

# REPAIR OF DAMAGE IN THE EVENT OF DELINQUENT CIVIL LIABILITY

Nicolae, Grădinaru<sup>1</sup>

## Abstract

*The damage is a harmful consequence, patrimonial or non-patrimonial, of the non-observance of the subjective rights and of the legitimate interests of a person, which determines the obligation of compensation for the person who committed the wrongful act.*

*The notion of damage is designated by synonymous terms as damages.*

*According to art.1357 of the Civil Code, the one who causes the damage to another by an unlawful act, committed with guilt, is obliged to repair it. The author is responsible for the slightest guilt.*

**Keywords:** *damage, liability, delinquency, wrongful act, loss, prejudice.*

**Jel Classification:** K0; K1

## *Conditions necessary to repair the damage*

In order to be susceptible to reparation, the injury must meet the following conditions: be certain, it has not been repaired and be the result of a violation of a subjective right or a legitimate interest.

The conditions for the damage to be repaired are those for him to be the direct and natural consequence of the unlawful act (the direct damage), to be certain - that is, to be fixed - and not yet to be repaired<sup>2</sup>.

The damage repair is done in kind, by restoring the previous situation, and if it is not possible or if the victim is not interested in the repair in kind, by payment of compensation, established by the agreement of the parties or, in default, by a court decision.

When establishing the compensation, it will be taken into account, unless otherwise provided by law, the date of the injury.

If the injury is of a continuity nature, the compensation is granted in the form of periodic benefits.

In the case of future damage, the compensation, regardless of the form in which it was granted, may be increased, reduced or suppressed, if, after its establishment, the damage has increased, decreased or ceased.

In order to be able to be repaired the damage must meet the following conditions:

The prejudice is certain, when its existence and its evaluation are certain.

In order to attract criminal liability, the damage must be safe and direct. It is safe when the damage has been produced and is directly in the situation where it is the result of the wrongdoing.

According to article 1532 of the Civil Code, in determining the damages, the future damages are taken into account, when they are certain.

The damage that would be caused by losing an opportunity to obtain an advantage can be repaired in proportion to the probability of obtaining the advantage, taking into account the circumstances and the concrete situation of the creditor.

The prejudice the amount of which cannot be established with certainty is determined by the court.

The injury may be current when it has already occurred and future when it has not occurred but it is certain that it will occur, such as the case of a person who has been the

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<sup>1</sup> PhD Associate Professor, "Constantin Brăncoveanu" University Pitesti

<sup>2</sup> The decisions of the Supreme Court no.346 of February 21, 1979, published in the Decision Book 1979. pp. 109-111 and no.470 of March 7, 1985, published in the Decision Book 1985, p.76.

victim of an unlawful act and who has been unable to work. In this situation, the current damages for the current injury (expenses with hospitalization, health care) are granted, but also for the future injury (supplementing the diminished salary).

According to art.1385 of the Civil Code, the damage is fully repaired, unless otherwise provided by law.

Compensation may also be awarded for future damage if its production is doubtful.

Compensation must include the loss suffered by the injured party, the gain he could have made under ordinary circumstances and which he was deprived of, as well as the expenses he incurred to avoid or limit the damage.

If the wrongful act also caused the loss of the opportunity to obtain an advantage or to avoid a loss, the reparation will be proportional to the probability of obtaining the advantage or, as the case may be, of avoiding the damage, taking into account the circumstances and the concrete situation of the victim.

According to art.1533 of the Civil Code, the debtor is liable only for the damages that he has foreseen or that he could foresee as a result of the non-execution at the time of the conclusion of the contract, unless the non-execution is intentional or due to his serious fault. . Even in the latter case, the interest damages include only what is the direct and necessary consequence of the non-performance of the obligation.

For eventual damages, ie whose production is not safe, no compensation is granted.

According to art.1365 of the Civil Code, the civil court is not related to the provisions of the criminal law, nor to the final decision to pay or to terminate the criminal trial regarding the existence of the prejudice or guilt of the perpetrator of the unlawful act.

The deed may not fulfill the conditions of a crime and by a criminal decision it will be decided to acquit or stop the criminal trial, but this does not cause the perpetrator to be exempted from repairing the damage, it exists and must be repaired. Not all illicit acts of injury are also crimes, but in all cases the damages must be fully repaired.

The damage was not repaired.

In case, the damage has been repaired, it is no longer justified to oblige the person who committed the deed to pay damages. For example, the one who destroyed another thing, repaired it or replaced it, or paid a sum of money for the victim to buy something else.

Usually, the obligation to repair the damage rests with the perpetrator of the wrongful act.

There are, however, certain situations when another person pays compensation for damages such as:

1) the victim receives compensation from an insurance company<sup>1</sup>. In this situation we must distinguish two hypotheses when the victim is insured and when the perpetrator is insured:

- the victim is insured, having the quality of insured person.

In the case of insurance of persons, the victim receives, at the realization of the risk, the sum insured from the insurance company, which is accumulated with the compensation due for the repair of the damage from the person who committed the unlawful act causing injury.

According to art.2236 of the Civil Code, the insurance indemnity is due, independently of the amounts due to the insured or the beneficiary of social insurance, to repair the damage of those responsible for its production, as well as of the amounts received from other insurers under other insurance contracts. .

- in the case of insurance of goods, the victim receives the sum for the insured goods and can accumulate with compensation from the person guilty of creating the damage only if the damage is greater and is not covered by the insurance in full<sup>2</sup>. The insurance company has

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<sup>1</sup> Decision no.390 / 2004 of the Alba Iulia Court of Appeal

<sup>2</sup> Decision no.817 / 2006 Bucharest Court of Appeal, IV Civil Division.

the possibility to recover the amount paid to the insured person, by introducing an action in regress against the person guilty of producing the damage.

- the perpetrator of the wrongful act and implicitly of the damage is insured.

In this situation, the victim receives compensation from the insurance company where the perpetrator of the damage is insured, if the damage is not covered, the difference is borne by the perpetrator of the unlawful act, personally.

- Compulsory civil liability insurance

Compulsory motor liability insurance for damages caused to third parties by car and tram accidents, called RCA insurance;

According to art.3 of Law no.132 / 2017, the natural or legal persons who own vehicles subject to registration or registration in Romania, as well as the trams have the obligation to insure for civil liability cases as a result of the damages caused by vehicle accidents. within the territorial limits provided by law<sup>1</sup>.

The natural and legal persons who use vehicles exclusively for the purpose of legally organized training, races, races or rallies are not obliged to conclude an RCA contract; for the risks deriving from these activities, the owners of vehicles or the organizers of the competition can be provided optional.

According to the provisions of art.5 of Law no.132 / 2017, the RCA contract is concluded for a period between one month and 12 months, multiple of one month, depending on the option of the insured.

Except from these provisions, the RCA contract may be concluded for a period of less than one month in the following situations:

a) for vehicles registered / registered in other Member States of the European Economic Area and the Swiss Confederation for which the insurance is requested for importation into Romania, for a maximum period of 30 days from the date of acquisition of the property, proven with supporting documents;

b) for vehicles intended for export, for a maximum period of 30 days;

c) for vehicles that are provisionally authorized for circulation, for periods of 30 days, but not more than 90 days.

Payment of insurance premiums is made in full or in installments according to the agreement between the insured and the RCA insurer. The RCA contract also takes effect if the insurance premium rate has not been paid within the term agreed between the insured / contractor / user and the RCA insurer, if the RCA insurer has not exercised the right to terminate the RCA contract. The RCA contract is an enforceable title for the outstanding and unpaid rates.

RCA insurance produces effects based on the provisions of the law, the regulations issued by A.S.F. in its application, as well as the conclusion of the RCA contract between the insured and an RCA insurer, issued including by electronic means, according to the regulations A.S.F.

The parties may also agree to include other clauses in addition to those established by this law and by the regulations issued by A.S.F. in its application, except for those that restrict the rights of the injured person.

The insured is obliged to pay the insurance premium to the RCA insurer, and the RCA insurer is obliged to pay the compensation of the injured third party, in accordance with the law and the insurance contract, when producing the insured risk.

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<sup>1</sup> Law no.132 / 2017 on compulsory motor liability insurance for damage caused to third parties by vehicle and tram accidents published in the Official Gazette no. 431 / 12.06.2017  
Law no.237 / 2015 regarding the authorization and supervision of the insurance and reinsurance activity, published in the Official Gazette no. 800 / 28.10.2015.

At the conclusion of the RCA contract and during its development, the insured has the obligation to allow the RCA insurer access to the database with the compulsory civil liability insurance concluded on the territory of Romania, to the records of accidents and previous claims and to provide the information requested by the RCA insurer. for risk assessment and calculation of insurance premium, established by ASF regulations

The RCA insurer's liability begins:

a) from the day following that on which the validity of the previous RCA contract expires, for the insured who fulfills the obligation to conclude the insurance at the latest on the last day of its validity;

b) from the day following the date on which the RCA contract was concluded, for the persons who did not have RCA insurance valid at the time of the new insurance conclusion;

c) from the moment of issuing the insurance contract, but not earlier than the date of entry into force of the provisional movement authorization or registration / registration of the vehicle, for the commercialized vehicles to be registered / registered.

In the event that the information provided by the insured person is not real at the time the RCA contract is concluded, the insurance premium can be recalculated and modified by the RCA insurer after the insured's prior notification.

In the provided case, if the insured does not express his agreement regarding the modification of the contractual conditions, he can terminate the RCA contract within 20 days from the date of receiving the notification.

In order to maintain the bonus / malus class, through the RCA contract the parties may agree the possibility of redemption, respectively the insured's bearing the amount of the compensation corresponding to the event, the insured compensating the RCA insurer its amount, after the payment of the compensation due to the injured person.

The RCA contract contains information on: the number and date of the conclusion of the contract, the parts of the RCA contract, the validity period, the maximum liability limits set by the RCA insurer, the insurance premium, the number of rates, the maturity of the rates, the intermediary, the bonus / malus class, the registration number / registration and vehicle identification number, as well as the states in which this document is valid.

The minimum liability limits covered by RCA insurance in accordance with European Union regulations are as follows:

a) for the material damages produced in one and the same accident, regardless of the number of the injured persons, the compensation limit is set, for accidents, at a level of 1,220,000 euros, equivalent in lei at the exchange rate of the foreign exchange market at the time of the accident occurrence. , communicated by the National Bank of Romania;

b) for personal injury and deaths, including for non-patrimonial damages produced in one and the same accident, regardless of the number of injured persons, the limit of compensation is set, for accidents, at a level of 6,070,000 euros, equivalent in lei at the course exchange market at the time of the accident, communicated by the National Bank of Romania.

Liability limits are revised every 5 years, depending on the evolution of the European Consumer Price Index (HICP) established in accordance with Council Regulation (EC) No 2494/95 of 23 October 1995 on harmonized indices of consumer prices. and are provided in the ASF regulations.

The RCA contract gives the right of the injured person, in case of injury, to be able to address for the repair of any auto repair unit, according to the law, without any restriction or constraint from the RCA insurer or the auto repair unit, which could be able to repair it. influence the option.

In applying these provisions, the RCA contract will contain a clause according to which, in case of damage, the injured person can address to perform the repair of any economic

operator who performs repair activities of the vehicles, according to the law, without any restriction or constraint that would could influence his choice.

Based on a single premium, RCA insurance covers damage caused to third parties through vehicle and tram accidents.

The RCA insurer awards compensation for damages caused to third parties by vehicle and tram accidents and for the expenses incurred by them in the civil process, in accordance with:

a) the level required by the legislation of the Member State in whose territory the accident occurred or at the level of the Romanian legislation in case the latter is higher;

b) the level required by the Romanian legislation, if the injured persons are nationals of some Member States, during a trip that directly connects two territories in which the Treaty on European Union and the Treaty on the functioning of the European Union apply, if there is no office competent national car in the crossed territory in which the accident took place.

Compensation is granted in an amount equal to the extent of the damage up to the maximum liability limit of the RCA insurer which is equal to the highest value between the limit of liability provided in the applicable law and that provided in the RCA contract.

#### Risks covered

The RCA insurer has the obligation to compensate the injured party for the proven damages suffered as a result of the accident caused by the insured vehicle.

Without exceeding the liability limits stipulated in the RCA contract, and under the conditions in which the insured event occurred during the validity period of the RCA contract, the RCA insurer grants cash compensation for:

a) personal injury or death, including for non-patrimonial damages;

b) material damages, including costs of cancellation and registration, costs with stamp fees, expenses with limitation of the damage, evidenced by documents, expenses related to diminishing the value of the vehicle after repairs, evidenced by documents or expertise;

c) costs regarding the return of the vehicle to the state before the insured event, evidenced by documents issued by specialized systems or by documents issued according to the law;

d) damages representing the consequence of the non-use of the damaged vehicle, including the temporary replacement of the vehicle, based on the option of the injured person;

e) court costs incurred by the injured person or costs related to the alternative dispute resolution if the solution is favorable to the injured person;

f) the expenses related to the transport of the damaged vehicle, belonging to the injured third party, from the place of the accident to the location where the damage detection center is located, to the repairing unit chosen by the injured party to repair the vehicle, the one closest to the place of accident occurrence or from the domicile of the injured person, as the case may be, if the respective vehicle can no longer be moved by its own means, and the insurer does not provide transportation.

Regardless of where the vehicle accident occurred - on public roads, on roads that are not open to public circulation, in premises and in any other places, both during the movement and during the stationing of the insured vehicle, the RCA insurer awards damages up to at the limit of liability provided in the RCA contract for:

a) the damage caused by the devices or installations with which the vehicle was equipped, including for the damage caused due to the accidental detachment of the trailer, semi-trailer or attachment towed by the vehicle;

b) the damage caused by the driver of the insured vehicle;

c) the damage caused by the deed of work, when the injury has its cause in the characteristics, the action or the inaction of the vehicle, by means of another thing caused by the movement of the vehicle, by leakage, waste or accidental drop of the transported substances, materials or objects;

d) the damages caused to third parties, as a consequence of the opening of the vehicle doors, while driving or when the vehicle is stopped or stopped, by its passengers, without ensuring that the safety of the other participants in the traffic is not endangered;

e) the damages caused to third parties, as a consequence of driving the vehicle under the influence of alcoholic beverages or narcotics.

The provisions of the letter. b) applies even in cases where at the time of the accident the driver of the vehicle:

a) drove the vehicle without the express or presumed consent of the insured;

b) is not the holder of a permit attesting the right to drive the vehicle in question;

c) has not complied with the legal obligations regarding the condition and safety of the respective vehicle.

Members of the family of the insured, the driver or any other person whose civil liability is involved in a vehicle accident and is covered by compulsory RCA insurance are not excluded from the benefit of insurance for their own personal injury.

Not granting compensation

According to art.12 of Law no.132 / 2017, the RCA insurer does not grant damages for:

a) the cases in which the owner, user or driver of the guilty vehicle has no civil liability, if the accident occurred:

(i) in a case of force majeure;

(ii) the sole fault of the injured person;

(iii) from the exclusive fault of a third person, except in the situations provided in letter.

d) the damages caused to third parties, as a consequence of the opening of the vehicle doors, while driving or when the vehicle is stopped or stopped, by its passengers, without ensuring that the safety of the other participants in the traffic is not endangered;

b) the damages caused to the goods belonging to the driver of the vehicle responsible for the accident, as well as those caused as a result of personal injury or his death, regardless of who requests these damages;

c) in the following situations:

(i) the damages were caused to the goods belonging to the natural or legal persons, if they were caused by a RCA insured vehicle, owned or used by the same natural or legal person and which is driven by a foreclosure of the same legal person or a another person for whom the natural or legal person is responsible;

(ii) the damaged property and the insured vehicle are part of the common property of the spouses;

(iii) the damaged good is used by the owner of the insured vehicle, which caused the damage;

d) the damages caused in the situations in which the proof of validity is not made at the date of the accident of the RCA insurance or the RCA insurer is not responsible;

e) the part of the damage that exceeds the limits of liability established by the RCA contract, produced in one and the same accident, regardless of the number of the injured persons and the number of persons responsible for producing the damage;

f) fines of any kind and the criminal expenses to which the owner, user or driver of the insured vehicle would be liable, responsible for causing the damage;

g) the expenses incurred in the criminal case by the owner, the user or the driver of the insured vehicle, responsible for producing the damage, even if in the criminal case the civil side was also resolved;

h) the amounts that the driver of the vehicle responsible for the damage is obliged to pay to the owner or the user who entrusted the insured vehicle to him, for damage or destruction of this vehicle;

i) the damages caused to the transported goods, if there was a contractual report between the owner or the user of the vehicle that produced the accident or the responsible driver and the injured persons at the time of the accident;

j) damages to persons or property in the vehicle with which the accident occurred, if the RCA insurer can prove that the injured persons knew that the vehicle was stolen;

k) the damages caused by the devices or the installations mounted on vehicles, when they are used as machines or work installations, these constitute risks of the professional activity;

l) the damages caused by accidents that occurred during the loading and unloading operations, these constituting risks of the professional activity;

m) the damages caused as a result of the transport of dangerous products: radioactive, ionizing, flammable, explosive, corrosive, combustible, which caused or aggravated the damage;

n) damages caused by the use of a vehicle during a terrorist attack or war, if the event is directly related to that attack or war.

#### Common fault

In the event that the injured person contributed, by fault, to the accident or to the increase of the injury, the person called to answer will be held liable only for the part of the damage that is attributable to him. In such situations, the extent of each person's liability will be that found by any means of evidence.

In case the extent of the liability of each person cannot be determined, it will be established in equal proportions, in relation to the number of parties involved in the accident, each party having the right to compensation in the proportion in which he was not responsible for the accident.

#### Amount of damages

According to art.14 of Law no.132 / 2017, the compensations are granted in an amount equal to the extent of the damage up to the maximum limit of liability of the RCA insurer which is equal to the highest value between the limit of liability provided in the applicable law and the one provided in the RCA contract, and the insurer is obliged to communicate the maximum amount of compensation, at the request of the injured party or his agent, within 7 calendar days.

In the case of total economic damage, the insurer evaluates the damaged vehicle, through a specialized evaluation system or through documents issued according to the law to determine its market value from the moment before the event. The injured party may choose to repair up to the market value of the vehicle, calculated as a result of the assessment, or to settle the case as a total damage by paying the difference between the market value of the vehicle and the value of the wreck.

The value of the repair is determined using the specialized evaluation systems or through documents issued according to the law in which the car repair unit can use its own value of the displayed working hours.

Compensation is granted for the amounts that the insured pays as compensation and for the costs and / or the expenses related to the alternative settlement of the litigation of the persons injured by bodily injury or death and by damage or destruction of goods<sup>1</sup>.

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<sup>1</sup> Decision no.1 / 2016 of the JCCJ, appeal in the interest of the law, published in the Official Gazette no. 258 / 06.04.2016. Admits the appeal in the interest of the law declared by the Prosecutor General of the Prosecutor's Office next to the High Court of Cassation and consequently:

In the unitary interpretation and application of the provisions of art. 86 of the Code of Criminal Procedure states that:

In the case of compulsory insurance of civil liability for damages caused by vehicle accidents, the insurance company has the quality of a civilly responsible party and has the obligation to repair the damage caused by the crime alone, within the limits established in the insurance contract and by the legal provisions regarding compulsory insurance. of civil liability.

In the event of personal injury or health or death, the compensation is granted both for the persons outside the vehicle that caused the accident and for the persons in that vehicle, except for the driver of the vehicle from which the accident occurred.

In the event of injury to the bodily integrity or health or death of other persons outside the driver responsible for the accident, damages are also awarded for the damages caused to the spouse or to the persons who are in the maintenance of the owner or driver of the insured vehicle<sup>1</sup>.

In the event of injury to the bodily integrity or health or death of a person or damage or destruction of property, compensation is granted if the vehicle that caused the accident is identified and insured, even if the author of the accident remained unidentified.

For the damage or destruction of the goods, compensation is granted for the goods outside the vehicle that caused the accident, and for the goods in that vehicle, only if they were not transported based on an existing contractual relationship with the owner or the user of the vehicle, as well as if they did not belong to the owner, user or driver of the vehicle responsible for the accident.

Compensation, as provided for above, is also granted if the driver of the vehicle responsible for the accident is a person other than the insured.

Compensation is paid when the injured persons do not have their domicile, residence or headquarters in Romania.

RCA insurer's right to request recovery of amounts paid

According to art.25 of Law no.132 / 2017, the RCA insurer has the right to recover the amounts paid as compensation from the person responsible for producing the damage, in the following situations:

- a) the accident was intentionally produced;
- b) the accident occurred during the commission of acts incriminated by the legal provisions regarding the movement on public roads as intentionally committed crimes, even if these facts did not occur on such roads or during the commission of other intentional crimes;
- c) the accident occurred during the time when the perpetrator of the crime committed intentionally tries to evade the prosecution;
- d) the person responsible for causing the damage drove the vehicle without the contractor's consent;
- e) the insured has unjustifiably refused to fulfill his obligations, thus preventing the RCA insurer from conducting his own investigation, and the insurer is able to prove that this led to the unjustified payment of the compensation.

In the unitary interpretation and application of the provisions of art. 320 paragraph (1) of Law no. 95/2006, the person who suffered a bodily injury through the act of another cannot be obliged, to the medical service provider, to pay the expenses of hospitalization and medical treatment that he has benefited within the respective medical unit, according to the law, within the limits of the package of basic or minimal, as the case may be, in cases where the perpetrator of injury was not identified or the injured person did not make or withdraw his prior complaint or the parties were reconciled.

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Details: <http://legeaz.net/monitorul-oficial-258-2016/decizie-iccj-ril-1-2016-calitatea-asiguratorului-rca-in-procesul-penal-accidente-vehicule>

<sup>1</sup> Decision no.23 / 2015 of the JCCJ, appeal in the interest of the law, published in the Official Gazette no. 71 / 01.02.2016 Admits the appeal in the interest of the law formulated by the Governing Board of the Alba Court of Appeal Iulia. It establishes that, in interpreting and applying the provisions of art. 50 paragraph 3 of Law no. 136/1995 regarding insurance and reinsurance in Romania, with subsequent amendments and completions, the right to compensation recognized to the spouse or persons who are in the maintenance of the owner or driver of the insured vehicle, responsible for producing the accident, regards only their personal injuries, as victims. direct from the road event.

Details: <http://legeaz.net/monitorul-oficial-71-2016/decizie-iccj-ril-23-2015-art-50-alin-3-legea-136-1995-asigurari-reasigurari>



In the interpretation and application of the same legal provisions, the perpetrator of the injury can be sued, in a separate civil way, for the expenses of the hospitalization and medical treatment that the injured person has benefited, within the limits of the basic or minimal package, in case he does not respond criminally, as the parties have been reconciled<sup>1</sup>.

According to art.93 of the Civil Code, if the right to assistance or a pension has been recognized in the social insurance, the reparation is due only insofar as the damage suffered by injury or death exceeds the aid or the pension.

As long as the aid or pension has not actually been granted or, as the case may be, refused to the injured party, the court may not compel the respondent to respond only to a provisional compensation

2) the victim receives compensation from a third party.

If the third party makes payment of money with the intention to repair the damage, the amount of money is compensation. The victim can claim damages from the perpetrator of the wrongful act in addition to the amounts received from the third party.

If the third party makes the payment with the intention of a gratuity, ie a free legal act, the victim may request the full compensation of the damage by the perpetrator of the unlawful act.

As for the proof of injury, to be repaired, it belongs to the injured party and can be done by any means of proof admitted by law.

The prejudice may be the result of a violation of a subjective right or a legitimate interest

The person who committed an act causing injury by infringement of a subjective right, is obliged to pay compensation for its complete repair, for example, violation of the right of real rights, the right to physical integrity, the right to copyright, inventor, honor, dignity, etc. .

Violation of simple interests may not be committed if they have been violated.

Violation of a legitimate interest gives the right to compensation if the following conditions are met:

- when a state of fact has stability and permanence and which justifies the assumption that it would continue for sure in the future. If the alleged victim received sporadic assistance from a person who died in an accident, the claim for compensation is not justified because he / she was harmed by this death;

- the interest to be lawful and moral. The concubine cannot obtain damages when it appears as an immoral connection<sup>2</sup>.

The object of the repair

According to art.1381 of the Civil Code, any injury gives the right to reparation.

The right to reparation arises from the day the damage was caused, even though this right cannot be immediately reaped.

From the date of its birth, all the legal provisions regarding the execution, transmission, transformation and extinction of obligations are applicable to the right to reparation.

The perpetrator of the unlawful act is obliged to repair the damage caused and when this is the consequence of the harm brought to an interest of another, if the interest is legitimate, serious and, by the way it is manifested, creates the appearance of a subjective right.

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<sup>1</sup> Decision no.22 / 2017 The ICCJ admitted the appeal in the interest of the law declared by the Governing Board of the Constanta Court of Appeal, published in the Official Gazette no.43 / 17.01.2018.

<sup>2</sup> I.Urs, Carmen Todica - Civil obligations, Titu Maiorescu University Ed., Bucharest, 2007. p.232-236.