



UNIVERSITÀ EUROPEA DI ROMA

## **Compensation for damages in the event of death, in the Italian Legal System**

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# Compensation Rights related to Damages Resulting from Death

- **Compensation Rights:**

- Iure hereditatis
- Iure proprio

- **Controversial legal Issue:**

- Damages for instantaneous loss of life related to the injuries give rise to a direct right of compensation, iure hereditatis, i.e. Thanatological Damages

(“Scarano” Decision – Court of Cassation, 23 January 2014 n. 1361 )

# Recognition of damages resulting from death caused by a wrongful act by another

- **Main legal questions :**
  - **Who can legitimately request compensation for non pecuniary damages in case of death caused by a wrongful act?**
    - Relatives belonging to nuclear family (parents, children, spouse, cohabiting partner);
    - Relatives not belonging to nuclear family (i.e. grandparents, grandchildren, son-in-law, sister-in-law, and so on)
  - **Identification and quantification Pecuniary Damages**
    - damnum emergens, i.e. actual incurred costs
    - lucrum cessans, i.e. lost future income
  - **Identification and quantification of Non Pecuniary Damages**

# Main legal questions (ctd)

## ➤ Non Pecuniary Damages

- **Definition by Case law** : damages by criminal or unlawful acts, any kind of prejudice caused by the impairment of inviolable personal rights recognized in the Constitution
- Suffered by the first-degree victim of the wrongful act and possibly transferable to the heirs, under the profile jure hereditatis:
  - Biological damages: recognized on the basis of considerable lapse of time between prejudice and death, i.e. terminal biological damages
  - Moral Damages: recognized on the basis of awareness of catastrophic consequence leading to death, i.e. catastrophic damages
  - Damages for loss of life, i.e. Thanatological Damages
- Suffered by relatives of the deceased victim, iure proprio

# Main legal questions (ctd)

## ➤ Non Pecuniary Damages (ctd):

- Suffered by relatives of the deceased victim, *iure proprio*

- Biological damages:

*any temporary or permanent injury to a person's physical and mental integrity which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily life and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income.*

### **Cfr. Italian Code of Private Insurance (articles 138 and 139)**

- Moral damages: state of anxiety or psychological distress as result of death of a relative
- (controversial) Existential damages, recognised in case ordinary habits were seriously disturbed to the point of being compelled to change lifestyle

# Thanatological Damages - Damages for loss of life

Until recent rejected by Italian Case-law:

## ➤ Arguments:

- No actual loss of the deceased person
- Biological Damages: only in the event of a health prejudice prolonged over time – not available for loss of life
- An heir cannot inherit indirectly something that was never an established right
- Remediation and comfort purpose of compensatory regime cannot be applied in case of Death
- No punitive Damages under civil liability regime

# Thanatological Damages - Damages for loss of life (ctd)

## Doctrine in favour:

### ➤ Arguments:

- Death is maximum impairment possible to an individual's rights to good health
- Offense to core family
- High cost for the society – harm to collectivity

# Thanatological Damages - Damages for loss of life (ctd)

➤ Case law solutions to contrasts the Aphorism: “it is cheaper to kill a person than to wound him”

- a right to non pecuniary damages *jure proprio*
  - major weight to the prejudice of the parental relationship
- “terminal biological damages”
  - Fatal injuries impacted psychological and physical integrity of the deceased victim and considerable period of time between injury and death
- “catastrophic damages” or “terminal moral damages”
  - sufferance of victim due to the knowledge of the fatal outcome
  - no right for compensation in case of instantaneous coma after injury



# “Scarano” Decision

- Innovative Case law.
  - Recognition of Thanatological Damages, *iure Hereditatis*
- Underlying opinion: Former case law does not correspond to the common social feeling of this given historical moment and the loss of life cannot lack of civil protection
- Recognition of right of compensation *per se* for the damages of (instantaneous) loss of life:
  - No need of considerable lapse of time between prejudice and death (cfr. “terminal biological damages”)
  - No need of awareness of catastrophic consequence leading to death (cfr. “catastrophic damages” or “terminal moral damages”)

# “Scarano” Decision

- Right for compensation for loss of life damages is acquired by the victim immediately at the time of fatal accident and is consequently transferable towards the heirs.
- Exception to the principle: compensation only in case of damages consequences not in case of damages events
- Motivation of the Court:
  - Loss of life is damage to the supreme good of life.
  - Compensatory right is acquired before the death event, so remediation and comfort purpose of compensatory regime is safeguarded
  - No punitive function
  - Tabular System prepared by the Tribunal of Milan to determine damages is not always able to ensure an adequate personalization of the damage

# “Scarano” Decision (ctd)

## Questions:

- Punitive effect;
- Equity rather than certainty and predictability;
- Tabular System:
  - appropriate guide to guarantee of an equitable compensation of (car incident) damages and, more in general, of the safeguarding of the principle of equal treatment.
  - Allows predictability and certainty of the possible damage types
  - Allows proper compensation administration of insurance companies
  - Should allow adequate level of possibility to personalize each case
- Impact on insurance premium