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DOCTORAL THESIS

(ABSTRACT)

REPAIRING THE DAMAGE CAUSED BY LOSS OF THE CHANCE TO OBTAIN AN ADVANTAGE OR TO AVOID A LOSS

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INTRODUCTION

The topic of the doctoral thesis, entitled “REMEDY OF DAMAGE CAUSED BY THE LOSS OF THE CHANCE TO OBTAIN AN ADVANTAGE OR TO AVOID A DAMAGE,” aims to provide a structured analysis of a legal institution still insufficiently explored in Romanian civil law. Although this concept has seen sporadic application in judicial practice, the approaches are often non-unitary, highlighting an acute need for clarification and uniformity. The study intends to respond to this need by providing a comprehensive and innovative examination of the principles and legal implications of the compensation of damage related to the loss of a chance.

As a researcher, I have accumulated a passion and solid knowledge in the field of civil law, and my doctoral studies have offered me the opportunity to delve deeper into this area, exploring in detail the complex aspects and challenges of the subject. My motivation for choosing this topic stems from the desire to contribute to the clarification and development of this legal field, with the aim of creating a useful theoretical foundation for both practitioners and researchers in the field.

Through this study, I aimed to make a valuable contribution to the academic and legal community, offering relevant solutions for the interpretation and application of this concept in civil law in Romania.

We also aimed to provide a unitary approach, an in-depth analysis of a "controversial" institution of civil law, which, we could say, still has a novelty character and which, although it has an application in judicial practice, is most often non-unitary. This is, in fact, the reason that led me to treat this topic within such an academic work.

Out of passion for civil law and the concept of reparation of damage, the topic represents for me a real opportunity to explore this doctrinal and jurisprudential issue in depth, to make significant contributions to the knowledge of this subject and to obtain expertise in this field.

The need for advanced research was established by observing the complexity and constant dynamics of the legislation and jurisprudence regarding reparation of damage, as a result I recognized the need for advanced academic research that would explore the complex questions and challenges in this field and that would offer innovative and relevant solutions in the application of civil law in Romania.

Contributing to the development of the academic and legal community is one of my professional priorities, and through my research activity, I aim to make significant contributions to the development of knowledge and understanding of the concepts and principles underlying reparation of damage in civil law. By actively participating in this research, I intend to share my knowledge and perspectives with the academic and legal community.

In my opinion, I fully support the need to address in Romania the issue of compensation for loss of opportunity. It is imperative to recognize that loss of opportunity can cause significant harm and, therefore, must be addressed with care and rigor in the legal system. In the context of civil law, this issue represents a complex challenge, as it requires a careful assessment of individual circumstances and the long-term impact on the individuals involved.

In Romania, there is a pressing need to develop and clarify the rules and practices regarding compensation for loss of opportunity. It is essential that the legislation provides a solid basis for the award of compensation in such cases and defines the relevant criteria and procedures in a clear and transparent manner.

In addition, greater awareness and sensitization is needed regarding the importance of protecting individual rights in this regard. Thus, legal education and the promotion of dialogue between legal professionals, academics and civil society are essential to ensure a proper approach to this issue.

I also strongly support the existence of a fundamental legal connection between respect for human rights and the human right to be compensated for the loss of an opportunity to obtain an advantage due to a harm caused. This legal parallel is essential for the promotion of justice and equity in our society, and in the following I have chosen to list some of the arguments that support my opinion:

1. Respect for human rights: The principle of respect for human rights is based on the recognition and protection of the human dignity and fundamental freedoms of each individual. This principle implies the obligation of the state and the authorities to ensure that all people are treated with dignity and that their fundamental rights and freedoms are respected, in accordance with legal provisions and international standards.

2. Right to compensation for loss of an opportunity to obtain an advantage: According to jurisprudence and international human rights standards, individuals have the right to compensation for loss of an opportunity to obtain an advantage if they have suffered harm due to the actions or negligence of others. This right derives from the principle of fairness and justice and is recognized as an essential component of human rights.

3. The need for balance and justice: In the application of the law and in the resolution of disputes, it is essential to maintain a balance between respecting human rights and ensuring that those who have suffered harm receive adequate compensation for the loss of an opportunity to obtain an advantage. This balance contributes to the promotion of justice and the restoration of justice in our society.

In light of these considerations, I argue that respecting human rights and the right to compensation for the loss of an opportunity to obtain an advantage are interconnected and essential for the promotion of a just and equitable society.

This formulation emphasizes the connection between respecting human rights and the right to compensation for the loss of an opportunity to obtain an advantage, underlining the importance of balance and justice in the application of the law.

I believe that it is crucial that the Romanian legal system pays special attention and treats seriously the issue of reparation for the loss of an opportunity to obtain an advantage. By adopting appropriate policies and practices, we can ensure that justice is served and that individual rights are properly protected in these delicate situations.

The damage resulting from the loss of a chance represents an element of novelty within the new regulation, the legislator consecrating this type of damage in order to create a unitary

judicial practice, but also to put an end to the controversies that existed in relation to this subject under the old regulation.

We can also say that it is a relatively new institution of law, especially Romanian law, being avoided and still insufficiently covered by both case law and doctrine. The reluctance of judges and law professors is probably explained by the controversies that this subject arouses.

At the same time, we found that in the specialized literature there are several points of view regarding various aspects of the compensation of damage, such as: scope, virtual damage, the dual legal nature of the damage, the assessment of the damage consisting in the loss of a chance, etc.

While the Civil Code states that the damage must be certain and foreseeable, the inclusion of the chance in these requirements is often much too difficult to achieve.

In the paper, we aim to present the importance of regulating and applying legal norms regarding the compensation of damage caused by the loss of chance, both at the domestic level, according to the legislation in force in our country, and at the international level, given the fact that there are numerous countries that present a rich doctrine and jurisprudence from this point of view, and France is the most suitable example. Therefore, we have also approached a parallel between Romanian and French legislation regarding the history of the "new" type of damage regulated in our country, but which has been the focus of the courts in France since the 19th century. For example, in this regard, French doctrine records a case settled on July 17, 1889, in which damages were awarded for the wasted chance of winning a lawsuit that did not proceed as a result of the fault of a ministerial official. And this is just a simple example in addition to those that were reached during the study. We consider this study topic all the more interesting and complex as the doctrine and jurisprudence in our country still show reluctance to expose the effects and benefits of its applicability, something possibly caused by the superficial way in which it is regulated by the legislation in force, we could say as a personal opinion.

In most foreign legislations, the damage suffered by the loss of a chance is a reparable damage, and in European legal systems, the reparation of future damage can also be ordered, even if its occurrence is considered, to some extent, uncertain.

Thus, although in most legal systems the certainty of the damage is a condition for its repair, those damages that have not yet occurred, but there is reason to believe that they will occur, will also be repaired.

In England, France, Germany, Scotland and Belgium, the courts have ordered the repair of damages resulting from the loss of an opportunity, on the grounds that the loss of an opportunity is itself a damage that will be repaired in proportion to the probability of obtaining the advantage, which could not be obtained due to the intervention of the unlawful act.

The new regulation has given this type of damage a special place, offering it a special legal regime precisely to protect the victims of the damage resulting from the loss of an opportunity and to provide compensation for the disadvantageous situation caused by the missed opportunity.

SCIENTIFIC RESEARCH METHODS

The paper bases its scientific analysis on a complex methodological approach, using a series of methods specific to legal research, intended to provide a deep and nuanced understanding of the topic addressed. During the research, research methods such as: the explanatory method, the logical method, the historical method, the comparative law method, the logical-deductive research method and, of course, the hermeneutic method were considered to emphasize the subjective nature of the paper.

First of all, the historical law method was used, which allowed the identification and interpretation of the evolution of relevant legal institutions, thus contributing to the understanding of their context and foundations. In addition, the logical-deductive research method was used to structure legal reasoning, starting from general principles to particular conclusions, ensuring the coherence and rigor of the argumentation. The comparative law method also facilitated the highlighting of differences and similarities between regulations from

various legal systems, thus providing an expanded perspective and a frame of reference for identifying the most efficient normative solutions.

Finally, the hermeneutic method, focused on the theory of interpretation, allowed for an interpretative approach to legal norms, considering not only the legal text itself, but also the context, purpose and principles underlying the regulation, contributing to an integrated and critical understanding of the subject under analysis.

By combining these methods, the work ensured a thorough, rigorous and scientifically pertinent research, offering useful solutions and perspectives in the concrete application of the reparation of damage resulting from the loss of a chance.

STRUCTURE AND SUMMARY OF THE WORK

The main theme of the thesis is part of a frontier area of contemporary civil law, located at the intersection of the general theory of civil liability, the evidentiary requirements of damage and the jurisprudential developments determined by the need to adapt the law to current social and economic realities. The main purpose of the research consists in the systematic and in-depth analysis of the damage resulting from the loss of a chance, as a distinct and autonomous form of damage, highlighting its legal particularities, the conditions of compensation, the methods of evaluation and reparation, as well as its practical relevance in Romanian law, in a comparative European and international context.

The proposed scientific approach aims not only at a conceptual clarification, but also at a coherent construction of a theoretical and practical framework that would allow a predictable and equitable application of the institution of loss of a chance in national jurisprudence, in accordance with European standards and established doctrinal trends. In this sense, the structure

of the thesis reflects a logical progression of the seven chapters, from the analysis of theoretical foundations to practical applications and proposals *de lege ferenda*.

In the context of civil law and tortious civil liability, the damage caused by the loss of a chance to obtain an advantage has become an increasingly discussed topic, generating numerous controversies and interpretative challenges. This concept, relatively new in the legal landscape, raises important questions about the limits and function of civil liability, but also about how the law can respond to the need to protect the legitimate expectations of individuals.

In the paper, we analyze whether the loss of a chance constitutes compensable damage and what are the essential conditions for establishing such liability. We explore the applicable theoretical and jurisprudential framework, with reference to the doctrine and the solutions offered by national and international courts. A central point of the analysis is the identification of the criteria by which a lost chance can be considered a certain and direct damage, given that, by its nature, chance implies a degree of uncertainty.

At the same time, we address the practical and moral implications of recognizing this type of damage, both from the perspective of equity and compensatory justice, and the risks of excessive expansion of the scope of civil liability. We will also discuss the impact that this expansion may have on legal and social relations, as well as the need for clear delimitations to avoid abuses and arbitrary interpretations.

It can be noted that I paid particular attention to the French bibliography, given that French jurisprudence and doctrine have devoted valuable experience regarding the repair of damage caused by the loss of a chance. This approach allows me to carry out, by the end of the thesis, a comparative analysis between Romanian and French law. My goal is to make a relevant and original contribution to the interpretation and application of this legal institution in Romania, offering both theoretical perspectives and practical directions that can support the development of our national legal framework.

The paper aims to provide a relevant contribution to the understanding of the damage caused by the loss of a chance and to bring arguments for (or against) its recognition as compensable damage in Romanian law, taking into account both the particularities of the national context and the trends in European law.

We could say that, within modern civil law, the concept of “loss of chance” (*perte de chance*) has gained increasingly broad recognition, being a mechanism intended to provide legal protection in a context marked by uncertainty and the lack of a direct causal relationship between the act and the damage suffered. Loss of chance is not just a legal abstraction, but a reality with profound implications in various branches of law, such as tortious civil liability, contract law, but also in the field of jurisprudence related to fundamental rights.

The second part of the thesis aims to explore in detail the issue of repairing the damage caused by the loss of the chance to obtain an advantage or to avoid a damage, analyzing it from an integrated perspective, which includes the theoretical foundations, the application criteria, as well as the practical implications.

We will also analyze the form of regulation of this type of damage in different European legal systems, the conditions for repairing the damage through the new regulations of the Romanian Civil Code, but also the methods of repair.

In the contemporary civil law landscape, the damage resulting from the loss of a chance represents a special category, marked by legal subtlety and practical complexity. Apparently immaterial, the loss of a real and serious opportunity to obtain a benefit or to avoid a prejudice naturally raises questions related to the admissibility and method of reparation, which is why we will find at the end of the study an applied and comparative analysis of this institution, with an emphasis on how it is embodied in Romanian jurisprudence, but also in comparative and international law.

Thus, each proposed chapter has a clearly established study objective, as we will present in the following lines.

The first major objective of the research is to delimit and substantiate the concept of damage resulting from the loss of a chance, from a historical, doctrinal and normative perspective.

Chapter I – “Damage resulting from the loss of a chance to obtain an advantage or to avoid a damage. Particularities of the legal nature” – aims to provide a solid basis for understanding the emergence and evolution of this concept, starting from the historical

landmarks that led to its progressive consecration in civil law, especially under the influence of jurisprudence.

The analysis of the notion and the regulation aims to highlight the atypical character of the loss of a chance, located between certainty and uncertainty, as well as to explain the reasons why it is qualified, in the doctrine, either as a new type of damage or as a particular expression of virtual damage. An essential objective of this chapter is to clarify the relationship between loss of opportunity and causality, as well as to examine the thesis of the dual legal nature of the damage, through the prism of the coexistence of the damage consisting of the loss of opportunity and the final damage, possibly unrealized.

Thus, the theory of loss of opportunity has a very interesting peculiarity, namely, the symbiosis of two distinct damages. An initial damage, of an abstract nature, which is materialized by the chance itself, by the possibility of participating in the favorable event, and a final damage, having a concrete nature, embodied by the advantage that the victim was deprived of or the damage that he could have avoided. Even if there is a strong connection between the two damages, they are not equivalent, the latter only contributing to the quantification of the former. The initial damage has an independent existence, being, in fact, the one that has legal validity within the theory of loss of opportunity, but whose existence and extent is conditioned by the final damage.

The second chapter, “Lost chance – genuine compensable damage. Conditions” aims to demonstrate the compensable nature of the loss of a chance, despite the inherent uncertainty affecting the final outcome. The purpose of this section is to analyze the loss of a chance as a conceptual substitute for the evidentiary difficulties of the causal relationship, offering a balanced legal solution between the protection of the victim and the avoidance of excessive liability.

The specific objectives aim to identify the legal basis of the loss of a chance, outline the essential conditions for the award of compensation, namely the existence of a real and serious chance, the unlawful act, the causal link, the prejudicial nature of the lost chance, as well as analyze the specifics of the causal relationship in this matter. A distinct emphasis is placed on

the role of the judge, including the administrative judge, in the interpretation and application of the concept, in the absence of explicit regulation.

The reluctance of jurisprudence and doctrine regarding this theories is probably explained by the fact that Romanian law has long viewed future damage negatively, stating that compensation cannot be claimed for an uncertain, eventual damage, something that can only happen in the future.

Undeniably, the criticisms regarding the damage resulting from the loss of a chance find their justification in its ambiguous nature. Everything related to the future has a relative certainty, with the element of the unknown always hovering over it. This was the legislator's reasoning when he regulated the condition of the undoubted character that the chance must meet. For this reason, it is also necessary to distinguish between eventual and virtual damage, which are so often confused. Even if the line between the two notions is often very fine, eventual damage lacks certainty, being at the level of desire and aspiration without foundation, thus, it does not entitle the injured party to compensation, but on the other hand there is virtual damage, as is also the lost opportunity, which has a high degree of certainty in terms of its occurrence and thus justifies the award of compensation.

A central objective of the thesis is the analysis of the methods of assessing and repairing the damage, offering an applied approach to how the lost opportunity can be quantified and compensated fairly, an aspect that generates the greatest practical difficulties.

Chapter III aims to examine the methods used in practice to quantify the loss of a chance, highlighting the assessment criteria and their limits, as well as solutions for the monetary assessment of the damage, taking into account the specific context and the principles of equity.

Special attention is paid to the assessment of bodily harm, where uncertainty is amplified by medical, statistical and prognostic variables. The aim is to highlight the recurring difficulties encountered in the assessment process and to analyze the role of expertise in substantiating compensation solutions.

The chapter also offers a multidisciplinary perspective on the topic and aims to extend the analysis beyond strictly legal boundaries, by integrating elements of forensic psychology and the contribution of technical expertise.

This part of the thesis not only deepens the legal dimensions of the loss of a chance, but also aims to bring an original contribution to the development of a coherent conceptual and practical framework for the repair of this type of damage in Romanian civil law.

Chapter IV, entitled “**Concretization of principles in Romanian law**”, aims to transpose theoretical principles into the Romanian normative and jurisprudential context, with an emphasis on the principle of full compensation for damage. The objective is to analyze the compatibility of the loss of a chance with the requirements of Romanian civil law, especially with regard to the evidentiary standard and the delimitation between certain damage and potential damage. The evidentiary difficulties and the standard of reasonable probability, essential for differentiating between certain damage and only potential damage, are thus highlighted. These distinctions are fundamental for the clear delimitation of the cases in which tortious civil liability may arise.

This section aims to highlight the tensions between the rigidity of classical norms and the need to adapt them, in order to ensure effective protection of the victim.

An essential objective of the research is the analysis of the concrete application of the concept in the practice of Romanian courts.

Chapter V aims to highlight the practical relevance, the evolution of the perception of the loss of a chance, the criteria used to individualize the lost chance, the specific areas of application and the recurring problems regarding the proof of probability.

The analysis of the jurisprudence aims to identify trends, non-unitary solutions and the need for doctrinal and normative clarification, observing the criteria by which a lost chance is individualized and the areas in which this type of damage is most often invoked, such as medical, educational, sports or professional.

The chapter focuses on the analysis of relevant cases from the practice of domestic courts, highlighting the conditions of admissibility, the recurring challenges related to probation and the

methods of assessing damages. The study of these cases provides a practical framework for understanding the application of the theory in concrete situations.

Next, **Chapter VI** addresses the international comparative dimension, contributing to the identification of established models in comparative law and the application of the concept in the case law of the European Court of Human Rights and in European Union law. The aim is to capitalize on the experience of other legal systems to enrich the interpretation and application of the institution in Romanian law. The comparative analysis with other legal systems and the proposal of modern interpretations also constitute essential landmarks in this work, which highlight emerging trends in European Union law, providing a broader context for the positioning of Romanian law in this matter.

Finally, **the last chapter** of the thesis aims to formulate critical conclusions and proposals *de lege ferenda*, analyzing the trend of expanding the recognition of the damage resulting from the loss of a chance and the role of the courts in the development of the concept. The objective is to contribute to the outline of an explicit regulation, capable of ensuring coherence, predictability and fairness in the reparation of this type of damage.

I believe that this part of the work best highlights the personal and subjective contribution to the research because it assesses the opportunity of introducing a legal regulation that would distinctly enshrine the loss of a chance as a form of reparable damage. The main doctrinal and practical arguments in favor of a normative intervention are presented, as well as potential risks such as the rigidity of the concept or the dilution of evidentiary requirements, which may justify maintaining an exclusively jurisprudential solution.

Although loss of opportunity is increasingly recognized as an autonomous form of damage, Romanian positive law currently does not contain an express regulation that would delimit its content, the conditions of application or the evaluation criteria. In this normative absence, case law plays a decisive role in shaping and affirming the concept, through a gradual process of adaptation to concrete cases, new areas and increasingly complex social realities.

In recent years, the courts have become true architects of the evolution of loss of opportunity, gradually extending its recognition beyond classic areas, such as medical malpractice or professional liability, to less explored spheres, such as commercial litigation,

arbitration or administrative conflicts. These guidelines, although sometimes fragmentary, indicate a clear trend: the judiciary is becoming increasingly receptive to the idea that probabilistic uncertainty is not an absolute obstacle to reparation, but an inherent characteristic of some modern forms of damage.

Against this background, the question naturally arises whether a legislative intervention is necessary to clarify the legal regime of loss of a chance. The chapter analyzes the arguments for and against such a codification and discusses the risks and opportunities that a possible explicit regulation implies. Equally, it examines the essential role of the courts in maintaining a dynamic equity in the absence of a clear norm – an increasingly relevant role in a changing legal landscape, where the need for stability must be harmonized with the demands of adaptability.

Through this analysis, the chapter aims not only to map the current path of case law on the matter, but also to provide a framework for reflection on the future of loss of a chance as a living legal institution, capable of responding to the challenges of a modern justice system.

Considering the constant jurisprudence and doctrinal developments regarding the recognition and reparation of damage resulting from the loss of a chance to obtain an advantage or to avoid damage, we propose to supplement the Civil Code, Title V - Civil Liability, with a new article after art. 1386, as follows:

Art. 1386 – “Reparation for damage resulting from the loss of an opportunity”, with the following paragraphs:

- “(1) The loss of a real and serious chance to obtain a patrimonial or non-patrimonial advantage, or to avoid damage, constitutes reparable damage, when this chance has been suppressed or diminished by the unlawful act of a person.
- (2) The compensation is established in proportion to the probability of achieving the advantage or avoiding the damage, depending on the specific circumstances and the evidence administered.
- (3) The existence of the chance is assessed objectively, taking into account all relevant circumstances, without being confused with the actual damage or with a certain gain.

(4) Liability for the loss of an opportunity does not presuppose the certainty of achieving the expected effect, but only the existence of a reasonable probability, recognized as valuable from a legal point of view.”

In order for this legislative intervention to transform the loss of a chance from a predominantly jurisprudential construction into a clearly defined normative institution, with imperative and predictable applicability in Romanian civil law, it is also imperative to correlate it with the 2 articles of the Civil Code, as follows:

Correlation with art. 1357 Civil Code (civil tort liability), by addition:

After paragraph (1) of article 1357 of the Civil Code, a new paragraph is introduced, paragraph (1¹), with the following content:

"(1¹) If the unlawful act caused the loss of an opportunity, under the conditions of art. 1386¹, the existence of the damage is given by the suppression or diminution of the probability of achieving an advantage or avoiding a damage, without the need for proof of the certain achievement of the final result."

This addition clarifies the fact that the probabilistic nature of the damage does not affect the engagement of tort liability, but only the method of assessing the compensation. This avoids the confusion frequently encountered in practice between the lack of certainty of the result and the non-existence of the damage, expressly establishing the fact that the object of the reparation is the lost opportunity, not the final result.

Correlation with art. 1532 Civil Code (contractual liability) - Paragraph (2) of Article 1532 of the Civil Code is amended and will have the following content:

"(2) When the failure to perform the obligation has determined the loss of a real and serious chance to obtain an advantage or to avoid damage, the creditor is entitled to compensation established in proportion to the probability of achieving a favorable result, according to Art. 1386."

This amendment ensures the unity of the legal regime between tortious and contractual liability in the matter of loss of a chance, eliminating unjustified differential treatments. At the

same time, the applicability of the proportionality mechanism in the contractual sphere is expressly enshrined, in full coherence with the new article 1386.

By introducing art. 1386 of the Civil Code and its express correlation with art. 1357 and art. 1532, the autonomy of the loss of a chance as a distinct form of reparable damage is achieved, the criterion of certainty is clarified, related to the existence of the chance and not to the achievement of the final result, the establishment of proportionality as a rule for assessing damages, the uniformity of the application of the institution in tortious and contractual liability and the significant reduction of the risk of non-unitary solutions in court practice.

Thus, by adding the new article and treating the issue through the 4 specific paragraphs, we believe that the conceptual clarity of the loss of a chance as an autonomous damage, distinct from the unrealized benefit, but compatible with the principle of full reparation is ensured. In short, the correlation with art. 1357 confirms that the probabilistic nature of the damage does not exclude liability, but only influences the method of assessing compensation, while, in a complementary way, the amendment to art. 1532 guarantees the unity of the legal regime between tortious and contractual liability in the matter of the loss of a chance, avoiding unjustified differentiated treatments.

This regulatory package provides the courts with a coherent, predictable and operational legal framework, reducing the risk of non-unitary solutions and strengthening the effective protection of victims in legal situations characterized by uncertainty. The present legislative proposal aims to clarify and consolidate the legal regime of the damage resulting from the loss of a chance to obtain an advantage or to avoid a damage, within the framework of tortious civil liability, in order to ensure a uniform and predictable application in the practice of the courts.

Although the Civil Code currently enshrines, through the provisions of art. 1385 paragraph. (4), the possibility of repairing the damage consisting in the loss of a chance, the current formulation does not provide sufficient normative references regarding the legal nature of this damage, the criterion of certainty and the standard for assessing damages, aspects that have generated non-unitary jurisprudential solutions. In practice, we have observed how the courts oscillate between qualifying the loss of a chance as certain damage and rejecting claims

on the grounds of the eventual or hypothetical nature of the final result, which affects the legal certainty and predictability of the act of justice.

At the same time, the insufficiently explicit correlation between art. 1385 and the general rules of tortious civil liability (art. 1357 Civil Code), as well as those applicable in the matter of contractual liability (art. 1532 Civil Code), create difficulties in establishing the relationship between the actual damage, the unrealized benefit and the loss of an opportunity. However, in the absence of a normative intervention, these difficulties are left exclusively to judicial interpretation, with the risk of increasing the fragmentation of practice.

Through this intervention, the loss of an opportunity is coherently integrated into the general architecture of civil liability, as an instrument for the effective achievement of its reparative function, in accordance with European doctrinal and jurisprudential trends.

Also, this addition would contribute to strengthening legal certainty, ensuring a unitary interpretation of the principles developed by case law and doctrine. It would provide judges with a clear regulatory framework for quantifying and awarding compensation in situations such as: loss of a chance to advance in a competition, to obtain a contract, to benefit from a medical treatment with a potential for cure, etc.

From the point of view of the need for express regulation, in Romanian law, the damage resulting from the loss of a chance is not expressly regulated by the Civil Code, but is recognized only through jurisprudence and doctrine, by extending the notion of actual and certain damage. This lack of regulation generates legal uncertainty, non-unitary approaches by the courts and difficulties in quantifying compensation. The introduction of an express text would contribute to ensuring legislative coherence in the field of civil liability; aligning Romanian law with European trends in the protection of legitimate interests in the form of real chances and encouraging the prevention of illicit conduct aimed at suppressing or affecting a person's chances in a competitive or legal context.

For a doctrinal justification, we appreciate that Romanian doctrine has consistently recognized the legitimacy of repairing the damage consisting in the loss of a chance, with reference to: "the losses suffered by a person through the obstruction of the loss of a real possibility of gain must be regarded as a form of actual damage, although uncertain in

quantification”, to the loss of a chance is “an autonomous damage, irreducible to the actual damage or to the lost gain, having its own characteristics and requiring a distinct legal treatment”, to the lost chance which constitutes a sufficient legal interest to justify compensation, especially in the context of professional obligations (medical, lawyer-client, teacher-student, etc.).

The doctrine clearly distinguishes between the damage caused by the loss of a chance (which is reparable) and the hypothetical or eventual damage (which remains irreparable due to the lack of causal link).

Therefore, from the perspective of *de lege ferenda*, the express intervention of the legislator is required in order to autonomously enshrine the damage resulting from the loss of a chance to obtain an advantage or to avoid damage, as a distinct form of reparable damage within the framework of civil liability. Such a regulation would have the role of eliminating the interpretative uncertainties generated by the exclusive jurisprudential application of art. 1385 of the Civil Code and ensuring a coherent and predictable application of the principle of full compensation.

In this regard, it would be appropriate to introduce the new article and the 4 distinct paragraphs that would define the loss of an opportunity as damage consisting in the disappearance of a real and serious probability of achieving a favorable result or of avoiding damage, as a result of an unlawful act. Such a legal definition would allow the clear delimitation of the loss of an opportunity from the purely eventual or hypothetical benefit and would provide the courts with a precise normative framework for assessing the compensable nature of the damage.

At the same time, a regulation *de lege ferenda* should clarify the applicable evidentiary standard, expressly establishing that the certainty of the damage relates to the existence of the opportunity, and not to the effective achievement of the final result. In this way, a disproportionate burden of proof would be imposed on the victim and the intrinsic probabilistic nature of this type of damage would be recognized, without prejudice to the requirements of the causal link.

It is also necessary to explicitly regulate the method of assessing damages, by enshrining the principle of proportionality, in the sense of establishing the amount of compensation

according to the lost probability, assessed in relation to the specific circumstances of the case and the situation of the victim. Such a legislative solution would allow for a fair balance between the interests of the parties and would prevent both over-compensation and under-compensation of damage.

Last but not least, a clear regulatory intervention would contribute to the harmonization of domestic law with European trends and comparative case law, facilitating a coherent judicial dialogue and promoting the uniform application of the concept of loss of opportunity in sensitive areas such as professional liability, administrative relations or medical liability. Therefore, the legislative enshrinement of this type of damage would transform a predominantly jurisprudential construction into a stable, predictable and efficient legal instrument, with imperative applicability in the practice of Romanian courts.

Therefore, this chapter proposes a reflection on jurisprudential trends and directions of evolution, analyzing the arguments in favor of an explicit regulation and the role of the courts in consolidating the concept in the absence of a clear norm. The need for a coherent approach that ensures predictability and fairness in the application of this reparation mechanism is emphasized.

CONCLUSIONS

The doctoral thesis aimed to analyze the institution of compensation for damage resulting from the loss of a chance to obtain an advantage or to avoid damage, an institution that, although still lacking an express and autonomous consecration in Romanian civil law, is experiencing a constant jurisprudential and doctrinal development, determined by the need to adapt the mechanisms of civil liability to contemporary social, economic and professional realities. The research approach started from the observation that the loss of a chance represents one of the most sensitive and controversial forms of damage, located at the intersection of certainty and probability, between actual and potential damage, between normative rigor and the need for

fairness. I also noted the existence of a structural tension between the classical requirements of civil liability – in particular the requirement of certainty of damage and causality – and contemporary social realities, in which damage is increasingly manifested in the form of the loss of concrete opportunities, but uncertain in terms of the final result.

The analysis carried out in the first chapters highlighted the fact that the loss of an opportunity cannot be reduced to a simple hypothetical projection of a future gain, but constitutes a distinct legal interest, susceptible to protection, to the extent that the lost opportunity is real, serious and objectively determinable. The historical and conceptual evolution of the notion has demonstrated that the recognition of the legal value of the opportunity marks a profound transformation of the traditional conception of damage, in the sense of overcoming the requirement of an absolute certainty of the final result and focusing on the effective protection of the concrete possibilities of achieving a legitimate interest. We can recall that the loss of an opportunity represents a natural evolution of the notion of damage, arising from the need to adapt civil law to the complexity of modern legal relations. Far from being a doctrinal artifice or an unjustified derogation from classical principles, the loss of a chance reflects the recognition of the legal value of a real probability, likely to produce significant patrimonial or non-patrimonial effects

In this context, the thesis has highlighted the particularities of the legal nature of the damage caused by the loss of a chance, insisting on its virtual, but not fictitious, character, as well as on the specific difficulties of the causal link. The loss of a chance obliges the judge to make an essential distinction between the final damage, which remains uncertain, and the damage itself, consisting in the suppression or diminution of a reasonable probability, directly attributable to the illicit act. In this logic, the loss of a chance appears as a genuine conceptual substitute for the uncertainty of the causal relationship, without however denying the necessity of the existence of a legal causal link between the conduct of the author and the damage invoked.

Therefore, the object of reparation is not the final unrealized result, but the chance itself, as an autonomous legal value.

An essential contribution of the research was the analysis of the causal link in the matter of loss of a chance, an issue that has constantly generated reservations in the practice of the

courts. The thesis demonstrated that, in this area, the causal relationship should not be assessed by reference to the final damage, but to the loss of opportunity as a distinct damage. Thus, the unlawful act should not be the direct cause of the final result, but the cause of the suppression or diminution of the chance. This reconceptualization of causality does not imply the abandonment of legal rigor, but an adaptation of the analysis tools to the specifics of probabilistic damage.

In the same context, the research highlighted the dual legal nature of damage, in the sense of the coexistence of the loss of chance and the eventual final damage. The distinction between these two levels is fundamental for the correct application of the principle of full reparation. Relating the compensation to the final damage would lead to an unjustified overestimation, while completely ignoring the loss of opportunity would be tantamount to denying the reality of the damage. The just solution is to find proportional compensation for the lost opportunity, assessed according to the probability of achieving the advantage or avoiding the damage.

The chapters dedicated to the conditions of compensation and the assessment of damage have highlighted the central role of the existence of a real and serious chance, of the unlawful act and of the causal link, as well as the complexity of the process of quantifying damages. It has been demonstrated that, in the matter of loss of opportunity, the evidentiary requirements cannot be identical to those applicable to certain damage, but must be adapted to the probabilistic nature of this type of damage. The standard of reasonable probability thus appears as an indispensable tool for achieving a balance between the rigors of the law and the need for effective protection of the victim. Thus, the analysis shows that compensation cannot be established arbitrarily, but must result from a proportional assessment process, based on objective data, expertise and logical reasoning. The difficulties encountered in the assessment of bodily harm, especially in the medical field, confirm the need for an interdisciplinary approach, in which technical expertise plays an essential role in determining the relevant probabilities.

The examination of Romanian judicial practice has highlighted a slow but visible evolution towards the recognition of the loss of an opportunity as compensable damage. This has confirmed the non-unitary and oscillating nature of the solutions pronounced by Romanian courts, especially in terms of the recognition of the compensable nature of the loss of an opportunity and the assessment of the causal link. While some courts have shown a progressive openness towards the recognition of this type of damage, others have remained faithful to a restrictive

interpretation, equating the loss of an opportunity with a possible or purely hypothetical benefit. This situation clearly reflects the limits of a predominantly jurisprudential construction, in the absence of a clear and coherent normative framework, and the non-unitary practice affects legal certainty and undermines the reparative function of civil liability.

The comparative approach highlighted the fact that, in legal systems such as the French, Italian or German, the loss of an opportunity is recognized as a distinct form of damage, and the mechanisms for assessment and reparation are much clearer and better consolidated, being established as an autonomous legal institution. In particular, French law has offered a coherent model, both doctrinal and jurisprudential, in which the loss of an opportunity is treated as a distinct damage, and the compensation is established in proportion to the probability lost. The case law of the European Court of Human Rights also confirms that the protection of patrimonial and non-patrimonial interests affected by the loss of an opportunity falls within the scope of the right to an effective remedy and the requirements of fairness. These external benchmarks have constituted an additional argument for the need for a similar development in domestic law.

In light of the entire analysis carried out, the fundamental conclusion of this thesis is that the loss of a chance does not represent an artificial or theoretical prejudice, but a real one, born from social and legal reality, the non-recognition of which leads to significant gaps in the legal protection of the person. Its abstract nature should not constitute an obstacle in the granting of compensation, but a methodological challenge for the judge, called upon to assess, with rigor and balance, whether the lost probability was significant enough to justify the intervention of the law.

Against this background, the thesis argues, in an argumentative manner, the need for the intervention of the Romanian legislator to expressly enshrine the prejudice resulting from the loss of a chance. The lack of clear regulation transforms this institution into a field excessively dependent on judicial interpretation, with the risk of accentuating discrepancies in practice.

The proposal of *lege ferenda* formulated within the work – the introduction of art. 1386¹ in the Civil Code – aims to provide a coherent normative framework, which defines the loss of an opportunity, establishes the evaluation criteria and enshrines the principle of proportionality of compensation.

The express correlation of this norm with the provisions of art. 1357 and art. 1532 Civil Code has the role of ensuring the unity of the legal regime between tortious and contractual liability, avoiding divergent interpretations and gaps in protection. Through this systematic integration, the loss of an opportunity is recognized as reparable damage regardless of the source of liability, in compliance with the same principles of evaluation and reparation.

In conclusion, the compensation for the damage resulting from the loss of a chance to obtain an advantage or to avoid damage should not be seen as an exception or a derogation from the classic rules of civil liability or as a problematic exception of civil law, but as an expression of its maturation, a necessary evolution, meant to respond to contemporary legal relations and the complex realities of modern society. The recognition and compensation of this damage represents a necessary step towards achieving a more equitable, more flexible and more oriented civil justice towards the effective protection of the legitimate interests of the person. Through the approach taken, this thesis aims to contribute to the theoretical and practical consolidation of this institution and to provide useful benchmarks for both doctrine and practitioners, in order to achieve a more equitable civil justice and more adapted to current realities, as well as to provide a solid foundation for future jurisprudential and legislative developments.

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