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PhD THESIS

**DEVELOPMENTS AND PERSPECTIVES IN THE REGULATION AND JUDICIAL
PRACTICE CONCERNING THE GENERAL DAMAGES COVERED BY THE COMPULSORY
CIVIL LIABILITY INSURANCE FOR MOTOR VEHICLES**

- Abstract -

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Key - words: compulsory civil liability insurance for motor vehicles (RCA), insurance companies, **traffic accidents, victim/victims, road deaths, personal injuries, general damages, damage files, insurance benefit/claim, insurance premium, court files, case-law.**

1. Rationale

I have chosen to study this theme because it is one of the most "mysterious" and vast fields in the domain of civil liability insurance for motor vehicles (RCA). The amount of general damages established by the court represents a considerable and also a highly unpredictable cost for the RCA insurers.

It is unpredictable since the law left the mission of establishing the general damages to the courts, and up to now, lacking the legal tools for quantifying the general damages, the judicial practice has been inconsistent. In addition, the very nature of the general damages implies a high dose of subjectivism (not only on the part of the victim, but also on the part of the insurer and even the judge).

Therefore, this thesis has mainly focused on the case law on general damages ensuing from traffic accidents. In order to understand where we stand and what solutions others have found to the problems we face in quantifying the general damages ensuing from traffic accidents, we have also analysed the situation in other European countries that can serve as a model for Romania.

2. The content of the thesis

The thesis comprises seven chapters, which are divided in their turn into other divisions and subdivisions, that is into subchapters and paragraphs, according to the needs of structuring the subject. Also, at the end there are separate sections dedicated to the final conclusions and the annexes.

The first chapter plays an introductory part defining the concept of "general damages" and briefly following the historical evolution of the quantification of general damages (in the universal history - from the Code of Hammurabi, the Roman Law of the Twelve Tables and the Bible up to the current rulings of the European Court of Human Rights - as well as in the Romanian regulations - from the Calimach Code to the recent rulings of Romanian courts). I also tried to make a conceptual clarification, delimiting the concepts of "non-pecuniary damages", "pecuniary damages", "personal injury", "general damages", "material damages", "bodily harm".

From the various classifications of damages that are relevant to the topic of this thesis, I insisted on that mostly used in practice. That is the classification of personal injury into recreational damages, pain and suffering damages (the compensation due in these cases being known as *pretium doloris*), aesthetic damages (the compensation being known as *prix de la beauté* or *pretium pulchritudinis*), juvenile damages (for which the compensation is known as *pretium iuventutis*), loss of life expectancy and sexual harm.

I have also presented in the first chapter the way in which the general damages are regulated in general in the Civil Code, while stating the main problems that were raised in connection to the general damages in general:

a) what is the nature - reparative or compensatory - of the amount that is granted as general damages?

b) which categories of persons should be compensated: only the direct victims or the heirs, the spouse and other persons who consider themselves injured as a result of the death or serious bodily injury of a close person, as well?

c) how should the non-pecuniary damages be assessed and what criteria must underlie the award of compensation? or

d) should certain limits or ceilings for monetary compensation be set or should it be left only to the discretion of the judge or, if the case may be, of the parties?

I have tried to answer these questions both in the first chapter and throughout the entire thesis.

In **the second chapter**, I have presented the economic-statistical coordinates of the compulsory RCA insurance for motor vehicles at EU level and in Romania (or, in other words, the main indicators whose evolution influences, in our opinion, the RCA market, including the amount of general damages). It refers to traffic accidents, the evolution of the car park and road infrastructure.

According to the data of the General Directorate for Driving Licenses and Car Registration (DRPCIV), the national car park in Romania at the end of 2019 registered a total of 8,749,390 units, increasing by 7% compared to the similar period of 2018. According to the same source, almost 80% of the national car park is older than 10 years (6,880,236 units).

Comparing the number of vehicles from the DRPCIV records with the number of the resident population in Romania (19,405,000 inhabitants on 01.01.2019 according to the National Institute of Statistics-INS), it follows that there is a car for every 2.2 people (compared to a car for every 18 people in 1990). However, according to statistics, at the EU level Romania comes in the second to last place from the perspective of the motorization level (with only 330 vehicles per thousand inhabitants compared to the EU average of 531 vehicles per thousand inhabitants).

Romania's defective road infrastructure is confirmed by various external evaluations. Thus, in the "Global competitiveness report (2011-2012)", the World Economic Forum places Romania on the 137th place out of 142 countries analysed from the point of view of road infrastructure's quality. According to the most recent global competitiveness report (2019), Romania has made some progress, but the situation remains defective: our country ranks 119th at road infrastructure's quality and 61st at transport infrastructure.

According to statistics, the death rate in Romania in traffic accidents is the highest in the EU. According to the European Commission, in 2018 the number of deaths in road

accidents per 1 million inhabitants was 96 (given that the EU average in the same period was 49, almost half the Romanian average).

The high degree of serious accidents in Romania is explained by the Romanian specialists in road transport safety also by the fact that most vehicle collisions in Romania are frontal, very dangerous, due to the lack of highways.

The constant growth of the car park as well as its age, in the context of a defective infrastructure, creates premises likely to favour a high number of road accidents. The increase of the number of road accidents determines the increase of the amount of general damages claimed and respectively, paid under the compulsory RCA insurance.

In the **third chapter**, I have analysed the public reports of the Financial Supervisory Authority (FSA) to identify the relevant information on the evolution of compensation granted by insurers in case of traffic accidents, including general damages.

According to these reports, in recent years, the insurance sector is highly dependent on the car insurance segment, especially the RCA insurance. From the most recent annual report of the FSA regarding the evolution of the insurance market, it follows that, in 2019, the general insurance market (which holds a share of 79% of the total subscribed gross premiums by insurers) remains dominated by car insurance. These take up to 72% of the total subscribed gross premiums for the general insurance activity and 57% of the total subscribed gross premiums by the insurance companies in 2019.

Unfortunately, the statistics in the FSA's annual reports do not include the share from the compensations corresponding to the amounts awarded as general damages. Instead, they are limited to indicating the share of compensation paid for personal injury (in which the general damages are included and have the largest share). However, the FSA data are useful to provide an overview of the evolution of general damages in the broader context of personal injury.

The data published by the FSA show that between 2010-2016, there has been a constant increase of the RCA subscribed gross premiums. The year 2016 has reached the highest value of the subscribed gross premiums (1,849,005,000 lei) and of the average premium (809 lei) over the last 10 years. After 2016, two years decrease period of the value of the premiums followed (in 2017 and 2018) and in 2019 the increase of the value of premiums resumed (reaching the value of 3,783,026,000 lei of subscribed gross premiums and respectively, 613 lei of the average premium).

The personal injury compensations (including the general damages) have registered a spectacular increase throughout the last 10 years (comparing the amount of the compensations from 2010 and 2019, one can notice that during this period the amount of these compensations has increased about 6 times).

However, this increase was not continuous, but had a sinuous evolution: the increase between 2010-2014 was followed by two years decrease period (2015 and 2016) and a new increase in the last 3 years (2017, 2018 and 2019). 2019 registered the maximum amount of compensation for personal injury (600,463,607 lei).

The table below shows the evolution of the gross compensation paid between 2010-2019:

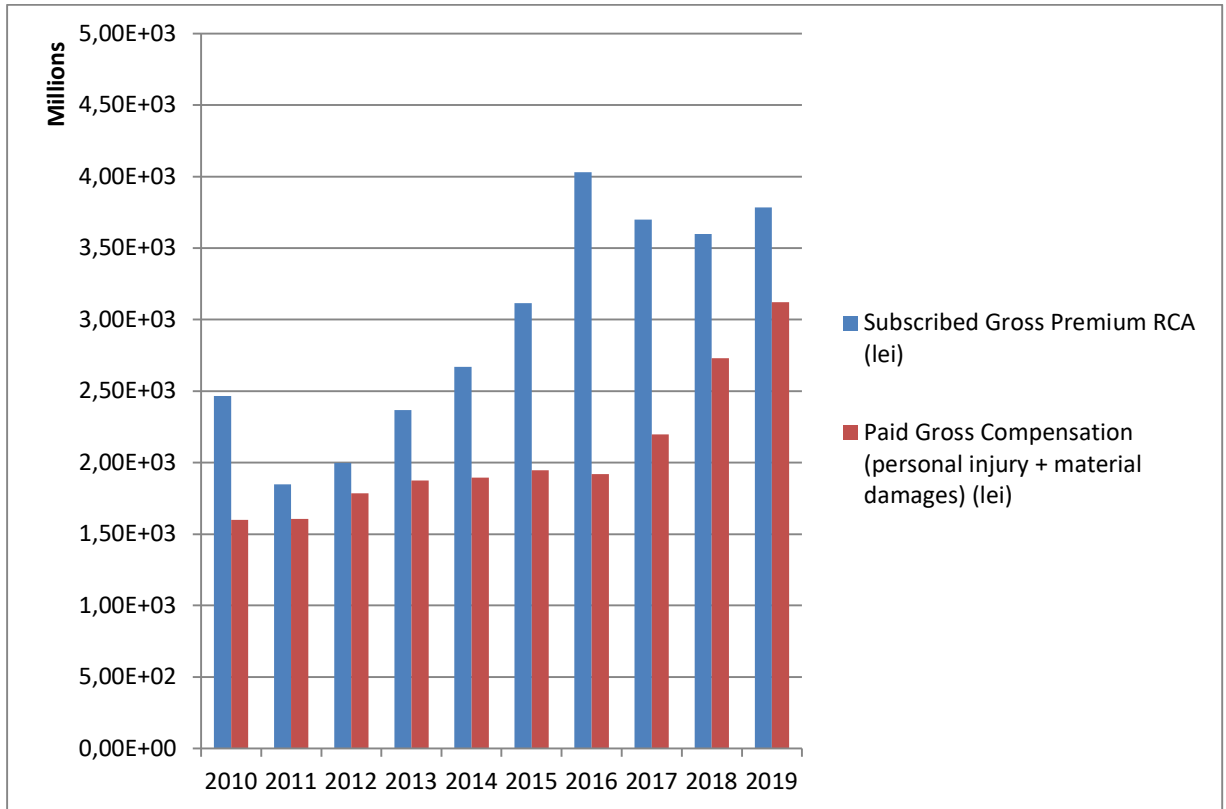
Table no. 9 [from the thesis] - The evolution of the gross compensations paid between 2010-2019

Criterion No.	Year	Compensation for personal injuries (lei)	Compensation for material damages (lei)	Gross compensation paid (personal injury + material damages) (lei)
1.	2010	110.900.185	1.491.396.400	1.602.296.585
2.	2011	272.657.634	1.333.154.157	1.605.811.791
3.	2012	325.745.985	1.460.066.009	1.785.811.994
4.	2013	384.870.419	1.489.145.218	1.874.015.637
5.	2014	470.603.949	1.423.290.107	1.893.894.056
6.	2015	438.045.048	1.508.855.123	1.946.900.171
7.	2016	416.845.482	1.503.047.836	1.919.893.318
8.	2017	523.146.801	1.672.830.371	2.195.977.172
9.	2018	554.175.641	2.175.878.316	2.730.053.957
10.	2019	600.463.607	2.520.152.330	3.120.615.937

Source: ASF reports 2015-2019

The figure below allows us to follow the parallel evolution of the subscribed gross premiums in relation to the paid gross compensations (personal injury and material damages).

Figure no. 1 [from the thesis] - Insurance premiums versus RCA compensation between 2010-2019



Source: author's processing based on data from the 2015-2019 FSA reports

Regarding the evolution of the average compensation for personal injury in the last 10 years, after a constant increase in the first four years (2010-2014), there has been a constant decrease in the last six years (2015-2019); the maximum was reached in 2014 (68,471 lei), and in 2019 the amount (50,256 lei) was close to the one existing in 2011 (49,956 lei).

Table no. 10 [from the thesis] - The evolution of the average compensation according to the compulsory RCA insurance between 2010-2019

Criterion no.	Year	Average amount of compensation for personal injury (lei)	Average amount of compensation for material damages (lei)	Total average amount of compensation (lei)
1.	2010	28.076	4.573	4.854
2.	2011	49.956	4.490	5.311
3.	2012	57.512	5.009	6.010
4.	2013	63.573	5.097	6.284
5.	2014	68.471	5.300	6.901
6.	2015	64.652	5.641	7.101
7.	2016	56.721	5.581	7.061
8.	2017	53.074	5.616	7.136
9.	2018	51.432	6.425	7.812
10.	2019	50.256	7.006	8.396

Source: author's processing based on data from the 2015-2019 FSA reports

The amount of the average compensation as a whole is closer to the amount of average compensation for material damages than for personal injury because the number of material damage files is much higher than the number of personal injury files. For example, in 2019 there were 11,948 paid damage files for personal injury compared to 359,739 paid damage files for material damages. If the number of material damages files increased by only about 10% in the last 10 years, the number of personal injury cases almost tripled in the same period.

In order to have an overview of the actual expenses with the compensations, the variation of the technical reserves constituted by the insurers for the reported but not settled damages (RBNS - *reported but not settled*), as well as for the damages incurred, but still not reported and therefore unpaid (IBNR - *incurred but not reported*), must also be taken in consideration.

The table below compares the level of subscribed gross premiums with the total level of damages (obtained from the sum of gross damages paid by insurers with the approved damage reserves and with the reserves for unapproved damages, according to the infographic elaborated by UNSAR and entitled "General damages as a result of personal injuries and/or death in car accidents" and the FSA reports from 2011-2019).

Table no. 12 [from thesis] - Synthesis of RCA indicators (including RBNS and IBNR) for the period 2007-2019

RCA Indicators	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
PBS subscribed gross premiums (million lei)	1398	1795	2160	2464	1875	2054	2461	2671	3115	4029	3699	3597	3783
Paid gross damage (million lei)	743	1220	1532	1603	1606	1782	1927	1894	1947	1920	2196	2730	3120
RBNS – approved damage reserves (million lei)	459	726	931	1126	1510	1358	1256	1731	1815	2212	2112	2310	2350
IBNR – reserves for unapproved damage (million lei)	165	360	474	569	750	717	853	828	941	1302	1273	1260	1200
Total damage (million lei)	1367	2306	2937	3298	3866	3857	4036	4453	4730	5434	5581	6300	6670
Damage rate (%)	97,79	128,47	135,98	133,85	206,19	187,78	164,00	166,71	151,85	134,88	150,88	175,15	176,32

Source: author's processing based on data from UNSAR and ASF reports 2011-2019

It can be seen that the paid gross compensation together with the approved damage reserves and the unapproved damage reserves exceeds the value of subscribed gross premiums every year in this period, except for 2007 (when the amount of the subscribed gross premiums slightly exceeds the total value of damage). Also, as one moves chronologically to the present, the differences between the level of premiums and the level of the damages has been steadily growing.

In the **fourth chapter**, I have analysed various institutional endeavours towards identifying some objective criteria for the quantification of general damages. Most of this chapter has been dedicated to the Guide issued by the Fund for the Protection of Street Victims (FPVS)¹, the most concrete and coherent proposal to use objective criteria for the quantification of general damages.

The guide aimed to determine an average level of moral damages, recognizing the possibility for the compensations to be individualized, by increasing or decreasing them according to the particularities of each case and the existing evidence.

Following the processing of the information from 2,339 decisions of the Romanian Courts of Appeal pronounced in 2009 and 2010, in the Guide proposed the following average values for general damages:

- a) 52,883 lei (general average compensation for an injured person in case of death);
- b) 334 lei/day (general average of general damages for each day of medical care).

Depending on the indirect victim's relationship with the deceased person, the following average values for general damages were proposed:

- (i) 75,097 lei for the parent (mother/father) as a result of the death of their son/daughter;
- (ii) 52,510 lei for the death of the spouse;
- (iii) 51,324 lei for the minor child (son/daughter) as a result of the death of the parent (mother/father);
- (iv) 36,434 lei for the adult child (son/daughter) as a result of the death of the parent (mother/father);
- (v) 29,912 lei for brother/sister.

In order for the proposed solutions to be used on the long term, the Guide proposed a scoring system for calculating the compensation due for injured persons in which the value of the point would represent one tenth of the average monthly net salary per economy established by INS. According to the proposal in the Guide, if the value of a point was 140 lei in 2010, in 2020 the value of a point would be 320 lei.

In this chapter, I have also analysed the proposals of The National Association of Insurance and Reinsurance Companies in Romania (UNSAR) regarding the criteria for establishing general damages in matters of compulsory RCA insurance, especially those in the infographic entitled "General damages due to injuries and/or death in car accidents". UNSAR has proposed a tabular system of points for personal injury, pleading that such a system is used in other countries too (for example Spain, Slovakia and the Czech Republic).

This system is based on the traumatic point (PT) and a traumatic scale between 0 and 200 traumatic points (PT), the maximum value of 200 PT being assigned to the permanent

¹ S. Greceanu, M. Necrelescu, *Ghidul pentru soluționarea daunelor morale: studiu privind practica națională și europeană în materie, sinteză și recomandări pentru soluționarea daunelor morale suferite ca urmare a vătămării sănătății și a integrității corporale ori a decesului persoanelor produse prin accidente de vehicule*, UNSICAR publishing house, Bucharest, 2012.

vegetative state (SVP). In determining the value of the PT, the possible solution would be the minimum gross monthly salary per economy. The system would be based on the presumed average level of suffering and a maximum possible compensation adjustment of 25%. It is interesting that UNSAR's suggestions did not go unnoticed, Law 132/2017 establishing that physical pain is determined based on a traumatic point.

The fifth chapter is dedicated to the regulation of general damages under the compulsory RCA insurance regime. After a brief recent history of the norms that regulated the general damages in the field of compulsory RCA insurance (among which can be mentioned the "long-lasting" Law no. 136/1995 and the norms issued for its application), we focused our attention on the legislation in force: Law no. 132/2017.

After a long period of time in which the relevant rules provided that general damages in case of personal injury and death are established "in accordance with Romanian law and jurisprudence", Law 132/2017 brings up certain legal criteria for quantifying general damages.

However, Law 132/2017 is limited to proposing the assessment of physical pain based on traumatic points (the value of a traumatic point being equal to twice the minimum gross basic salary per country guaranteed in payment at the date of the accident). Regarding the psychic traumas as non-pecuniary damages, Law 132/2017 is limited to providing that "the injured person can bring documents as proof" (which can be interpreted in a permissive manner, but even more in a restrictive manner - as a limitation of proving the psychic traumas through documents, ignoring the need/utility of proving them with witnesses).

At the same time, Law 132/2017 does not provide the criteria for assessing the general damages in case of death. Anyway, the rules set out in this regulation regarding the physical pain are also inapplicable because the secondary legislation establishing the traumatic score has not been adopted yet. Therefore, the general damages are still established as they were before Law 132/2017.

Although the norms contained in Law 132/2017 are not yet functional, I have analysed the implications of quantifying the general damages according to Law 132/2017 on the parties of the compulsory RCA insurance report (insurer, injured person and insured).

The sixth chapter is the most extensive chapter in the whole work. It is devoted to the case law on general damages. It is not confined to the case law in Romania (although it covers most of this chapter and exceeds in length any of the other six chapters) but also refers to the case law of the European Court of Human Rights (ECHR) as well as that of the Court of Justice of the European Union (CJEU).

In the section reserved for the ECHR jurisprudence, we presented the ECHR position on general damages, the ECHR criteria for assessing general damages as well as aspects from the ECHR case law on general damages granted to victims of traffic accidents in Romania.

With regard to the case law of the CJEU, I have presented several cases of the Luxembourg court which are relevant to the subject under scrutiny (for example, the *Drozdovs* and *Haasová* cases in which the CJEU showed that RCA insurance must cover non-pecuniary damage, the *Marques Almeida* case in which the CJEU has shown the effects of the victim's contribution to the damage upon the right to compensation or the *Carvalho* case which show how the lack of guilt of the drivers involved in the accident influences the compensation). However I paid the utmost attention to the *Petillo* case in which the CJEU ruled that national

rules allowing specific calculation methods in the case of non-pecuniary damages for traffic accidents that are less favourable to victims than those provided by the rules of common law in matters of civil liability, are allowed by the ECJ (compatible with EU rules).

Regarding the national case law, after some introductory aspects referring to, among others, the significance and the role of general damages according to the case law, the analysis went on to establish, based on the consulted judgments, which is the "case law" that the judge should take into account in delivering a solution regarding the claims of general damages raised by the victims of traffic accidents. The conclusion I have reached is that the court adjudicating the claim for general damages will decide based on the specific circumstances of the case. Given that the case law is not a source of law, there is no obligation to apply it unconditionally, but the court can use it as a guide.

After some considerations regarding the motivation of the judgments pronounced in field of general damages (recalling the generic references to the case law of The High Court of Cassation and Justice of Romania and the ECHR as well as the main "choruses" that can be found in the relevant judgments), I have presented the main rules and criteria for determining the amount of general damages (including the indication of the specific elements in case of death, respectively in case of personal injury).

The courts constantly refer in their decisions to the criteria for the quantification of general damages, listed in Decision no. 89/09.06.2003 of the Supreme Court of Justice (the negative consequences suffered by the person concerned physically and mentally, the importance of the damaged values, the extent to which these values were damaged, the intensity to which the consequences of the injury were perceived, the extent to which the victim's family, professional and social situation were affected, fairness and proportionality). However, in justifying the amount of general damages, the courts preferred to use more specific criteria.

From the reviewed case law, it results that in case of death the main criterion to which the courts refer to is the relationship with the victim of the persons requesting compensations. At the same time, from this jurisprudence it results that in case of death, the courts granted the highest amounts of general damages to the minor children, then to the parents and then to the spouses/partners. In general, the persons with the same relationship with the victim are granted the same amount of general damages.

Other important circumstances taken into account by courts when granting general damages in case of death are the possible cohabitation with the deceased, the possible guilt of the deceased victim at the time of the accident, the age of the deceased and the relatives/persons requesting general damages, the relationship between the author of the accident and the person requesting general damages, the standard of living, the socio-economic context and the income of the victim or the level of education and the occupation of the relatives of the deceased. To all this is added, as a kind of "safety net", the more general criterion of fairness (and proportionality), very useful to the courts in justifying the amounts awarded.

In case of personal injury, the main criteria to which the courts refer when establishing moral damages are the number of days of medical care required for healing provided in the medical certificate and any permanent or long-term injuries suffered as a result of the

accident, including loss of an organ or sense or the extent to which the victim's life has been endangered. Other important criteria used by the courts in such cases are the victim's contribution, the victim's age, the general standard of living and socio-economic context, the relationship between the author of the accident and the victim claiming general damages, fairness and proportionality.

According to the criteria for the quantification of general damages, I tried to answer the question of who can benefit from general damages in the event of road death (analysing even rather sensitive issues such as the rights of unborn children at the date of the accident or the rights of the relatives of the driver guilty of the accident and who died in the accident). I also tried to answer the question of who can benefit from general damages in case of personal injuries (especially whether there are circumstances under which the relatives/other people close to the injured person can benefit from general damages).

Then I have presented the way in which the moral damages are proved, with the indication of the particularities in case of death, respectively personal injuries. I pointed out as a general rule that, unlike property damages that are proven with material evidence, in case of general damages a great importance is attached to the role of the judge who will assess taking into consideration the consequences suffered by the victim, a certain overall amount to compensate for the non-material damage suffered.

At the same time, I have shown that in the event of road death, the courts usually resort to presumptions, starting from the idea of the existence of a mutual affection between family members. I also stressed the probative importance of medical expertise reports in cases where victims suffer injuries as a result of traffic accidents.

The thesis also includes some observations regarding the amount of general damages awarded by the courts. I have shown that the trials regarding general damages take a long time because the parties will use all available remedies. Given the inherent subjectivity of the general damages field, at least one of the parties will be discontent with the court's ruling (the victim will appreciate that the compensation was too little, and the insurer will appreciate that the victim has received too much) and will challenge the judgment.

In order to prove their case, insurers usually invoked the provisions of the Guide but, as a rule, the Guide was not favourably received by the courts. Instead, the victims motivated the high amount claimed by referring to the maximum limit of compensation provided in the compulsory RCA insurance policy, but the courts did not accept this argument, showing that this maximum limit should be considered only in accidents with several victims.

I also presented examples that demonstrate the disproportion between the amounts requested by the victims and those granted by the courts, but also contradictory rulings of some courts in the same case.

In the thesis I also presented the conclusions of processing the information regarding general damages awarded by courts in case of road death and personal injuries between 2012-2019, classified by the year and category of court. From these data it follows that generally, the highest amount of damages awarded can be found at the level of tribunals and courts of first instance, while at the level of courts of appeal and the supreme court these damages are reduced. The values obtained from this processing also allowed certain comparisons with the values proposed in the Guide (including with the values updated to 2020).

The analysis of national case law on general damages has not failed to address issues such as the currency in which the amount of general damages is expressed in the consulted judgments or when penalties start to flow for late payment of general damages.

In the thesis, I presented several relevant cases encountered in the judicial practice. I mention below as an example three such cases.

Case study no. 1.

Following an accident that occurred on 15.03.2012, the wife and the daughter requested general damages in amount of 500,000 lei each for the death of the husband, respectively the father, guilty of the accident (after engaging in an overtaking, he entered the opposite direction, when he lost control over the driving direction and fell over outside the roadway).

Initially, Sibiu Tribunal (the Civil Sentence no. 677/06.06.2011) and then Alba Iulia Court of Appeal (the Civil Decision no. 69/10.10.2013) rejected the claims for general damages on the grounds that according to art. 50 par. (3) of Law no. 136/1995, the insurer does not grant compensation for the damages caused as a result of the personal injury or death of the driver responsible for the accident, "regardless of who claims these compensations".

Instead, on second appeal, The High Court of Cassation and Justice of Romania, within the Civil Decision no. 3707/2014, interpreted the provisions of art. 50 par. (3) stating that by these provisions the legislator has expressly specified that the spouse or the person who is in the maintenance of the owner or driver of the insured vehicle, responsible for the accident, may claim compensation, without conditioning the application for these compensations of their direct involvement in the accident. Therefore, the case was sent for retrial of the appeal to Alba Iulia Court of Appeal.

In the retrial of the appeal, by the Civil Decision no. 267/2015, the Alba Iulia Court of Appeal obligated the insurer to pay general damages to the **wife** and **daughter** in the amount of **50,000 lei** each.

After this ruling, in the Official Journal no. 71/01.02.2016 was published Decision no. 23/26.10.2015 of The High Court of Cassation and Justice of Romania settling an appeal in the interest of law and which established that if the driver guilty of the accident died, his relatives cannot claim general damages for the suffering caused as a result of death but only for their own personal injuries suffered in the same accident.

As a result of the solution given in the appeal in the interest of law by Decision no. 23/2015, The High Court of Cassation and Justice of Romania decided in the Civil Decision no. 202 / 03.02.2016 to admit the insurer's second appeal and **rejected in full the action of the wife and daughter** (including the claims regarding the general damages).

I estimate that in this case, The High Court of Cassation and Justice of Romania was correct. At the date when it delivered the solution for the second appeal in this case, Decision

no. 23/26.10.2015 settling the appeal in the interest of law had already been published in the Official Journal and had the legal obligation to respect the solution given in the appeal in the interest of law from the date of its publication in the Official Journal.

Case study no. 2.

In one case, the mother did not adapt the speed to the wet road and lost control of the vehicle, which entered in a tree. Following the impact, the 3-month-old child died and the child's mother (driver) and her mother-in-law were injured. Following this accident, an application for compensation for the death of the baby was filed by the driver's husband (200,000 euros) and the four grandparents (100,000 euros each).

Caransebeş Court of first instance, by the criminal Sentence no. 89 / 20.03.2019, granted the amount of **50,000 euros to the father** and **15,000 euros to each of the 4 grandparents**.

Timișoara Court of Appeal criticized the solution of the court of first instance (Caransebeş Court) because it did not take into account the close family and affinity ties between the author of the accident and the persons requesting general damages (civil parties), respectively the fact that the defendant (author of the accident) lived in the same house and had a common life with the civil parties (her husband and in-laws).

This situation would have required some caution in granting general damages in order not to be in the situation for the defendant herself to derive pecuniary benefits from her own fault in the producing of the road accident, a tragic event after which her 3-month-old son died. The fact that, through her own fault, the mother caused her son's death cannot be deprived of legal consequences. Although the liability of the insurer is not removed in such a case and the award of general damages is not itself illegal, this aspect must nevertheless be taken into account in the individualization of compensations. "The role of general damages, which does not necessarily have to be quantified in sums of money, is to ensure moral compensation to the civil parties, as a result of the suffering created by the perpetrator, however given the close link between the defendant and the civil parties, there is an obvious possibility to divert these damages from the purpose provided by the legislator" (Criminal Decision no. 603/04.06.2019 of the Timișoara Court of Appeal).

On appeal, Timișoara Court of Appeal reduced the amount of general damages awarded by Caransebeş Court of first instance (**from 50,000 euros to 15,000 euros** in the case of the **father** and **from 15,000 euros to 5,000 euros** for **each of the 4 grandparents**).

Case study no. 3.

Due to excessive speed, the driver lost control of the driving direction, colliding with a poplar tree on the side of the road, and accident resulted in the death of the passenger on the right (aged 36 years old) and the passenger's son (aged 5 years old). It was noted that both the driver and the passenger on the right were drink-driving. It was not clear from the evidence taken if the passenger on the right had asked the driver to transport him and his son or if the driver had proposed to transport them on his own initiative.

As a result of the two deaths, the Street Victims Protection Fund (because the vehicle did not have RCA insurance at the time of the accident) received applications for damage compensation from the wife-mother (200,000 euros in total for husband and son), the son-brother aged 10 (150,000 euros in total for the death of the father and brother), the paternal grandparents (150,000 euros in total each parent-grandparent for the death of the son and grandson) and the brothers/sisters - uncles/aunts (100,000 euros in total each of the 3 brothers/sisters - uncles/aunts for the death of the brother and grandson).

In first instance, by the civil Sentence no. 180/27.01.2012, Bucharest Tribunal granted **50,000 lei each the wife-mother and the son-brother** aged 10, and to the other relatives **5,000 lei each (parents-grandparents and brothers/sisters - uncles/aunts)**.

By the civil Decision no. 361/A/19.10.2012, **Bucharest Court of Appeal increased the amount of moral damages awarded to the wife-mother and surviving son-brother at 100,000 lei** for each and maintained the rest of the amounts granted by Bucharest Tribunal.

By the civil Decision no. 3024 / 30.05.2013 pronounced by The **High Court of Cassation and Justice of Romania**, the second appeal was admitted and the case **was sent for retrial** because, among other things, the appellate court did not indicate which non-patrimonial rights were infringed and the evidence that showed the seriousness of the damage.

In the retrial of the appeal, Bucharest Court of Appeal retained in granting general damages strictly the existence of the family relation between the indirect victims and the two deceased persons.

Thus, regarding the quantification of the compensations for the general damages suffered by the wife, respectively the mother of the deceased, Bucharest Court of Appeal held that the evidence presented does not show the physical and moral suffering alleged as a result of the death of the husband and child.

More specifically, the court held that the only evidence that can allow a characterization of the marriage relationship is an address from the county police inspectorate stating that the deceased husband was in an advanced state of intoxication with alcohol at the date and time of the accident. However, instead of coming home with his son, he was going to another town at that time. "The three aspects, the advanced state of intoxication with alcohol, the advanced hour and the heading at that time and in that state to another town, in the absence of contrary evidence prove that family life, at least for the deceased, was secondary, more important being the alcohol consumption and the relationship with people outside the family, also consuming alcohol" (Civil Decision no. 276 A/27.09.2013 of Bucharest Court of Appeal).

In addition, the court held that the wife did not provide any evidence that demonstrates her suffering after her husband's death or how her life had changed after her husband's death and what hardships she encountered after this death. Therefore, Bucharest Court of Appeal considered that the evidence showed that only the marriage relationship was damaged, which is why it granted general damages in amount of 50,000 lei.

Regarding the establishment of general damages suffered by the same person but as a mother for the death of her 5-year-old son, Bucharest Court of Appeal found that this son was in the same car as his father, so the mother was not in the situation to protect him from his father's reckless actions. In this case too no evidence was given to show the sufferings the mother endured. "However, the high intensity of the connection between mother and children is notorious, the fact of the son's death causing mental suffering of the same increased intensity, which is why a compensation of 100,000 lei is required."

Therefore, Bucharest Court of Appeal **increased the** amount of general damages awarded to the mother-wife from 50,000 lei **to 150,000 lei** (of which *100,000 lei for the death of the child* and *50,000 lei for the death of the husband*). Instead, **it maintained the solution** regarding the amount of general damages **in the case of the other relatives** of the deceased.

Instead, in the Civil Decision no. 2158/17.07.2014 pronounced in second appeal, The High Court of Cassation and Justice of Romania criticized the solution of Bucharest Court of Appeal on the ground that it reduced to a single criterion (family relation) the quantification of the compensations granted for the alleged general damages. "As the relevant national and conventional legal principles require full reparation of the general damage represented by the «physical and moral negative consequences suffered, given the importance of the injured values, the extent to which they were affected», the appellate court was also held to refer to the criterion of fairness and the principle of proportionality of the damage with the compensation granted, also established by the case law in the field of the quantification of the general damages ”.

If the appellate court criticized the applicants for failing to provide evidence of the suffering and trauma following the two victims deaths, The High Court of Cassation and Justice of Romania held that "it is unequivocal that the trauma suffered as a result of the two deaths of their relatives produced major consequences for the applicants' family life, which led to profound changes in their quality of life as well”.

Also, as a result of the application of the principles of fairness and proportionality, but also of the provisions of the Guide, **The High Court of Cassation and Justice of Romania increased the** amount of moral damages granted **to the surviving child-brother to 60,000 lei, to the parents-grandparents to 60,000 lei, and to the brothers/sisters - uncles/aunts to the amount of 25,000 lei each**. In the case of the mother-wife, the solution of Bucharest Court of Appeal was maintained.

The last chapter of the thesis (seventh) presents the manner in which the general damages for traffic accidents are determined in other countries.

After some introductory considerations regarding various initiatives that proposed a harmonization of the rules for quantifying the general damages at the European Union level, I have analysed as a case study how moral damages are quantified in 5 reference countries of Europe (Great Britain, Germany, Italy, Spain and France), which generally served as a

model or can serve as a model for Romania. In this analysis I referred to both general aspects and specific aspects in case of personal injuries and road death.

For example, in the case of the *United Kingdom*, it is noteworthy that judges are provided with a guideline ("*Guidelines for the Assessment of General Damages in Personal Injury Cases*") that summarizes previous judicial practice in case of personal injuries. The judge will choose from this guide the situation/situations closest to the case submitted for settlement, taking into account the particular circumstances of the concrete case under examination.

In *Germany* are notable those tabular collections of judgments in personal injury cases called "*Schmerzensgeld-Tabelle*" made by private authors (lawyers, insurers etc.) and which contain information that will allow the reader to identify similar/relevant practice for the case to be solved.

In *Italy*, the tables made by the courts (among which the tables of the Milan Tribunal were gradually imposed) containing the average values of general damages (not only in case of injuries but also of death) are remarkable. Over time, these tables have also been refined to include amounts referring to terminal damages (compensation for the victim's suffering related to the perception of imminent death when a significant period of time elapses from the date of the injury to death due to that injury) or general damage for premature death (when the victim, who has suffered an injury as a result of the road accident, dies from causes independent of those injuries before receiving compensation for the initial injury).

In *Spain*, the legislator's effort to regulate the amount of general damages in detail is admirable. *Baremo* consists of several tables with compensation in case of death, permanent injuries (sequelae) and temporary injuries. For each of the three cases (death, permanent injury or temporary injury), compensation is established for 3 categories: basic non-pecuniary damage, specific non-pecuniary damage (for example, in case of death, the death of both parents in the accident or the death of the only child) and pecuniary damage.

In *France*, attention is drawn by the concern to identify as fully as possible all general damages suffered by victims in order to compensate as much as possible for these damages. Within the "*Dintilhac Nomenclature*" are identified and analysed all types of personal injuries that can be compensated, distinguishing between pecuniary and non-pecuniary damage, temporary and permanent damage (both in case of injury and death). It is also useful to practice the regular publication of compensations awarded amicably or on the basis of a court ruling, under the control of a public authority (The Association for the Management of Information regarding the Insurance Risk - "*Association pour la Gestion des Informations sur le Risque en Assurance*"- AGIRA).

At the end of the seventh chapter, certain general aspects regarding the establishment of general damages in other states (such as, criteria for establishing general damages and the share of disputes settled in court) are also included.

3. The conclusions of the thesis

The analysis in this thesis focused in particular on the case law on general damages in traffic accidents because the law left it to the courts to quantify the general damages due to

the victims of accidents. Somewhat to be expected, this freedom generated a non-unitary and unpredictable practice in establishing general damages, a fact that all those involved (victims, insurers and even courts) complained about.

The unpredictability of the courts in terms of quantifying general damages to compensate for non-pecuniary damages in case of traffic accidents should not be so surprising if we take into account several combined factors, including:

a) the lack of legal criteria for quantifying general damages;

However, more recently, Law 132/2017 provided the assessment of physical pain based on traumatic points. But the rules provided in Law 132/2017 are still not applicable in the absence of secondary legislation establishing the traumatic score.

b) the subjectivism of the two parties with opposite interests;

On one hand, the victims (direct - in case of injuries or indirect - in case of death), have the interest to obtain the largest sums possible as general damages. On the other hand, the insurer has an interest in paying as little as possible.

c) the subjectivism of the judge;

The matter of general damages in itself implies a subjective appreciation: to value something invaluable (meaning values such as life, health, bodily integrity).

The judge has to confront two opposing interests, two extreme perspectives. In this context, the judge has a balancing role; he/she must find a middle way, a "right measure", which is not easy.

Given that the judge's decision is also influenced by his/her education, culture, personality and life and professional experience, it may not be so surprising that in the same cases different judges give different solutions, sometimes even with big differences.

d) the abundance and maximum extension of the trials for granting general damages as a result of traffic accidents;

Trials relating to the amount of general damage in road accidents usually end only after the parties have exhausted all possible remedies. All the time one of the parties (or both) will consider that the amount of general damage is too high or too low (as appropriate) and will lodge an appeal.

e) the lack of market self-regulation.

The case law has failed to create its own benchmarks so that the determination of general damage becomes more predictable for all involved, unlike Italian jurisprudence (we can mention here the tables of Milan Court). Romanian case law has only managed to outline some criteria for establishing general damages, but these are so general that they allow large differences between the amounts awarded by different courts in similar cases.

Also, no other public institutions in the Romanian judiciary system (such as the Superior Council of Magistracy or the National Institute of Magistracy) were concerned with identifying tools to harmonize judicial practice. Thus, we differ from the United Kingdom, where *The Judicial College* (the corresponding institution of the National Institute of Magistracy in Romania) constantly processes the relevant jurisprudence and provides the courts

periodically with an updated guide that reflects the amounts awarded by the courts according to various types of injuries.

Private initiatives for the synthesis of relevant case law did not come either from the market, such as the "*Schmerzensgeld-Tabelle*" in Germany.

The only notable initiative was the Fund for Street Victims Protection Guide. It proposed some statistical, abstract averages of the amounts of general damage, averages established following the processing of judgments delivered by the courts of appeal in 2009 and 2010. Even if the authors of the Guide admitted that these amounts (average levels) can be increased or diminished, depending on the particularities of each case, however, as a rule, the Guide was not received favourably by the courts, being invoked various reasons (especially the lack of its legal consecration). One possible explanation for the fact that the courts received this instrument with distrust is that they perceived it as coming from insurers.

In this context, this approach aimed to achieve a certain synthesis of recent judicial practice (from the last 8 years) that can be an instrument, a starting point, that can be used in future practice. I consider this approach useful, especially since I am not aware of any similar analysis in order to structure those developed in the experience of the courts so far.

From this synthesis of the judicial practice that we have carried out, emerge aspects, such as:

- a) the main rules and criteria for establishing general damages in case of personal injuries or death;
- b) the beneficiaries of general damages (indirect victims) in case of death;
- c) the proof of general damages.

I specify that the synthesis of the judicial practice contained in this thesis is based on **534 court decisions** delivered in **434 cases**, of which **270 civil cases** and **164 criminal cases**. Of the 534 judgments, **374 judgments were appealed**.

Of the 374 judgments:

- in approximately **45% of cases (168 judgments) the solution to the judgment under appeal was upheld,**

- in approximately **29% of cases (110 judgments) the court of judicial control reduced the amount of general damages,** and

- in approximately **26% of cases (96 decisions) the court of judicial control increased the amount of moral damages.**

The average damage in case of death at the level of courts as it results from the processing of data related to the analysis period 2012-2019 is as follows:

Table no. 33 [from the thesis] - Average damage in case of death at the level of courts resulting from the processing of the data of the tabular structure no. 21 corresponding to the analysis period 2012-2019

(lei)

Average damage at the level of Court of first instance 1	Average damage at the level of Tribunal 2	Average damage at the level of Court of Appeal 3	Average damage at the level of The High Court of Cassation and Justice of Romania 4
358,690	483,565	239,354	280,367

Source: author's processing.

Thus, the average general damages per decision at the level of Tribunal is almost 35% higher than at the level of Court of first instance, while the judgments delivered by Court of Appeal provide a reduced amount of general damages by almost 50% (49.50%) compared to those awarded by Tribunal, and The High Court of Cassation and Justice of Romania awards by its judgments general damages increased by an average of 17% compared to the amount of general damages from Court of Appeal.

Also, from the processed data it appears that, in general, the courts have estimated that, in case of death, the largest amounts are due to the minor child, then to the parent and then to the spouse/partner. The same data allows the conclusion that in general the highest amounts are granted by the courts that have the first contact with these cases (courts of first instance and tribunals), and the higher courts (courts of appeal and the supreme court) reduce these amounts in appeals.

In order to argue and detail the above, we present the following synthetic situation:

Table no. 34 [from the thesis] - The interval of variation of the average damage in case of death at the level of courts resulting from the processing of the data of the tabular structure no. 21 for the analysis period 2012-2019.

(lei)

Beneficiary	Average damage range between 2012-2019 at level of court			
	Court of first instance	Tribunal	Court of Appeal	The High Court of Cassation and Justice of Romania
Husband / wife / partner	79.190-369.048 (4,66 times)	125.000-731.314 (5,85 times)	75.753-225.065 (2,97 times)	55.500- 625.500 (11,27 times)
Adult child	53.007-252.013 (4,75 times)	60.000-227.561 (3,79 times)	52.508-206.585 (3,93 times)	8.500-112.908 (13,28 times)
Minor child	102.600-562.300 (5,48 times)	96.500-682.733 (6,51 times)	116.667-321.083 (2,75 times)	110.250-405.000 (3,67 times)
Parent	78.733-502.375 (6,38 times)	42.500- 742.422 (17,46 times)	86.580- 435.000 (5,02 times)	63.050-460.000 (7,29 times)
Brother/sister	19.540-300.200 (15,36 times)	32.500-611.194 (18,80 times)	21.928-141.471 (6,45 times)	20.700-180.000 (8,69 times)
Other persons (grandparents, grandchildren)	18.040-354.400 (19,64 times)	5.000-89.400 (17,88 times)	21.375-68.220 (3,19 times)	2.000-24.475 (12,23 times)

Source: author's processing

It can be concluded that the lowest **range of variation** for the average damage in case of death regardless of the beneficiaries is that of the Court of Appeal, and the largest is particular to the Court of first instance for "Other Persons", the Tribunal for "brother/sister" and The High Court of Cassation and Justice of Romania for the adult child. **The highest sum (general damage) to be covered** by the insurer amounted to 742,422 lei, the beneficiary being the parent, the Tribunal being the court that ordered the payment of these general damages, while the Court of Appeal grants general damages to the parent in the highest amount of 435,000 lei. The High Court of Cassation and Justice of Romania awarded general damages to the spouse/partner, as beneficiary in the highest amount of 625,500 lei.

On the other hand, as it results from the table below, it can be seen that in the decisions on average damage in case of personal injuries pronounced by the Court of Appeal and The High Court of Cassation and Justice of Romania, the value is above the average damage in case of death by 9% and respectively, 18%, granted by the same court.

Table no. 35 [from the thesis] - Average damage in case of personal injuries at the level of courts resulting from the processing of the data of the tabular structure no. 24 corresponding the analysis period 2012-2019

(lei)

Average damage in case of injury per decision at the level of Court of first instance 1	Average damage in case of injury per decision at the level of Tribunal 2	Average damage in case of injury per decision at the level of Court of Appeal 3	Average damage in case of injury per decision at the level of The High Court of Cassation and Justice of Romania 4
202,155	446,460	261,079	331,876

Source: author's processing.

As it can be seen from the table below, given the complexity and multitude of cases, the amounts in case of personal injuries vary much more than in case of death at all courts.

Table no. 36 [from the thesis] - The interval of variation of the average damage in case of personal injuries at the level of courts resulting from the processing of the data of the tabular structure no. 24 corresponding the analysis period 2012-2019.

Average damage for injury per decision - range of variation (lei)	Court of first instance	Tribunal	Court of Appeal	The High Court of Cassation and Justice of Romania
	22,400-437,800 (19.54 times)	27,922-326,400 (11.69 times)	19,378-184,113 (9, 50 times)	4,550-265,850 (58.42 times)

Source: author's processing.

In general, the amounts granted by the courts are high compared to the average income of the population. As an example, the judgments processed show that in the period 2012-2019 The High Court of Cassation and Justice of Romania granted an average damage per decision of 280,367 lei (approx. 58,000 euros) in case of death and 331,876 lei (approx. 68,500 euros) in case of injuries.

It should also be taken into consideration that the data provided by the FSA show that in the last 10 years there has been a constant increase of the amounts paid by insurers as general damages (which results indirectly from the increase of amounts paid by insurers as personal injuries, category which also includes general damages). This has put pressure on RCA insurers and the insurance market in general.

In the context in which there are more and more cars, and the infrastructure, already insufficient, does not cope with the growth rate of the car park, there are no premises for the decrease of the number of traffic accidents. In addition, we remind that Romania ranks first in terms of the death rate in traffic accidents in the European Union.

The question is what is the impact of these judgments on insurers?

We will start from our data, already presented and analysed. Thus, according to the data provided by the FSA, in 2019 there were registered **11,948 files** for cases of deaths and injuries, the average compensation granted was **50,256 lei/file**. According to the analysis made by A. Zimolo Armando and M. Körner (see Figure no. 3 from the thesis) in Romania, **9.20%** of insured cases reach the courts. Considering that the average damages pronounced in court – Court of Appeal, are of 239,354 lei in case of death and respectively, 261,079 lei in case of bodily injuries, and out of the total registered cases, **6.26%** result in deaths, the impact on companies would be as follows:

Hypothesis 1. The number of insured cases that reach the court doubles, and the share goes from 9.2% to 18.4%, of course maintaining the data mentioned above and assuming that road events resulting in deaths have also personal injuries, the compensations

will increase by **29.25%**, almost **30%**, and as a result, **the RCA insurance premiums will increase by 30%**.

Hypothesis 2. The number of insured cases that end up in court triples, and the share goes from 9.2% to 27.6%, of course maintaining the data mentioned above and assuming that road events resulting in deaths also have personal injuries, and the sums established by the court remain at the amounts already specified, the compensations will increase by **58.50%**, almost **60%**, and as a result **the RCA insurance premiums will increase by 60%**.

Hypothesis 3. The number of insured cases that reach the court remains at 9.2%, and the compensations established by the court increase by 50%, the insurance premiums will increase by 17.88%, almost 18%.

Hypothesis 4. The number of insured cases that reach the court remains at 9.2%, and the compensations established by the court double, the insurance premiums will increase by 35.76%, almost 36%.

Hypothesis 5. The number of insured cases that reach the court doubles, and the share goes from 9.2% to 18.4%, and the compensations established by the court increase by 50%, the insurance premiums will increase by 65%.

Hypothesis 6. The number of insured cases that reach the court doubles, and the share goes from 9.2% to 18.4%, and the compensations established by the court increase by 100%, the insurance premiums will increase by 100.75 %, practically they double.

Hypothesis 7. The number of insured cases that reach the court triples, and the share goes from 9.2% to 27.6%, and the compensations established by the court increase by 50%, the insurance premiums will increase by 112.12 %.

Hypothesis 8. The number of insured cases that reach the court triples, and the share goes from 9.2% to 27.6%, and the compensations established by the court increase by 100%, the insurance premiums will increase by 165.76 %.

In any case, in the near or medium term, there may be positive evolutions in the predictability of general damage to the extent that the provisions of Law 132/2017 on the assessment of physical pain based on traumatic points become applicable. But when this happens depends on the legislator's agenda. Until then, possible initiatives can be expected within the market or at the level of courts that bring changes for the benefit of all those involved.