Angelo Viglianisi Ferraro
Meditteranea University of Reggio Calabria, Director of the Mediterranea International Centre for Human Rights Research (Reggio Calabria, Italy)
avf@unirc.it

Mariusz Załucki
Andrzej Frycz Modrzewski Krakow University(Kraków, Poland), visiting professor at the Mediteranea International Centre for Human Rights Research (Reggio Calabria, Italy)
mzalucki@afm.edu.pl

The Right to Respect for Private and Family Life and Compensation for the Non-Material Damages in Italy and Poland

Abstract
One of the fundamental rights is the right to respect for private and family life. This right is connected, among other things, with the issue of the bonds of the people who are closest to us. Family ties are therefore a fundamental value. Protecting these ties can take different legal forms and tools. Satisfactory protection of these ties is an important challenge for contemporary legislators. This applies, inter alia, to civil law mechanisms, which should provide, among other things, for compensation for the infringement of family ties. Recently, however, more and more damage of this kind has been caused and more doubts have been raised. They concern, for example, whether, where, as a result of a tort or delict, a victim suffers serious damage to his health and the victim's vegetative condition results in such damage, provision should be made in the legal system for a mechanism of compensation for such damage to persons closest to the victim. The authors look at these issues from the perspective of two different legal systems, with different experiences in this area, discussing, among others, the latest achievements of national legislators and seeking answers to the question of the common future of law in Europe in this area.

Keywords: fundamental rights, human rights, right to respect for private and family life, non-material damages, compensation.

1. Family ties play an important role in human life. They are of great importance for society, and therefore they are an interest subject to legal protection[1]. This protection refers to constitutional regulations, which, guarantee protection and care from the State and provide assistance to families experiencing problems and difficulties problems and difficulties[2]. This is what happens in Italian law, Polish law or other legal systems. This is a solution typical of modern countries.

However, the law usually does not define the term of family. So there are different concepts of family – under different laws in different countries.. For example, in the science of sociology there is a differentiation between the so-called small family and big family[3]. A small family includes a man and a woman who are in marital relation with each other, as well as their minor children. A large family, according to this approach, consists of several small families (grandparents, parents, children), who are connected by close relatives relations. The described criteria for division are not the only ones. Also other concepts can be found. For example, in Polish juridical science, it is more likely to encounter the concept of family in a narrower sense (small family)[4]. They include spouses and children living in the same household. The creation of such a family takes place as a result of marriage. However, this is a rather traditional approach, because today social relations are much more complicated than even several years ago. Marriages are less and less often concluded, and relationships between the same-sex partners are more popular[5].

The law must react to this changing reality and generally it has. One of the areas that must keep up with the times is civil law, where legal relations and claims related thereto differ significantly from those from several dozen or several hundred years ago, when the solutions for this area were designed in the applicable acts (civil codes)[6]. This is particularly visible in the context of tort liability, where the

[1] Katharina Boele-Woelki, "The principles of European family law: its aims and prospects," *Utrecht Law Review*, Vol. 1, no. 2, 2007, pp. 160–168.

[2] Andrzej Mączyński, "Konstytucyjne podstawy prawa rodzinnego," in Włodzimierz Wróbel, Piotr Kardas, and Tomasz Sroka (eds.), *Państwo prawa i prawo karne. Księga Jubileuszowa Profesora Andrzeja Zolla*, (Wolters Kluwer Polska: Warszawa, 2012), pp. 757–778.

[3] Cf. Deborah Chambers, *A Sociology of Family Life*, (Polity Press: Malden MA, 2012), p. 94 et seq.

[4] Jan Winiarz, *Prawo rodzinne*, (Państwowe Wydawnictwo Naukowe: Warszawa 1990), p. 13.

[5] Cf. Justin Borg-Barthet, "The Principled Imperative to Recognise Sam-Sex Unions in the EU," *Journal of Private International Law*, Vol. 8, no. 2, 2012, pp. 359–388.

[6] See, generally: Hector MacQueen, Antoni Vaquer, and Santiago Espiau Espiau (eds.), *Regional Private Laws & Codification in Europe*, (Cambridge University Press: Cambridge, 2003).

infringement of interests protected by law, as well as the types of those interests, have undergone significant evolution[7].

The subject of this paper will therefore be an area combining family ties and tort liability. Over the years, in individual legal systems, personal interest in the form of the right to respect for private and family life has evolved[8]. As is known, this right is connected with the ties of close relatives, which should be subject to legal protection, also by means of civil law mechanisms. In this respect, the issue of responsibility for non-pecuniary damage[9], deserves special attention even in the context of the claims of the close relatives of a victim, especially when the victim is in the vegetative state[10]. In recent times, this issue raised serious doubts both in Italian law and Polish law[11]. This is why the attempt to present it in a broader forum appeared.

2. Further considerations should start with the reminder that the family symbolizes an organized social unit, but the law does not provide it with legal personality. Subjects of legal relationships existing between individual family members are the members themselves and not the family as an organized whole. Various duties of family members, imposed by law, such as cohabitation, mutual help and cooperation for the good of the family (including raising and caring for children), require not only cooperation of family members, but also State support. The State should shape the legal system in such a way that the family would have

---

[7] Fabrizio Cafaggi and Horatia Muir, "The Making of European Private Law," *European Governance Papers*, no. 2, 2007; Rafał Mańko, "The Unification of Private Law in Europe from the Perspective of the Polish Legal Culture," *Yearbook of Polish European Studies*, Vol. 11, pp. 109–137; Stefan Leible, *Wege zu einem Europäischen Privatrecht*, (Universitat Bayreuth: Bayereuth, 2001).

[8] Cf. Ursula Kilkelly, *The Right to Respect for Private and Family Life*, (Council of Europe: Strasbourg 2001).

[9] Giorgio Resta, "The New Frontiers of Personality Rights and the Problem of Commodification : European and Comparative Perspectives," *Tulane European and Civil Law Forum*, Vol. 26, 2010, pp. 33–65.

[10] See also Janno Lahe, Irene Kull, "Compensation of Non-Pecuniary Damage to Persons Close to the Deceased or to the Aggrieved Person", *International Comparative Jurisprudence*, Vol. 2, no. 1, 2016, pp. 1-7.

[11] Enza Pellecchia, "Sul risarcimento dei danni non patrimoniali e dei cosiddetti danni riflessi", *Responsabilità civile e previdenza*, Vol. 1, 1997, p. 133 et seq.; Laura Frata, "La concezione unitaria del danno non patrimoniale e la sua quantificazione nell'illecito plurioffensivo", *Nuova giurisprudenza civile commentata,* vol. 4, 2013, p. 777 et seq.; Maria Casoria, *"Per aspera sic itur ad astra":* la risarcibilità del danno "parentale" assurge a principio di ordine pubblico internazionale", *Foro italiano*, 2014, Vol. 10, p. 2909 et seq.

appropriate conditions to perform its natural functions and that the family ties would strengthen and not weaken[12].

Acceptance of this view, as one may think, underlies the constitutional solutions that are supposed to protect the social functions provided for the family. This is why in individual constitutions there are regulations concerning family protection and marriage, which are to enable protection of family ties, including by means of ordinary legislation. This is evident in Polish law, where the legislator in Articles 18 and 71 of the Constitution imposes an obligation to protect family ties and introduces as a constitutional rule the obligation to protect marriage and parenthood. In turn, according to Article 47 of the Polish constitution, everyone has the right to protect their private and family lives, honor and good name and to decide about their personal lives[13]. Similarly, the Italian constitutional legislator, in Articles 29, 30 and 31 of the Italian constitution, indicates *inter alia* that it is the State's duty to support the families and to perform related obligations. The same regulations also contain other European constitutions.

Therefore, the legislator imposes on public authorities the duty to take into account in his social and economic policy the value of the interest of the family. This assistance must be provided to the extent that it helps to protect the durability of family ties. The detailed tools (instruments) of protection related to this are determined by statutory acts. Such an act can be, among other provisions of civil law, which should specify civil law mechanisms of values determined by the Basic Law. Therefore, civil law must take into account constitutional guidelines and implement them[14].

In the area of torts, and therefore liability related to causing damage are particularly important. If civil law does not provide compensation for the damage caused, then it may turn out that the legal protection of the values provided for in the constitution will only be illusory. However, the question arises whether this compensation should apply to people that are close relative of the injured, or under what conditions we can talk about their own damage and the liability of the perpetrator of the damage for its remedy? Can the basis for such liability of the

[12] The trends in State support for families in Europe are very interesting. On the short presentation of the evolution of this support see: Anne Helene Gauthier, "Historical Trends in State Support for Families in Europe", *Children and Youth Review*, Vol. 21, No. 11-12, 1999, pp. 937-965.

[13] See, among others, Leszek Garlicki, *Polskie prawo konstytucyjne*, (Liber: Warszawa 2010), p. 83 et seq.

[14] Cf. Bram Akkermans, "European Union Constitutional Property Law," *Maastricht European Private Law Institute Working Paper*, no. 14, 2014; Bob Brouwer and Jaap Hage, "Basic Concepts of European Private Law," *European Review of Private Law*, no. 1, 2007, pp. 3–26.

perpetrator of the damage be sought in the protective regulations effective in this respect the right to respect for private and family life.

3. Legal systems generally provide for the responsibility for so-called material damage and moral injury. The essence of this responsibility is considered a pillar of law. Its various kinds are joined by one common feature, i.e. satisfaction of the damage to the property of a specific person, to whom the damage was caused. This first responsibility, as is known, is usually referred to as the loss consisting in the reduction of the injurer's property (*damnum emergens*) and the lost benefits associated with the lost opportunity to increase the value of the property if the liability was not incurred (*lucrum cessans*)[15]. In turn, the form of damage here is moral injury, where there is a non-pecuniary damage, related to, among others, negative psychological experiences of the person, pain or suffering. While in the first case, legal systems generally provide for specific and exhaustive regulation, the issue of moral injury and related liability for many years has raised significant controversies. Recently, this also applies to the issues covered by the subject of this statement.

It should be noted that in legal acts having a harmonizing meaning at European level, this problem is also not neglected. For example, the Article 2:202 (1) of the DCFR states that non-economic loss caused to a natural person as a result of another's personal injury or death is legally relevant damage if at the time of injury that person is in a particularly close personal relationship to the injured person. The same is true of another regulation aimed at approximating the laws of the Member States. The third sentence of the PETL Article 10:301 (1) states that non-pecuniary damage can also be the subject of compensation for persons having a close relationship with a victim suffering a fatal or very serious non-fatal injury[16]. Therefore, it is not the case that the problem discussed in this paper concerns only two selected legal systems. It is rather a problem for the whole of Europe. This is not surprising since the right to respect for private and family life is included in the European Convention on Human Rights (Article 8)[17].

---

[15] Maciej Kaliński in Adam Olejniczak (ed.), *System prawa prywatnego. Prawo zobowiązań – część ogólna*, (C.H. Beck: Warszawa 2009), p. 76 et seq.

[16] See also Gerhard Wagner, *The Common Frame of Refernece: A View From Law & Economics*, (European Law Publishers: München 2009), p. 230 et seq.

[17] Cf. Daniel Thym, "Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?", *International and Comparative Law Quarterly*, Vol. 57, no. 1, 2008, pp. 87-112.

It should be remembered in this respect that the issues of family ties are an area that in civil law is subject to legal protection by means of structures characteristic of the protection of personal rights. Despite various doubts and objections, which in the discussion on this subject appeared in particular legal systems, both in Italian law and Polish law, it can be said today that the family relationship is considered to be a personal right, which opens the way for connected claims, by family members. However, the views in this respect are not uniform.in many aspects there are various controversies.

What is interesting, both in Italy and in Poland, is that one of the most common facts that opens the way to the analysis of a case through the prism of infringement of the personal rights of relatives are traffic accidents. Most often, in those cases, there was a discrepancy in interpretation, and thus various judicial decisions (applying the law to similar facts differently). Different points of view in the basic areas, are a highly unsatisfying state.

4. In Polish law, the issue of liability for infringement of personal rights and compensation for the moral injury caused in their infringement is connected with the provisions of the Civil Code[18]. It should be recalled that Polish law distinguishes property damage from non-pecuniary damage and, in this respect, it provides for different solutions. A claim for non-pecuniary damage may only occur in the cases provided for in the Act (enumerated).

It should be emphasized that according to Article 23 of the Polish Civil Code, personal interests of a human being, in particular health, freedom, honor, freedom of conscience, surname or pseudonym, image, secret of correspondence, inviolability of a flat, scientific, artistic, inventive and rationalizing creativity, remain protected under civil law regardless of protection provided for in other regulations. According to Article 24 of the Polish Civil Code, the one whose personal interest is threatened by someone else's action, may demand the abandonment of this action, unless it is not unlawful. In the event of a breach, he may also request that the person who committed the infringement, completes the actions necessary to remove its consequences, in particular to make a declaration of appropriate content and in an appropriate form. Under the rules provided for in the Code, he may also demand monetary compensation or payment of an appropriate sum of money for

[18] Act of 23 April 1964, Civil code, *Journal of Laws,* item 459, 2017.

the indicated social purpose[19]. In turn, the issues of payment of compensation in this case are determined by the provision of Article 448 of the Polish Civil Code, where the act stipulates that in case of personal rights violation, the court may adjudicate to whom the personal interest has been violated, the appropriate sum for financial compensation for the moral injury suffered or upon its demand to adjudicate the appropriate sum to the social purpose indicated thereby.

On such normative background, doubts appeared about the content of personal interest in the form of family ties. Recently, they mainly concerned whether the adjudication of redress is possible only when the tie between family members was completely broken (as a result of death), or even if the injured survived the event causing the damage (generally it was about a road accident), but suffered serious injuries resulting in a real break or significant limitation of the existing family ties.

Until recently, Polish case law has been divergent in this matter. For example, the Court of Appeals in Warsaw in April 2013 indicated that, for example, love for family members, although it is in the formula of values approved in society, is not in principle considered as a personal interest[20]. Similarly, according to the Court of Appeal in Wrocław, according to the ruling of January 2015, in such cases, personal rights are infringed in the form of bodily injury and health disorder, but it is the personal interest of the injured, not his close relatives. Also, the Supreme Court in its judgment of January 2017 took a similar position, accepting, *inter alia*, the view that since the life of the closest family member was not lost as a result of an event causing damage, the family tie was preserved, even if the effect of the event is much more sacrifice and effort in maintaining family relations[21]. This view was also shared by the Court of Appeal in Krakow in the judgment of January 2017[22]. In turn, different opinions were held by other courts. For example, the Gdańsk Court of Appeal in the judgment of November 2015 raised that the right to have a family in which its members establish strong, lasting and deep emotional, social and economic relationships should not be disturbed, and the negative interference in this sphere is a violation personal interest. The Warsaw Court of Appeal in its judgment of January 2016 also emphasized that it was possible to infringe personal rights in the form of the right to undisturbed life

[19] Izabela Lewandowska-Malec (ed.), *Dobra osobiste*, (C.H. Beck: Warszawa 2017).
[20] I Aca 1143/12.
[21] I CSK 444/16.
[22] I Aca 1103/16.

in a full family, even though the family ties were not completely broken because no death occurred, but another event resulting in the lack of real opportunity to build, care and shape correct family relationships. This position was also taken by the Supreme Court in the February 2017 judgment, when it upheld the judgment adjudicating compensation to the victim close to the victim in a car accident, as a result of which he remained in a vegetative state[23].

It should be noted that this last view of the Supreme Court expressed the opinion shaping in Polish law, in the jurisprudence of common courts, that family ties between close relatives, if permanent and real, are personal interests, and their infringement may justify the adjudication of redress. The ultimate expression of forming opinions in Poland were the resolutions of the Supreme Court, adopted on March 27, 2018, having the force of legal rules, stating that the court may award compensation for the moral injury suffered by the closest relatives of the injured party who suffered severe and permanent damage to health as a result of an unlawful act[24]. This applies especially to people who are in a vegetative state due to an accident.

Therefore, it seems that in Poland the trend of recognising the legitimacy of claims of this type has won. It is believed that the events resulting in the vegetative state of the victim limit the family tie, lead to situations similar to the breaking of this relationship. They exclude the possibility of building and caring for family ties, they are unique and therefore may be the basis for payment of cash benefits for the closest relatives.

At the same time, it should be added that in Polish law, the amount of compensation depends on the overall circumstances of the case. By determining its amount, the court determines the objective criteria of assessing the extent of the moral injury suffered by the injured person in a given case. The main premises defining its amount are: the type, nature, duration of physical suffering and negative mental experiences, their intensity, irreversibility of consequences, the degree of permanence of disability, associated loss of prospects for the future, or the accompanying feeling of helplessness caused by the need to take care of others and a sense of social unsuitability. An important circumstance individualizing in the assessment of the courts is also the age of the victim. Loss of the possibility of achieving the intended goals, deriving pleasure from life affects especially young people[25].

[23] V CSK 291/16

[24] III CZP 36/17, III CZP 60/17, III CZP 69/17.

[25] See judgement of Appeal Court in Kraków, I Aca 1076/17.

5. Also in Italian law, over the years, there has been an evolution of views in the discussed area.

The basis for liability for such damage was sought in the Italian Constitution. It has to be explained that the Italian Constitution guarantees full protection for the fundamental rights under Articles 2, 29, 30 and 31, namely the moral integrity, marriage, family solidarity and relationship. On the basis of these provisions, it has been said that each member of the family has the right to a fair compensation for the loss of parental consortium. Initially, this concerned the death of a family member but wasn't so obvious due to the fact that Italian law is imprecise. This is why in the last few decades the changes of the compensation rules have been mostly the result of the jurisprudence.

It has to be mentioned that compensation for damages, under the Italian Civil Code, according to the Article 1223, includes both the *damnum emergens*, as well as the *lucrum cessans*. Italian law is also aware of the responsibility for non-pecuniary damages. However, the Italian statutory rules do not provide for a definition of non-pecuniary damages. It only provides for a right of compensation under Article 2059 of the Italian Civil Code.[26] This is why the legal issues related to the identification and quantification of non-pecuniary damages, suffered both by the first-degree victim of the wrongful act and possibly transferable (for some authors, but not for the United Sections of the Court of Cassation) to the heirs, under the profile *jure hereditatis*, as well as directly by the relatives with an autonomous right, *jure proprio, are more complex*[27].

Damage and liability issues have given rise to a number of problems. One of the conception that has played an important role in the perception of many issues in this area was based on the notion of *validity*. This term was used to describe the psychosomatic efficiency relating to the implementation of every human activity. According to this view, every anatomical-functional loss reducing *validity* is to be considered compensable damage. The physiological value of the various functions with the reference to the importance in the implementation of the social and vegetative life, which also include the efficiency of the individual in his or her

[26] Ilaria Garaci, Compensation for damages in the event of death in the Italian legal system, *Diritto Mercato e Tecnologia* 2014, No. 2, p. 72.

[27] Ilaria Garaci, Compensation for damages in the event of death in the Italian legal system, *Diritto Mercato e Tecnologia* 2014, No. 2, p. 72.

family and social environment should be considered[28]. This view was discussed in Italy for many years. Of course, there were supporters and opponents of this view.

Finally the idea of non-pecuniary damages were recognized in the views of the courts. The Supreme Court of Cassation with five important decisions of May 2003[29], and the Constitutional Court, with the decision of July 2003[30], as well as the four decisions of the Supreme Court of Cassation of November 2008[31], have interpreted Article 2059 of the Italian Civil Code in context for the compensation for the non-pecuniary damages also to the victim's relatives.

In the opinion of judges and some scholars, every loss or alteration of a parental consortium should be compensated, as long as it creates a particular type of damage to the relatives, called by some authors the "existential damage". This type of damage is characterised by a serious disruption of living habits, with a change in the way in which people interact with each other, both inside and outside the family[32]. The Court of Cassation, with a nearly consolidated jurisprudence, considered that compensation of this type of damage should be also covered to people unrelated to the family unit in the strict sense[33], for example to the

---

[28] The conception of *validity* was exposed by Cesare Gerin, a professor of Forensic Medicine in Bari, later a professor in Rome. See: La valutazione medico-legale del danno alla persona in responsabilità civile, Atti delle Giornale Medico-Legali Triestine 1952.

[29] Case No. 7281/2003, 7282/2003, 7283/2003, 8827/2003, 8828/2003.

[30] Case No. 233/2003.

[31] Case No. 26972/2008, 26973/2008, 26974/2008, 26975/2008.

[32] It should be underlined that 10 years ago, with the already mentioned decisions no. 26972-26975/2008, the United Sections established that art. 2059 of the civil code should be interpreted, avowing any subdivision in different subcategories of damages, because non-pecuniary loss is an unitary category (and it is not admitted any overcompensation or duplications in the compensation). In the Court of Cassation's opinion, Italian judges might refer to different types of damages in describing the loss, but this must not lead to an assessment of different heads of damages. This restrictive approach was connected to the circumstance that the birth of the existential damage produced some «excesses» in the application of the category at issue by the lower Courts. Examples of case law evidencing the granting of an award of non-pecuniary damages according to the theory of the "existential damages" include compensation for the harm suffered as a consequence of an erroneous haircut, the loss of a pet, a delayed flight take-off on Christmas Day, the break of the shoeheel of a bride's shoe, receiving illegitimate fines and so on. These are all examples of decisions by the first instance judges, Giudici di Pace (Justice of the Peace), who created the so called «bagatelle» damages (very small damages).

[33] For the recognition of the damages suffered by relatives not belonging to the nuclear family of the de cuius, the Supreme College has however sometimes requested the demonstration of cohabitation. See, for example, the sentences No. 10823 of 11 May 2007; No. 16018 of 7 July 2010; No. 1410 of 21 January 2011; and especially No. 4253 of 16 March 2012. This restrictive position seems, however, passed.

legally separated spouse[34], to the *more uxorio* partner[35] even if *same-sex*[36]. Recently, interesting views have also emerged on the compensation of damage that can be caused by the disruption of family ties, in terms of contacts with a person in a vegetative state. The Italian Council of State, with the sentence of June 2017[37], and the Regional Administrative Court in Lombardia, with the decision of April 2016[38], established that the damage consisting in infringement of the right to respect for private and family life may consist not only in the interruption of the emotional link with the victim on account of an event giving rise to a vegetative condition but also, interestingly, in the late, delayed interruption of artificially maintained parenthood. The case, which was of interest to the jurisprudence, was about the order to keep a child alive artificially, which was done against the will of her relatives. The existing legal regulations in Lombardy Region resulted in unjustified maintenance of the vegetative state, which, in the court's opinion, resulted in illegal continuation of the situation in which relatives of a person in a vegetative state could not be relieved of this situation, which was not in accordance with their will. For this reason, the father of the girl in a vegetative state has been considered fully entitled to the right to obtain *iure hereditatis* compensation for non-pecuniary damage suffered by the daughter to have been artificially kept alive against his will (one might say from the "delayed death"). Moreover, the court has also considered compensable - *iure proprio* – another peculiar category of non-patrimonial damage, which could be defined as the damage for the "delayed interruption of a parental relationship" which become

---

[34] In the sentence no. 21230/2016, the Court of Cassation underlined that in this case it must be proved that «the unlawful act has caused that pain and those moral sufferings that are usually accompanied by the death of a loved one, even though it is necessary for this purpose to demonstrate that, despite the separation, there was still a particularly intense emotional bond». In the decision it is also emphasized that «the status of separate - connecting to its non-definitiveness and to the possible resumption of family communion ... – in theory is not incompatible with the position of secondary injured».

[35] Corte di Cassazione Civile, No. 7128 of 21 March 2013, No. 8037 of 21 April 2016; but also the sentences No. 46531/2014. Trib. pen. Verona of 3 December 1980; Trib. civ. Milano of 18 February 1988; Trib. civ. Roma of 9 July 1991.

[36] Moreover, the art. 1, paragraph 49, of the law n. 76 of 20 May 2016, establishing the civil partnerships between persons of the same sex, now establishes clearly that "in the event of the death of the de facto partner, resulting from the unlawful act of a third party, in identifying the damage compensable to the surviving party same criteria identified for compensation for damage to the surviving spouse.

[37] Sentence no. 3058/2017.

[38] Decision no. 650/2016.

artificial and unwanted[39]. According to the administrative judges, the patient was denied a series of fundamental rights: first, that of self-determination regarding the choice not to receive treatment, that "is a right to absolute freedom, effective *erga omnes*", and then also to the effectiveness of judicial protection[40].

It must be underlined that recently the Italian Court of Cassation has admitted the compensation of the damage for the loss of the parental relationship also in favor of the subject born after the death of the relative (and therefore deprived, ex ante, of the parent's affection)[41].

Worthy of note is, for example, sentence no. 9700 of 3 May 2011, which explicitly recognized the right to compensation of damage for the non-constitution (due to an unlawful act attributable to a third party), of "an emotional and educational relationship that the law protects because it is normally a factor which permits a more balanced personality formation".

According to the Supreme College there is "no problem concerning the juridical subjectivity of the conceived, since it is not necessary to configure it to affirm the right of the born to reparation and not, on the other hand, that subjectivity can be deduced from the fact that the fetus is the object of protection by the law».

6. This shows that the problem of compensation for non-material damage suffered in family cases is varied and complex. However, the future of this area

[39] For example, the Regione Calabria "the health structures are delegated to take care of patients' diagnostic and care" and in these structures "basic care must be ensured that consists of nutrition, hydration and care of the people". And therefore, the medical staff could not proceed with the suspension of artificial hydration and nutrition, because they would have failed in their professional and service obligations.

[40] The Consiglio di Stato redefined the amount due iure successionis to the father (the sole heir of Eluana), "because the total sum recognized does not seem adequate to the gravity of the injury caused, and appears illogical, even when compared with the sum recognized by way of compensation for damages in favor of Mr. Englaro, as if the damage done to him was greater than that suffered by his daughter". And it recognizes to the interested party a sum equal to € 100,000 (and not € 30,000, as required by the first istance judge).

[41] On this topic, see Alfredo Minozzi, *Studio sul danno non patrimoniale (Danno morale),* (Società Editrice Libraria: Milano 1917); Renato Scognamiglio, Il danno morale (contributo alla teoria del danno extracontrattuale), *Rivista di diritto civile* 1957, p. 277 et seq.; Alberto Ravazzoni, *La riparazione del danno non patrimonale*, (Giuffrè: Milano 1962); Luca Barchiesi, *Danno alla salute e perdita della vita*, (Giuffrè: Milano 1997); Giuseppe Cassano, *Rapporti familiari, responsabilità civile e danno esistenziale*, (Cedam: Padova 2006), p. 65 et seq..; Marco Bona, *Manuale per il risarcimento dei danni ai congiunti*, (Maggioli editore: Roma 2013).

is not clear. It seems difficult, and not necessarily possible, to harmonise the principles of liability in this area, given the different values and interests that are protected in other countries. Although the unification of private law in Europe is a tempting problem and a major challenge, observing the case-law of individual European countries by the courts may be the way forward.

References

Act of 23 April 1964, Civil code, *Journal of Laws,* item 459, 2017.

Akkermans B. (2014), "European Union Constitutional Property Law," *Maastricht European Private Law Institute Working Paper*, no. 14.

Barchiesi L. (1997), *Danno alla salute e perdita della vita*, Giuffrè: Milano.

Borg-Barthet J. (2012), "The Principled Imperative to Recognise Sam-Sex Unions in the EU," *Journal of Private International Law*, Vol. 8, no. 2, 2012, pp. 359–388.

Bona M. (2013), *Manuale per il risarcimento dei danni ai congiunti*, Maggioli editore: Roma.

Brouwer B., Hage J. (2007), "Basic Concepts of European Private Law," *European Review of Private Law*, no. 1, pp. 3–26.

Cafaggi F., Muir H. (2007) , "The Making of European Private Law," *European Governance Papers*, no. 2, 2007.

Casoria M. (2014), *"Per aspera sic itur ad astra":* la risarcibilità del danno "parentale" assurge a principio di ordine pubblico internazionale", *Foro italiano*, Vol. 10, p. 2909 et seq.

Cassano G. (2006), *Rapporti familiari, responsabilità civile e danno esistenziale*, Cedam: Padova, p. 65 et seq.

Frata L. (2013), "La concezione unitaria del danno non patrimoniale e la sua quantificazione nell'*illecito plurioffensivo", Nuova giurisprudenza civile commentata, vol. 4, p. 777* et seq.

Garaci I. (2014), Compensation for damages in the event of death in the Italian legal system, *Diritto Mercato e Tecnologia* , No. 2, p. 72.

Garlicki L. (2010), *Polskie prawo konstytucyjne*, Liber: Warszawa , p. 83 et seq.

Gauthier A.H. (1999), "Historical Trends in State Support for Families in Europe", *Children and Youth Review*, Vol. 21, No. 11-12, pp. 937-965.

Kaliński M. (2009) in Adam Olejniczak A. (ed.), *System prawa prywatnego. Prawo zobowiązań - część ogólna*, C.H. Beck: Warszawa, p. 76 et seq.

Kilkelly U. (2001), *The Right to Respect for Private and Family Life*, Council of Europe: Strasbourg.

Leible S. (2001), *Wege zu einem Europäischen Privatrecht*, Universitat Bayreuth: Bayereuth.

MacQueen H., Vaquer A., Espiau Espiau S. (eds.) (2003), *Regional Private Laws & Codification in Europe*, Cambridge University Press: Cambridge.

Mańko R.(2007) , "The Unification of Private Law in Europe from the Perspective of the Polish Legal Culture," *Yearbook of Polish European Studies*, Vol. 11(2007-2008), pp. 109–137;

Resta G. (2010), "The New Frontiers of Personality Rights and the Problem of Commodification : European and Comparative Perspectives," *Tulane European and Civil Law Forum*, Vol. 26, pp. 33–65.

Lahe J., Kull I. (2016), "Compensation of Non-Pecuniary Damage to Persons Close to the Deceased or to the Aggrieved Person", *International Comparative Jurisprudence*, Vol. 2, no. 1, pp. 1-7.

Lewandowska-Malec I. (ed.) (2017), *Dobra osobiste*, C.H. Beck: Warszawa.

Minozzi A. (1917), *Studio sul danno non patrimoniale (Danno morale),* Società Editrice Libraria: Milano.

Pellecchia E. (1997), "Sul risarcimento dei danni non patrimoniali e dei cosiddetti danni riflessi", *Responsabilità civile e previdenza*, Vol. 1, p. 133 et seq.

Ravazzoni A. (1962), *La riparazione del danno non patrimonale*, Giuffrè: Milano.

Scognamiglio R. (1957), Il danno morale (contributo alla teoria del danno extracontrattuale), *Rivista di diritto civile*, p. 277 et seq.

Thym D. (2008), "Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?", *International and Comparative Law Quarterly*, Vol. 57, no. 1, pp. 87-112.

Wagner G. (2009), *The Common Frame of Refernece: A View From Law & Economics*, European Law Publishers: München, p. 230 et seq.