an interpretation that become mandatory for all courts.

[3] *C Alunaru/L Bojin*, Romania, in: E Karner/BC Steininger (eds), European Tort Law 2018 (2019) 533, nos 35–39.

member or a close friend of the direct victim). The only exception admitted in jurisprudence to this prohibition was the case in which the direct victim died. This exception is explicitly regulated by art 1.391 (2) of the Romanian Civil Code, which stipulates the following: 'The courts may also grant compensation to ascendants, descendants, brothers, sisters and spouse for the pain and suffering caused by the death of the victim, as well as to any other person who can prove the existence of such injury.'[4]

This judgment is a landmark decision in the field of Romanian tort law as it has changed the previously prevailing approach in case law. Its major importance, both for the theoretical approach of tort law, and mostly for future case law, can be summarised as follows.

Firstly, by this decision, the Constitutional Court stated very clearly that, in regard to compensation for diminished possibilities of family and/or social life, the difference between direct and indirect victims cannot be drawn *a priori*, but only *a posteriori*, by a court, after taking into consideration all the particularities of a given case. Such an analysis is mandatory because it is inequitable to place in the same situation a spouse who has a legal duty to take care of the other spouse, who was injured to the point that they cannot survive without permanent care, and a cousin who has not maintained any relationship with the direct victim over the years but claims that he suffered severe pain when he heard the news of the damage inflicted on his relative. Analysing the first situation, the Constitutional Court acknowledged that the wrongful deed activates new duties for the other spouse or 'reconfigures' the way in which this spouse must fulfil their obligations (art 309 para (1) and art 325 para (1) of the Romanian Civil Code).[5] In such a case, the spouse, as well as any other person who can prove a real restriction or diminution of their own possibilities of social and/or family life, must be considered a direct victim.

Secondly, the Constitutional Court draws a distinction between moral damage, in general, and ricochet damage consisting in restrictions of possibilities in social and/or family life, as a special type of moral damage. In this respect, although the right to compensation for moral damage in general remains unavailable for the relatives of the direct victim, the former can access this remedy for any restriction that they suffer in respect of their own possibilities of family and/or social life.

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[4] *C Alunaru/L Bojin*, Romania, in: K Oliphant/B Steininger (eds), European Tort Law Basic Texts (2016) 298.

[5] Art 309 para (1) of the Romanian Civil Code stipulates that 'spouses owe each other mutual respect, fidelity and moral support' while art 325 para (1) provides that 'spouses have the obligation to provide mutual material support.'

However, the courts must not only determine whether the indirect victim has indeed suffered a restriction or diminution of their possibilities to maintain their social and/or family life, but also the amount of compensation to which they are entitled. Thus, the Constitutional Court underlined that the duty of the legislative authority is to establish criteria on the basis of which the courts can establish the persons entitled to compensation and the amount of compensation, such as the severity of the damage, the irreversibility of the damage, the type of relationship between the direct victim and the plaintiff, etc. This is the second reason why Decision no 342 of 9 July 2024 is very important.

2. High Court of Cassation and Justice, Preliminary Procedure Ruling no 19 of 3 June 2019

The second decision concerns the issue of commencement of the statutory limitation period for claims made by public authorities for compensation of damage. It specifically deals with the hypothesis when the existence of the damage was not ascertained by the authorities themselves, but by the Court of Auditors and whether, in such a case, the limitation period starts from the date of communication from the Court of Auditors.

This judgment was issued in a preliminary procedure initiated by the Court of Appeal Constanța, which addressed a question to the High Court of Cassation and Justice regarding the statute of limitations of claims for compensation of damage consisting in pecuniary sanctions applied by the Court of Auditors because of irregularities discovered after an auditing activity. Briefly, the High Court was requested to answer whether the report issued by the Court of Auditors or by another public authority empowered by law with controlling the activity of other entities, through which the authority found irregularities and issued sanctions against those entities, could be considered the moment from which the statute of limitations period begins for claims for damages filed by the respective entities against those persons who they hold responsible for the respective damage.

This question was raised in the context in which some courts were of the opinion that the statute of limitations begins on the date on which the Court of Auditors issues a report regarding an irregularity and applies a pecuniary sanction, while other courts opined that such a report has no bearing on this matter and that the statute of limitation begins, according to the general rule, when the victim knows, or should have known, about the existence of the damage and the person responsible for it. This divergence of interpretation has led to uncertainty in the daily practice of pub-

lic entities and, in many cases, to a cessation of economic activity given the possibility that a director or another person in charge could be held responsible for a certain damage for eternity, and not merely in theory.

The High Court, by its Decision no 19 of 3 June 2019, issued in a preliminary procedure ruling, stated that the report issued by the Court of Auditors or by another public authority empowered by law with controlling other entities, by which the controlled entity was obliged to repair the damage caused to it by its public employees or resulting from the payment of an undue amount of money, does not mark the beginning of the statute of limitations period for a claim for compensation for the respective damage, irrespective of its contractual or tort basis.

This decision is a landmark case because it ended the practice of public authorities' managers filing claims for damages against a previous manager and third parties, for alleged damage caused five or ten years earlier. The importance of this decision lies in the fact that the High Court clarified that the reports issued by the Court of Auditors or by any other authority empowered by law with controlling the financial activity of other entities do not have any bearing on the statute of limitations for at least three reasons: (a) the Court of Auditors is a third party in respect of the legal relationship between the entities subject to auditing activities and other natural or legal persons. Therefore, its acts and deeds, including its reports, cannot influence the statute of limitations for claims raised on the basis of a legal relationship established between other parties; (b) the Court of Auditors is a public authority which is empowered to conduct financial audits based on the documents provided by the entity subject to inspection. Consequently, the controlled entity cannot claim that it should have had knowledge of damage only when the Court of Auditors issued its report; (c) the audit conducted by the Court of Auditors is purely facultative. There is no mandatory provision that stipulates that this authority will conduct an audit enquiry over a certain entity over a certain period. Thus, its reports cannot serve as a marker for the beginning of the statute of limitations because the issuance of such a report is an uncertain event.

Finally, the High Court underlined that, in all cases, a court of law or other entities empowered by law, must decide whether, in a certain case, all the conditions for the establishment of civil tort liability are met and this power cannot be exercised by the Court of Auditors or by any other authority empowered by law to conduct financial audits of other entities. Moreover, the source of tort liability is a wrongful deed and not a report which states that a public entity has wrongly managed its financial resources.

3. High Court of Cassation and Justice, Decision no 1589 of 10 June 2015

The third decision deals with the limits of the legitimate exercise of freedom of speech and their consequences in the field of tort law and compensation for damage.

In this judgment, the High Court of Cassation and Justice had to solve a dispute in which claimant X sought relief (compensation of damage) for an alleged violation of his personal right to dignity and private life and also non-pecuniary compensation for an alleged violation of the honour of his late father by defendant Y. Briefly, both X and Y were public figures (politicians) who were competing for a seat in the Romanian Parliament. During the 2012 campaign, Y appeared several times on a television show, in which he presented X as the child of a general of *Securitate* (the political police under the former communist regime in Romania). This topic was, and still is, one of the major subjects of debate in Romanian society, a collaborative relationship with *Securitate* being a sufficient motive to end one's political career. The allegations made by Y were based on a series of press articles from 2008. The Bucharest Tribunal, as the court of first instance, awarded X RON 5,000 (approx € 1,000) as compensation for moral damage and ordered Y to publish, at his own expense, the decision in two nation-wide newspapers. This decision was appealed by Y, an appeal which was dismissed by the Bucharest Court of Appeal. Y filed a request for review of this decision.

The High Court dismissed the request filed by Y, upholding the decisions issued by the lower courts, underlining that the defendant clearly violated the claimant's personal right to honour and the memory of the claimant's late father. Thus, the High Court decided that the defendant must be held responsible based on civil tort liability, for two main reasons. Firstly, the information regarding X and his father, presented in the newspapers used by the defendant to endorse his statements, were false, since, after the publication of the respective press articles, an enquiry was conducted by the National Council for Studying the Archives of Securitate and the investigation concluded that X's father was not a general of *Securitate*. The result of the enquiry was also published and discussed in the media. Secondly, all these facts could have easily been discovered by Y because he made the allegations approximately seven years after the publication of the press articles which he used. Therefore, the High Court concluded that Y deliberately chose to present only such information that could discredit his opponent, with this precise purpose, and that such conduct cannot be acknowledged as a legitimate manifestation of freedom of expression.

This is a landmark decision in Romanian case law regarding the limits of the freedom of expression in public discourse in relation to one of the most difficult social topics in Romanian society. The importance of this decision lies, firstly, in the fact that the High Court acknowledged that balancing competing rights is a necessary and autonomous step in any legal reasoning concerning liability for a violation of human rights, and will thus be decisive for future case law in this type of litigation.[6] The High Court of Cassation and Justice devoted important parts of the *ratio decidendi* to the issue of 'solving the conflict between rights', more precisely between the rights protected by art 8 of the European Convention on Human Rights (ECHR) (the right to private life, right to honour, dignity and one's own image) and the freedom of expression protected by art 10 of the ECHR. In order to solve this conflict, the High Court has provided consistent reasoning, analysing the provisions of the Romanian Civil Code regarding the freedom of expression through the principles established by the European Court of Human Rights (ECtHR)[7] following the lines suggested by the second paragraph of the above-mentioned provisions: any interference with the rights recognised by the ECHR must be in response to a pressing social need and must be necessary in a democratic society.

Secondly, this decision is a landmark case because it makes a more accurate distinction between information of public interest and information regarding the private life of an individual. Therefore, in the case discussed, the High Court stated that an allegation of a collaboration between an individual, whether living or deceased, with the political police of the ex-communist Romanian regime is a topic of public interest and the disclosure of such information is justified and protected under freedom of expression. However, even though such disclosure is not per se a viola-

[6] See eg, High Court of Cassation and Justice, Civil Section 1, Decision no 319 of 5 February 2020, discussed by *C Alunaru/L Bojin/B Şerb*, Romania, in: E Karner/BC Steininger (eds), European Tort Law 2020 (2021) 535, nos 31–42.

[7] According to art 20 of the Romanian Constitution, in a case regarding human rights, the courts are obliged to interpret the national regulations in accordance with international regulations concerning the human right. These legal provisions stipulate as follows: '(1) Constitutional provisions concerning citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.'

tion of one's private life, an accusation regarding a collaboration with the *Securitate* has a strong social significance in Romanian society and can have serious consequences for the life of the accused and can represent a violation of the victim's right to honour and own image. Therefore, the High Court established that such an allegation must be treated as an allegation of a certain fact and not as a value judgement. Consequently, such an allegation must be proved and, if the allegation is not proved, it can be considered a wrongful deed and the wrongdoer can be subjected to tort liability.

Finally, the importance of this decision also lies in the fact that it emphasises that freedom of expression is protected when the purpose of a disclosure is to inform the public about a matter of general interest. For this purpose, the information presented must be correct and complete, considering the reasonably accessible information. Thus, as in the case discussed, if a person has exercised freedom of expression against its purpose and brought to the attention of the public opinion only information likely to create a negative image of another person, concealing information that could have contradicted that image and that could have been obtained as easily as the negative information, insisting on presenting erroneous information and pursuing only their own interests must be considered as conduct that can be subjected to compensation on the basis of tort law.

4. High Court of Cassation and Justice, Decision no 836 of 13 April 2022

The fourth decision deals with tort responsibility of healthcare institutions for injuries due to nosocomial infections and stresses the duties of care and security of the healthcare institutions towards patients.

In this judgment,[8] the High Court of Cassation and Justice dealt with one of the most widely debated subjects in the last decade in Romania – nosocomial infections (pseudomonas aeruginosa) in public hospitals. Briefly, this case involved claimant A, who filed a lawsuit against the defendant Timișoara Medical Institution for Cardiovascular Diseases (IBCT) in which she alleged that her husband (B), during his period of hospitalisation there (approx one month, in which he underwent a surgical intervention), contracted a nosocomial infection that caused his death. After the surgery, B developed a fever and tests subsequently showed that

[8] This decision has been analysed in detail by *L Bojin/S Căileanu*, Romania, in: E Karner/BC Steininger (eds), European Tort Law 2022 (2023) 523, nos 4–22.

he had contracted a nosocomial infection, which led to his death after two weeks. The claimant requested that the defendant be ordered to pay RON 45,000 (approx € 10,000) as material damages (funeral expenses) and € 750,000 as moral damages for shock and emotional pain and suffering caused by her husband's death.

The request was dismissed by the court of first instance, which reasoned that B's death was caused by his precarious state of health prior to hospitalisation, which made him more susceptible to the development of the aggressive biological agent. This judgment was upheld by the Timișoara Court of Appeal. The claimant filed a request for review against this decision before the High Court of Cassation and Justice, which granted the request and ordered a retrial, giving the Court of Appeal two mandatory instructions. The first one concerned the factual premise of the case, namely that nosocomial infections are caused by infectious agents usually present in medical institutions due to deficiencies in hygiene, sterilisation procedures, and similar factors, and that they are associated with the disease for which the patient was hospitalised. The second one is a judicial interpretation of art 655 para (1), point (a) of Law no 95/2006 concerning the reform in the field of public healthcare, which provides as follows: 'The public and private health institutions, as providers of medical services, are liable, according to the generally applicable rules, for damage that occurred during their activities of prevention, diagnosis or treatment, as a consequence of nosocomial infections, unless an external cause, outside of the control of the institution, is proven.' The High Court emphasised that the liability regulated by this norm is strict or objective in nature. Such liability is triggered without the necessity of alleging, proving or presuming any fault of the medical institution because it is based on a duty of warranty, due to the risky nature of prevention, diagnosis or treatment, which, in turn, are associated with the risk of nosocomial infections.

Although this case is not complicated, it can be considered a landmark one because it offered a possibility for the High Court to change its case law in the field of medical tort liability (especially in the case of nosocomial infections but also in other hypotheses regulated by art 655[9]), switch-

[9] The other hypothesis in which the medical institution can be held liable, pursuant to art 655, are: 'b) known defects in medical devices and equipment, assistive technologies and devices used improperly, without being repaired; c) the use of sanitary materials, medical devices, assistive technologies and devices, medicinal and sanitary substances, after the warranty period or their validity period expired, as the case may be; d) the acceptance of medical equipment and devices, assistive technologies and devices, sanitary materials, medicinal and sanitary substances from suppliers without

ing from general subjective liability, based on the fault of the wrongdoer, to an objective liability, which does not require fault or in which the fault is implicitly assumed. In this respect, the High Court stated that while the risks associated with medical procedures (including the risk of death) may be accepted by the patient through their informed consent, the risk of nosocomial infections is assigned by law to the medical institutions and cannot be transferred to the patient or assumed by them. Therefore, there is no liability for nosocomial infections unless it can be proved that the infection has a cause which is external to the medical institution (ie, a source located outside the institution, and which could not be detected by the activities of supervision, prevention and control of infections associated with medical treatment). In other words, the exemption from liability provided by art 655 is applicable only when the external source of the infection is identified, and the burden of proof rests with the medical institution. By applying these principles to the facts of the case, the High Court concluded that the state of the patient's health (the main reason for which the claimant's request for compensation was dismissed at first instance and on appeal) can represent the 'external cause' only when the patient themself was the carrier of the infectious agent and this fact could not have been detected and/or controlled by the medical institution. In order to avoid such situations, medical institutions are under a duty to examine patients prior to hospitalisation.

Another consequence of great importance of this judgment concerns the concept of legal duties of security owed by healthcare institutions (and doctors) to patients. The duty of security is a duty ancillary to the duty of care owed to a patient. It covers the organisation of patient care to maintain the physical and psychological integrity of the patient. The High Court argued that such duties, among which is the duty to investigate the existence of infectious agents at the time of hospitalisation, are duties to achieve a specific result and not mere duties of diligence. This also represents a shift in perspective in the field of legal duties that are traditionally considered to be duties of diligence.

This is a landmark decision in the field of tort law because, although it puts pressure on public financial resources given the fact that nosocomial infections are a systemic problem of the national healthcare system, the High Court explicitly stated that victims of nosocomial infections must be compensated and that the medical actors involved in a case, given their

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the insurance provided by law, as well as the subcontracting of medical or non-medical services from suppliers without insurance for medical liability'.

legal responsibilities, have a burden of proving a situation of exemption of liability.

5. High Court of Cassation and Justice, Decision no 2532 of 24 November 2020

The fifth decision deals with non-pecuniary rights of corporations (and legal persons in general) and with reparation of non-pecuniary loss suffered by them following violation of such non-pecuniary rights.

This case resulted in the High Court of Cassation and Justice being faced with a new question with respect to civil tort liability, namely whether a legal person is entitled to moral damages for violation of its non-pecuniary rights. In this case, claimant A (a legal person) filed a lawsuit against defendant B, requesting that the defendant be ordered to pay RON 360,000 (approx € 72,000) as compensation for moral damage for violating and denigrating the company's reputation. The claimant argued that this damage resulted from numerous reports to the police and lawsuits filed against it by the defendant over the course of the past ten years. The Brașov Tribunal dismissed the request at first instance, a decision which was upheld on appeal by the Brașov Court of Appeal. The reason acknowledged by both courts was that, according to the provisions of the Romanian Civil Code, only a natural person is entitled to the right of dignity, honour and reputation.

The claimant filed a request for review against this decision before the High Court of Cassation and Justice, which granted this request and ordered a retrial of the case by the Brașov Court of Appeal. This decision is a landmark case in the field of civil tort liability because the High Court acknowledged that a legal person has not only patrimonial rights, but also certain non-pecuniary rights, including the right to reputation and professional prestige.

In order to render this decision, the High Court stated that even though art 72 of the Romanian Civil Code (which expressly stipulates that 'any person has the right for their dignity to be respected' and that 'any damage to a person's honour and reputation, without their consent or in violation of the limits provided by art 75, is prohibited') can be interpreted as referring only to natural persons,[10] such a distinction is not justified in light of the new provisions of the Civil Code regulating the defences in the case

[10] Given the fact that this provision is included in a section of the Civil Code entitled 'respect of the private life and of the dignity of the human being' – Book I (On persons), Title II (Natural person), Chapter II (Respect owed to the human being and to

of violation of non-pecuniary rights. In this respect, the High Court emphasised that the provisions of art 252 of the Civil Code (which provides that 'every natural person has the right to the protection of the values inherent to the human being, such as life, health, physical and mental integrity, dignity, intimacy of private life, freedom of conscience, scientific, artistic, literary or technical creation') must be connected with art 257 of the Civil Code, which provides the following: 'the provisions of this Title apply by analogy to the non-pecuniary rights of legal persons'.[11]

It is important to stress that the High Court did not acknowledge that all the non-pecuniary rights enjoyed by a natural person can be recognised to a legal person, but only those rights that are compatible with the nature and characteristics of the legal person. Consequently, the right to life or health cannot be attributed to a legal entity because such entities do not have a biological body. However, the right to reputation and professional prestige can, and must be, acknowledged to legal persons in their capacity as economic agents. Or, given the fact that both natural and legal persons can act as economic agents, it would be discriminatory to recognise only natural persons as having the right to reputation and professional prestige.

In addition, the High Court stressed that we must take into consideration that the legal person is also a subject of law, a holder of rights and obligations, and the right to reputation of such a subject of law cannot be limited to the role it can have as an element of goodwill, but must be viewed (similarly to the case of a natural person) as the way in which the legal person is perceived and appreciated by other subjects of law. Therefore, although a legal person cannot argue that it suffered pain because of the violation of its reputation, it must be noted that the reputation of a legal entity is directly linked with its economic activity and has a great influence on this activity. Thus, it may suffer damage as a result of a violation of its reputation and, consequently, can claim compensation of such damage from the wrongdoer on the basis of civil tort liability.

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their inherent rights), Section III (Respect of the private life and of the dignity of the human being) of the Romanian Civil Code.

[11] Book I (On persons) Title V (Defence of the non-pecuniary rights) of the Romanian Civil Code.