



RECENT DEVELOPMENTS IN ITALIAN CIVIL LAW ON COMPENSATION FOR NON-PECUNIARY DAMAGE

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ABSTRACT

The problem of compensation for non-pecuniary damage has become particularly important in the context of the Italian doctrinal and jurisprudential debate. In fact, the Italian civil code of 1942 had established a rule of compensation for non-pecuniary damage only in cases provided for by law (art. 2059); this rule was initially intended to limit the area of compensation for non-pecuniary damage to cases in which the illicit act also constituted a crime. This original approach was however overcome thanks to the enforcement of the 1948 Constitution, which placed the protection of human personality at the centre of the system, affirmed by art. 2 of the Constitution, as well as with reference to specific personality profiles, including the right to health in art. 32. The remarkable aspect of this evolution is that the constitutional principles just mentioned were concretised by jurisprudence, thanks to the reconstructive contribution of the doctrine, without a modification of the normative data, as regards the civil code. This has determined, in the matter under discussion, and from the point of view of the method

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of evolution of the system, an approach very similar to that of common law. A similar methodological approach has also been found in recent years with reference to the issue of proof and settlement of non-pecuniary damage. This is an aspect that represents the privileged key to understanding the entire thematic area of non-pecuniary damage; in fact, and since non-pecuniary damage cannot be immediately traced to an evaluation using market criteria, it is necessary to find techniques to compensate for it otherwise. Further, from this point of view, the Italian legal experience is characteristically peculiar considering the widespread use of tables for the settlement of non-pecuniary damage so as to ensure the need for predictability and fairness.

Keywords: non-pecuniary damage, compensation, Italian Constitution, liquidation, burden of proof.

1. INTRODUCTION

First, I think it is necessary for me to illustrate the reasons that led me to dedicate my contribution, within a book titled *Codification of Civil Law, assessment, reforms, and options*, to the subject of compensation for non-pecuniary damage from the point of view of the Italian scholar. I found this theme particularly significant of a special technique by which a civil codification now in force for over 81 years, such as the Italian one, can evolve and transform and, therefore, be reformed. As I attempt to demonstrate, it is a technique that has seen judges' decisions, in particular, those of the Constitutional Court and the Supreme Court, play a key role in a framework where the text of the Civil Code as such has remained largely unchanged. The judges' decisions, in turn, were largely prepared from the writings of scholars; so, in the field, a particularly fruitful form of interaction between doctrine and jurisprudence has emerged; and this interaction can be considered a model for the development of a civil code in other areas as well.

In fact, the recent history of this problem, as outlined over the course of more than half a century, is so interwoven with reciprocal links between doctrinal reconstructive proposals and responses in terms of case law that the formula proposed by Franco Galgano, now a classic, of

dialogues between doctrine and jurisprudence is even reductive. Suffice it to think of the subject of biological damage in years gone by, to which we will return shortly, whose initial arrangement was the merit, as is well known, of the joint contributions of the Pisan civil law school, the Genoa school, and the jurisprudence of the Court of Genoa,¹ as well as the contents of sentence no. 184/86 of the Constitutional Court, in whose argumentative framework it was easy to see the traces of an arrangement of the problem of non-asset damage, and the relations between art. 2043 and art. 2059 of the civil code, dating to over a quarter of a century earlier; or, closer in time, the accreditation of the category of existential damage, notoriously due to the contribution of the Trieste School²; or again to the dense thread of doctrinal references that can be seen in the United Sections sentence nos. 26972-5 of 11 November 2008, for example, but not just regarding the introduction of the prerequisites for compensation for non-asset damage seen in the seriousness of the injury and the gravity of the damage.

It could be said, therefore, with reference to the subject of non-pecuniary damage, and paraphrasing the title of a celebrated essay,³ that it is not so much the case law that has become doctrine, but the doctrine that has impregnated the case law: and this notation, on the contrary, would already allow a different approach to be taken to a discussion that too often, and in a somewhat repetitive manner, is carried out in terms of a doctrine placed in a submissive position with respect to a case law that has become too creative:⁴ almost as if the doctrine's submissiveness can already be seen in the circumstance of not always wanting to criticise, and one might even say for the sake of taking sides, the solution to a problem for the mere fact that it has been put forward at the level of jurisprudential law and has been accompanied by an argumentative framework whose richness, surprisingly, is not perceived as the fulfilment of the constitutional obligation to justify decisions, sanctioned by art. 111, para. 6 of the Constitution (obviously all the more pregnant

1 See on this point Monetti, Pellegrino, 1974, pp. 159 et seq.

2 See Cendon, Ziviz, 2000, pp. 10 et seq.

3 In this sense see Busnelli, 2013, pp. 1519 et seq.

4 In this sense see the title of one of the chapters of the volume by Castronovo, 2015, pp. 87 et seq.

the more complex the issue to be dealt with and the more original the decisional outcome to be reached), but rather as a sort of hubris of the judicial body, moved 'more by the need, true or alleged, to argue than by the anxiety to decide'.⁵ It is almost as if the creativity of jurisprudential interpretation were to be understood, regardless of the results it reaches and the argumentative apparatus with which it accompanies them, as an overflowing of jurisprudence from its specific function, responsible, among others, for a sort of eclipse of civil law, where the assumption as an ordering criterion of the discourse of the value of the effectiveness of protection would not be the (almost banal) recognition of a fundamental principle of our legal system, but the point of emergence of an 'attitude in which the solution adopted in the concrete case finds no other foundation in itself, and the traditional otherness between legislation and jurisdiction is lost'.⁶

Indeed, it is difficult to understand, even on a purely logical level, how an attitude that is defined as 'not (of) ignorance of doctrine, but rather (of) care and knowledge in order to measure oneself against it on an equal footing' can be the cause of jurisprudence finding itself 'without the secure backing of doctrine',⁷ thus giving rise to a sort of 'originality with the risk of discontrol'. Especially when it must be acknowledged, on the part of the author whose thoughts we are referring to, that a pronouncement of some years ago by the United Sections took care to specify that 'the "creativity" of jurisprudential interpretation must challenge the interpreter's sense of measure and above all his sense of responsibility', since 'the safeguarding of the unity and "stability" of jurisprudential interpretation ... must now be considered ... as a matter of course ... as a legal criterion for the interpretation of legal norms, in order to avoid "confusion" between (jurisdiction) and legislation'.⁸

This leads one to believe that the fundamental junction of the relationship between doctrine and jurisprudence in the present time does not lie in the fact that jurisprudence is overflowing and creative and

5 Ibid., p. 88.

6 Ibid.

7 Ibid.

8 The reference is to Cass. 6 November 2014 no. 23675.

doctrine is weak and submissive, but rather in the physiologically different, but for this very reason fertile, position in which one and the other are placed in the interrelationships created between doctrine and jurisprudence. In this perspective, the circumstance that jurisprudence, precisely because of the task, which is proper to it, of providing concrete answers to the problems that are submitted to it, may have even more awareness of the dimension of effectiveness than doctrine, in fact, represents the peculiar added value of the jurisprudential contribution. This is provided, of course, that the canon of effectiveness is understood, as case law has, for the most part, understood and applied it, not as a mere and generic affirmation of a need for justice, such as to lead to decisions that are oblivious to the constraint that the interpreter derives from the regulatory system, but rather as an indication of the fact that the function, one might say the mission, of the jurist is legitimate, and is justified, if, and to the extent that, it is suitable for offering an effective (hence, effective) solution to the problem of material life that is submitted to it, failing which, law risks turning into a game of icy, self-referential logic.

The centrality of the issue of non-pecuniary damage, also from the perspective of the dialogue between national courts and the Court of Justice of the European Union, also results from the very recent decision of the latter, of 4 May 2023 in case C – 300/21, which, facing a problem of compensation for non-pecuniary damage from unlawful processing of personal data, affirms some principles of general importance on the subject. We will return to some aspects of this pronouncement in the course of this chapter.

2. THE ORIGINAL STRUCTURE CONTAINED IN THE CIVIL CODE OF 1942

As I mentioned above, with regard to compensation for non-pecuniary damage, the legislative data within the Italian Civil Code have never been amended. It is, therefore, still in force, in its original text, art. 2059

of the Civil Code, according to which ‘non-pecuniary damage must be compensated only in cases determined by law’.⁹

The reasons that led the Italian legislature to introduce this provision are still under discussion; the most reliable reading of them sees at the base a consideration of political right policy that had induced the legislature of the time – influenced by the ideology of the fascist regime – to reject the bourgeois conception of civil liability, of which the French Civil Code was instead an expression. In fact, the idea that even non-patrimonial values could always be converted into pecuniary benefits was typical of the bourgeois conception just mentioned, at least according to the reading that the legislature of the Italian Code of 1942 gave of it. Instead, the Italian legislature of 1942, limiting the compensation of non-pecuniary damage only to cases determined by law, had wanted to affirm the idea, clarified in the report accompanying the Civil Code, according to which non-pecuniary damage had to be compensated only when the unlawful act determinates a particularly serious offence of the values founding the legal system. For this very reason, the cases determined by the law of compensation for non-pecuniary damage, to which art. 2059 of the Italian Civil Code largely coincided with those in which the unlawful act also constituted a crime; in fact, a provision of the Italian Penal Code, art. 185, provided, and still provides, that the offender is required to pay compensation for the damage, including non-pecuniary damage, that the crime has caused.¹⁰

In this way, the legislator of the Civil Code of 1942 had constructed a system of compensation for non-asset damage that scholars have defined as bipolar, that is, hinging on the rule of the general compensability of pecuniary damage, so to speak, and the compensability of non-asset damage only in the cases provided for by law.

9 The contributions of scholars on the subject are numerous. A recent and comprehensive review can be found in Navarretta, 2021, pp. 1586 et seq.

10 See on this topic, Salvi, 2019.

3. THE NOVELTY OF THE CONSTITUTION OF 1948 AND THE FIRST INTERVENTIONS OF THE CONSTITUTIONAL COURT

However, this structure of the discipline of compensation for non-pecuniary damage in the Civil Code – which sees precisely the non-pecuniary damage compensable only in cases where the unlawful act also constitutes a crime – has been called quickly into question by the entry into force of the 1948 Constitution in Italy. The latter – as well as other constitutional texts that came into force after the end of World War II and the defeat of the Nazi-fascist regimes (think, for example, of the German *Grundgesetz* of 1949) – has placed at the centre of the hierarchy of values which it has affirmed the need to protect the human person, his dignity, and his fundamental rights, also emphasising the duty of solidarity between private individuals, to which art. 2 of the Constitution refers. In fact, and attempting an always debatable work of chronisation, there is no doubt that the season of civil liability that began, in our doctrinal elaboration, in the 1960s, can certainly be defined as that of solidarity. It is no coincidence that this principle was at the basis of S. Rodotà's¹¹ reconstruction of the problem of civil liability, which resolved, from the point of view of identifying the functions of civil liability, in the affirmation of the centrality of the reparatory function of damage, leaving

11 See Rodotà, 1964.

the concept of tort in the background.¹² It was, in fact, effectively noted, in this regard, that at the basis of the renewal of studies on civil liability, precisely in the first half of the 1960s, there was a perception ‘of the functional evolution of civil liability from a means for the prevention and sanctioning of the reprehensible behaviour of the agent, to an instrument that allows compensation, with the greatest intensity and in the greatest number of cases, for the victim of the damage’.¹³

The next step, in terms of the speech we are referring to here, has been easy, although not quick: given that non-pecuniary damage derives mainly from the injury of non-pecuniary interests, and, therefore, from the violation of the rights of the person, the need to protect the latter in a full and effective manner has led to doubt the conformity with the Constitution of a discipline that limited the compensation for non-pecuniary damage to only cases in which the fact also constituted a crime.

This doubt arose first of all with regard to the non-material damage resulting from the violation of the right to health; this right is, in fact, protected in a very incisive way by art. 32 of the Italian Constitution. We read, in this provision, that ‘the Republic protects health as a fundamental right of the individual’; therefore, the constitutional protection

12 Decidedly against this trend, as is well known, is the contribution, also almost contemporary to Rodotà’s work, by Cian, 1966, where, already in the introductory note (pp. VI–VII), it is observed that

in the system of civil responsibility not only the interests of the injured party must be affected, but also those of the person to whom the burden of compensation should be borne’, further specifying that ‘a system that is based on the assumption of culpability, and looks at the obligation to compensate not only as a means of reparation but also as an evil threatened to the offender, constitutes, with its differentiated treatment of guilty and not guilty persons, a valid instrument of justice to induce individuals to that shrewd and prudent conduct that can exempt them from liability and therefore always represents a strong means of preventive protection of the protected interests; whereas a system that merely considers the causation of the damage, with the inevitable consequence of the almost necessary recourse to various forms of insurance, may also result, in the formation of custom, in a diminished supervision of one’s own conduct.

13 In this sense see Salvi, 1983, p. 12, who starts from the analysis of Rodotà’s work already mentioned above, as well as the works of Scognamiglio on the concept of damage (among others, Scognamiglio, 1957, pp. 277 et seq.; Scognamiglio, 1969, pp. 464 et seq.).

of this right has led to the affirmation of a sort of *Drittwirkung* (i.e., the effectiveness also in terms of relations between private individuals) of the right to health, creating the conditions for a broad compensatory protection of non-pecuniary damage to health. The argument proposed by a judgement of the Italian Constitutional Court dating back in time – no. 184 of 1986 – to achieve this result, despite the restrictive wording of art. 2059, can be summarised as follows: art. 2059 does not refer to the entire area of non-pecuniary damage, but only to damage consisting of pain or suffering. The damage to health, in and of itself considered, instead, finds its discipline directly in the general rule of the civil code on civil liability, namely, in art. 2043; the latter identifies the condition of compensation for damage in its injustice, which, in turn, certainly exists where the damage results from the violation of a right protected by the Constitution. Therefore – this was the conclusion, which allowed the Constitutional Court to exclude the constitutional illegitimacy of art. 2059 – the non-pecuniary damage to health, with its own peculiar nature, such as to distinguish it both from patrimonial damage and from subjective moral damage (from pain and suffering) can be compensated on the basis of a direct application of art. 32 Cost., read in relation to art. 2043.

Judgement no. 184/86 of the Constitutional Court paved the way for the elaboration of the category of biological damage, meant precisely as damage to health in and of itself considered: a category that has been effectively defined as an Italian way to compensation for personal damage.¹⁴ In my speech today, for reasons of time, I cannot dwell on other moments in the evolution of the category of biological damage: I would simply like to recall that, a few years after the aforementioned sentence, another judgement of the Constitutional Court, no. 372/1994, led the damage to health back to the provision of art. 2059, stating that an interpretation of this provision in the light of art. 32 of the Constitution required in any case the compensation for that damage, because the cases determined by law were meant precisely to consider the bond deriving from the Constitution. A few years later, the category

14 The evolution of the category of ‘danno biologico’ is illustrated in several works by Castronovo. See in particular Castronovo, 2018, pp. 157 et seq.

of biological damage became a category, also normative, in the field of accidents at work, through d. lgs. 38/2000.

4. THE JURISPRUDENCE OF THE SUPREME COURT IN THE FIRST DECADE OF THE XXI CENTURY: RISE AND CRISIS OF THE CATEGORY OF EXISTENTIAL DAMAGE

The argumentative model that led to affirm the compensation for damage to health – on the basis of the direct application of constitutional rules – was quickly extended to other interests or profiles of the person, and to the damages resulting from their violation: in fact, on the one hand, the Italian Constitution contains a provision, art. 2, which recognises and guarantees, in very broad terms, the inviolable human rights, both as an individual and in the social formations in which human personality takes place; on the other hand, the European Convention on Human Rights and, more recently, the Charter of Fundamental Rights of the European Union have also come into play. These normative texts have drawn a very wide sphere of protection of the human person and his interests and have therefore created the premises for a very significant compensatory protection. Two judgements of the Supreme Court, also dating back in time, can be placed in this perspective, namely, judgements 8827 and 8828 of 2003; these have stated that the legal concept of non-pecuniary damage is broader than both that of the so-called subjective moral damage, that is, pain or suffering, and of biological damage, meant as an injury to the psycho-physical integrity ascertainable as such on the basis of medico-legal criteria. Therefore, the concept of non-material damage coincides, according to these judgements, with any unjust injury to an interest of the person from which prejudices incapable of economic evaluation arise.

This approach had the merit of widening the scope of compensatory protection of the person in the case of non-pecuniary damages, protection that the category of biological damage limited to the area of damage to health; at the same time, and on the contrary, it has created the risk of

an excessive expansion of the area of non-pecuniary damage compensable. In fact, if every interest of the person, as constitutionally protected, if harmed, can found an unjust damage, and therefore compensable, in relation to the provision of art. 2043, conditions are created for a generalised compensation for non-pecuniary damage, also extended to what, in doctrinal contributions and in the jurisprudential elaboration in Italy, has taken the name of existential damage, and which is similar to the category, known in English law, as *loss of amenities of life*. It then becomes necessary to introduce a filter to the compensation of these damage profiles, both in order not to empty the rule contained in art. 2059, above mentioned, and to avoid the proliferation of trivial compensation claims, such as to undermine the functionality of the judicial protection system from the point of view of its suitability to process too many applications.

This is the context of the subsequent jurisprudential intervention of the Supreme Court represented by the judgements of the United Sections no. 26972–5 of 11 November 2008. These judgements have argued, first, the unitary nature of the category of non-material damage, which cannot be articulated internally through the recognition of an independent relevance to existential damage. Moreover, in order to arrive at a synthesis between the need for wide recognition of the protection of compensation for the interests of the person and the opposing need to avoid an excessive expansion of judicial claims relating to minor non-material prejudices, the judgements affirmed that the assumption for the reparability of non-material damage is, first, that it has led to the infringement of constitutionally guaranteed inviolable rights. The problem becomes, at this point, one of identifying the criteria through which it is possible to formulate the judgement of inviolability of the right: and this is certainly one of the most controversial aspects of the matter, as it is outlined by the sentences of the United Sections just mentioned. In this regard, it does not seem tenable that the area of inviolable rights coincides, and is exhausted, with those expressly defined as such by the Italian Constitutional Charter: and this from a twofold angle.

On the one hand, in fact, it is not seriously debatable that there are rights recognised by the Constitution, but not expressly qualified by it with the attribute of inviolability, which must instead be considered as

such, since they pertain to the very essence of the human person: such as, for example, and on the basis of an expositive order dictated only by the existence, as regards the first of the situations that will be recalled, of a consolidated case law orientation – above mentioned – in the sense of the compensability of damage resulting from the lesion of the right, the right to health (art. 32), the right to freely profess the religious faith of one's choice (art. 19), the right to freely manifest one's thought (art. 21). This last, that is, the right to freely manifest one's thought also makes it possible to realise that the test of inviolability of the right, which the United Sections themselves seem to suggest (i.e., the possibility, contemplated by the same constitutional norm, of limitations to the exercise of the same, dictated, as happens in the case of the right of free movement, by reasons of health or security), does not always lead to fully reliable results; in fact, even in the presence of the provision of exceptional and entirely temporary limits that may be imposed on the exercise of the right to freely express one's thoughts (as happens in the case of art. 21, 4th Const, in the event of the seizure of the periodical press by officers of the judicial police), it does not seem tenable, from a systematic point of view, that the right to freely manifest one's thoughts is devoid of the attribute of inviolability.

It is a question, therefore, of identifying a normative criterion through which to make a judgement as to the existence, in concrete cases, of a hypothesis of constitutionally qualified injustice in the sense attributed to this formula by the United Sections: and it must be a normative criterion that is necessarily elastic, in the presence of the rule of art. 2 of the Constitution, which models the inviolable rights of the person as an open genus, as, moreover, considered by the same sentences of the United Sections.

In this research, the constitutional normative datum can offer us an initial, though not exhaustive, indication, where, from the same, according to a reading that can be considered consolidated for some time now, the choice in the sense of the centrality of the value of the human person clearly emerges; but this axiological choice of the Italian Constitution must now be further meditated upon in the light of the content of the European Charter of Fundamental Rights of the European Union of 7 December 2000, adopted on 12 December 2007 in Strasbourg. This, as is

known, and on the basis of art. 6 of the Treaty establishing the European Union, as amended by art. 1 of the Treaty of Lisbon, now has *the same legal value as the Treaties* and, therefore, is included in the design of the sources of law, having now overcome the uncertainties over its regulatory status that had followed its original adoption in 2000, on a level of equiordination with the 1948 Constitution. Title I of the Charter ('Dignity') opens, in art. 1, with the statement that '*human dignity is inviolable. It must be respected and protected*', which is followed, within the same title, by arts. 2–5, which recognise the right to life (Art. 2) and the right to the physical and mental integrity of the person (art. 3), then sanctioning the prohibition of torture and inhuman or degrading treatment or punishment (art. 4) and the prohibition of slavery and forced labour (art. 5).

The normative structure of the Charter of Fundamental Rights of the European Union therefore leads to the conclusion that all the rights of the person that pertain to the essential core of his or her dignity must be considered inviolable: and here the jurisprudential elaboration of the Supreme Court subsequent to the United Sections shows us, as we shall see in greater detail shortly, suggestive examples of argumentative forms that move from the qualification of human dignity as an inviolable right, when it comes, in particular, to compensation for non-material damage: indeed the latter, as mentioned at the beginning and as we shall see in greater detail shortly, seems to really take on a leading role in drawing the '*complexity*' of non-pecuniary damage.

It can therefore be acknowledged that, in the design that we could define of evolutionary typicality that the United Sections intended to model as regards the area of compensation for non-asset damage, the category of inviolable rights could in fact play a significant role as a criterion for selecting the non-asset damage that can be compensated, circumscribing the scope of extension of cases of compensation for the latter to cases in which compensation was really necessary in order to protect the dignity of the person.

The first pronouncements immediately following the United Sections in fact used the aforementioned criterion: thus, in the presence of a claim for compensation relating to a tort of misleading advertising, the assessment of whether or not an inviolable right of the consumer to

free determination as to the choice and use of the product (Art. 21(2) of the Consumer Code) can be configured, assumed a central importance in the economy of the reasoning.¹⁵

However, it must be acknowledged that, in the subsequent jurisprudential elaboration of the Supreme Court, the parameter of the inviolable right seems to fade away, often and simply flowing back into the ascertainment of the configurability of the lesion of a fundamental right of the person constitutionally guaranteed.

Thus, for example, in a ruling on non-pecuniary damage resulting, according to the victim's argument, from intolerable and unlawful emissions, the reasoning of the judgement is set out in terms of injury not to an inviolable right of the person, but to a constitutionally guaranteed fundamental right, excluding the judgement that the right to domestic tranquillity could be considered as such.¹⁶

Similarly, in another decision, which compensated non-pecuniary damage, in a case of serious injuries suffered by a person of non-EU citizenship, who – in the trial on the merits – had been awarded biological damage, but not non-pecuniary damage, it is discussed in terms of compensation for non-pecuniary damage configured as a consequence of the injury to the right to health, considered a fundamental right.¹⁷

Similar argumentative modules can also be found in a sentence shortly after the decision by the United Sections, in the context of solving the problem of compensation for non-asset damage in the case of contributory negligence on the part of the injured party: in fact, the compensation of non-pecuniary damage in this hypothesis is also affirmed 'where the illicit act objectively covers the elements of a crime, or in any case involves damage to values of the person that are

15 The reference is to Cass. S.U. 15 January 2009 no. 794.

16 See Cass. sez. II, 8 March 2010, no. 5564.

17 This is the principle stated by the Court of Cassation, section III, 24 February 2010, no. 4484: if the content of the factual hypothesis referred to in the decision – denial of compensation for non-material damage in favour of the non-EU victim of a health injury – is well understood from the statement of the judgement, it would have been a case in which the argument in terms of the inviolability of the right was particularly pertinent, because it related to the very essence of the dignity of the person.

constitutionally protected, or configures other cases of compensation foreseen by law, pursuant to article 2059 of the civil code', since, on the other hand, contributory negligence may be relevant only for the purposes of liquidation.¹⁸ However, one must ask oneself whether the non-use of the argumentative form regarding the identification of inviolable rights is simply the result, so to speak, of a terminological habit, such as to be linked to the jurisprudential direction of the Supreme Court's 2003 rulings, also referred to above,¹⁹ or derives from the fact that, at least in the case of injury to the right to health, the inviolability of the same is, so to speak, self-evident and therefore does not require further argumentative support; while the assessment criterion is based on the possibility of identifying, or not, in the case in point, the injury of an inviolable right is destined to be relevant above all where it is a question of scrutinising new subjective legal situations that have not yet been definitively accredited in the sense of their suitability to trigger, if injured, the protection of compensation.

The judgements of the United Sections no. 26972–5 of 11 November 2008 also specified that 'the seriousness of the offense constitutes a further requirement for admission to compensation for non-pecuniary damages to the person resulting from the violation of inviolable constitutional rights'. This second requirement has been understood to mean that 'the right must be affected beyond a minimum threshold causing serious prejudice' and 'the injury must exceed a certain threshold of offensiveness, making the prejudice so serious as to be worthy of protection in a system that imposes a minimum degree of tolerance'. In particular, 'the filter of the severity of the injury and the seriousness of the damage provides for a balance between the principle of solidarity with the victim and that of tolerance, with the consequence that compensation for non-pecuniary damage is due only if the level of

18 In this sense, Court of Cassation, section III, 10 November 2009 no. 23734; simply the violation of constitutionally protected interests is also referred to by Court of Cassation, 17 December 2009 no. 26516.

19 The reference is obviously to the sentences of the Court of Cassation 31 May 2003 nos. 8827 and 8828, published, among other places, in Navarretta, 2003a; see obviously also the sentence of the Constitutional Court no. 233 of 11 July 2003, in Navarretta, 2003b.

tolerability is exceeded and the damage is not futile'; the assessment of both requirements remains subject to the parameter constituted by social conscience at a given historical moment.

These statements have aroused radically contrasting attitudes between Italian scholars: from full agreement on the part of authors who, moreover, had essentially inspired them,²⁰ to the subscription of the idea underlying the rule, albeit with some critical clarifications as to the argumentative apparatus that should have supported it or the conclusions that could be drawn from it,²¹ up to the affirmation that the introduction of the exceeding of the limit of tolerance as a further prerequisite for the compensability of non-asset damage, resulting in an unreasonable disparity of treatment between the compensation for non-pecuniary damage and that for pecuniary damage would expose the solution accredited by the United Sections to a doubt of constitutional illegitimacy.²²

In fact, it is the very consideration of the function of the aquilian institute (all the more so) when non-pecuniary damage is considered, and the reconnaissance of the developments in European private law of civil liability, that make it possible to confirm that the rule of the non-compensation of non-serious damage constitutes a real systematic and applicative gain, but that it probably needs to be argued in a more articulate manner and specified in some of its applicative aspects.

From a functional and systematic point of view, then, the rule of the non-recoverability of non-serious damage finally represents a point of emergence of awareness of the limits of the aquilian institute: in the sense that the latter, even in the ductility of the rules that characterise it, at least in our regulatory system, cannot be attributed the suitability to follow, offering protection through the modality of the indemnity sentence, every situation of legally relevant interest, which is outlined in experience, having instead to discount the existence of an area of

20 The reference is, in particular, to Navarretta, 2001, pp. 801 et seq. as well as, in commentary on the judgements of the Sezioni Unite; see Navarretta, 2009, pp. 139 et seq.

21 In this sense see Mazzamuto, 2009, sections 588 et seq., 593; we would also refer, in this perspective, to Amato, 2009, 460 et seq.

22 See Ziviz, 2009, p. 98; Riccio, 2009, pp. 277 et seq.

prejudice destined to remain entrusted to social complexity.²³ The conclusion in the sense that such suitability cannot be attributed to it is already connected to the need to avoid what has long been effectively described as a crisis of excess inputs, or of demands, of the institution of civil liability, which cannot be seriously entrusted with an overall and pervasive function of the 'government' of the economic-social reality.

Therefore, and at least in the field of non-pecuniary damage, the Italian regulatory system, precisely through the jurisprudential orientation mentioned, came up with a solution very similar to that one contained in the Draft Common Frame of Reference, where it is present, also referring to the area of pecuniary damage, the c.d. *de minimis* rule, according to which (VI – 6.102) '*Trivial damage is to be disregarded*'.

In the latter regard, it should be pointed out, however, that it is precisely the very recent decision of the CJEU, aforementioned on damage caused by violation of *privacy*, that art. 82 (1) of the GDPR must be interpreted as precluding a national rule or practice which makes compensation for non-material damage subject to the condition that the damage suffered by the person concerned has reached a certain degree of seriousness, both because art. 82 refers to the concept of non-material damage without mentioning a threshold of seriousness, and in the light of the GDPRs need to ensure a consistent and high level of protection of individuals with regard to the processing of personal data throughout the European Union.

5. THE LATEST DEVELOPMENTS IN CASE LAW: PROOF AND SETTLEMENT OF NON-PECUNIARY DAMAGE AND THE PROBLEM OF PUNITIVE DAMAGES

The subsequent developments of the problem of compensation for non-material damage in the jurisprudence of the Italian Court of Cassation can be briefly described in terms of a partial overcoming of the

23 Mazzamuto, 2009, section 593; Castronovo, 2008, pp. 315 et seq.

principles affirmed by the judgements of 2008 illustrated just now and of an increasingly marked attention to issues relating to proof and liquidation of damages.

In particular, the overcoming of the principles affirmed by the aforementioned case law can be seen in the articulation of the category of non-pecuniary damage. The idea that is proposed by an orientation developed in 2018 (Cass. 901/18; Cass. ord. 7513/18) is in fact in the sense that any injury caused to an interest protected by the Constitutional Charter is characterised by a double dimension of damage: the dimension of the relational/external projection of being and that of the moral damage/intimistic internalisation of suffering. In this way, a sort of 'symmetry' is envisaged with the double dimension of the pecuniary damage, the emerging damage ('internal' damage, which affects the already existing assets of the subject), and the loss of profit (which, of that heritage, is the dynamic and external projection). The procedure that the court must carry out in order to verify the existence of non-pecuniary damage that can be compensated therefore presupposes, first, the identification of the right of the protected person at the constitutional level; subsequently, the court must carry out the analysis, and a rigorous assessment, on the level of proof, both of the inner aspect of the damage (moral suffering in all its aspects, such as pain, shame, remorse, self-esteem, melancholy, sadness), as well as of its worsening modifying impact on daily life that returns to evoke the idea of existential damage (*the loss of amenities of life*).

As regards the questions relating proof of non-pecuniary damage, the problem of the liquidation of the same has arisen, in particular, with regard to the category of biological damage, where the prejudice suffered by the victim is objectively appreciable to the extent that it refers to the impairment of the individual's health. Here, the issues that arise concern, first, the need to satisfy the requirement of uniformity of the liquidation of damages in all the hypotheses of fact that present analogous characteristics, from the point of view of the injury suffered by the victim, thus also ensuring as far as possible the predictability of the decision; and, then, the need to leave a margin within which the judge can consider, when liquidating the non-pecuniary damage, the particularities of the individual case.

It is well known that a pair of Supreme Court rulings dating some twelve years gave a sort of normative value to the Milan tables (*tabelle milanesi*), while leaving room for judicial discretion in the matter. The Milan tables consist of a document drafted by a working group active precisely at the Court of Milan, and which is composed of judges and lawyers; the group has collected and analysed hundreds and hundreds of decisions issued with reference to cases in which the victim had suffered non-pecuniary damage and has drawn up parameters for quantifying the damage, which take into account medical-legal criteria for assessing the seriousness of the injury. In this way, once the data considered by the table are known (e.g., the age of the injured party, in case of biological damage), the use of an electronic programme is sufficient to arrive at the determination of the compensation sentence.

It was recalled a short while ago that the jurisprudential direction, accredited from 2108 onwards, in the jurisprudence of the Court of Cassation, through the distinction of the two components into which the violation of a personal right can be divided (the external/relational dimension and the internal dimension of a moral/suffering character); an approach that, insofar as it is relevant to the discussion taking place here, seemed, among other things, suitable to lead to a reconsideration of the use of the Milan tables in the settlement of non-asset damage, not so much from the point of view of the premise of their substantially normative value, but from the point of view of the congruity of the criteria accredited by them. The course of reconsideration has led, in fact and finally, to a calling into question – which then became an erosion – of the Milan tables, as the criterion that the court of merit must use when it is called upon to liquidate the non-asset damage, in favour of the Roman ones.²⁴

In this perspective, the emphasis was first of all placed on the circumstance that unlike biological damage, moral damage, that is, subjective suffering, which does not have a medico-legal basis, by definition,

24 See Court of Cassation, 10 November 2020 no. 25164 with a note by Ponzanelli, 2020b. See also Ponzanelli, 2021, pp. 37 et seq. Lastly, returning to the subject, also taking into account the new Milanese tables of March 2021, and with particular wealth of developments, Court of Cassation no. 10579 of 21 April 2021.

eludes a priori assessment, but must be attached, proven, and assessed in its concrete, multiform, and variable phenomenology that no logical reason, nor any positive basis, allows it to be related in standardised terms to the seriousness of the injury to psychophysical integrity.²⁵ This prefigures a liquidation technique that even if still based on the system of tables as regards damage to health, could not be extended to non-material damage, given that the assessment and settlement of the latter should still be entrusted to the preliminary investigation of the individual case ‘in its concrete, multiform and variable phenomenology’.²⁶

In the latter regard, a particularly significant example of a technique for settling non-pecuniary damage, other than health damage, which takes into account the seriousness of the injury, is an order by the Supreme Court of Cassation, which states, with reference to a case of dissemination of news seriously damaging to the reputation of a person accused of being part of a mafia-type association, that the moral damage in the presence of an injury to very personal rights, such as those invoked by the injured party, is by definition

*a damage that ‘cannot be proven in its precise amount’, pursuant to art. 1226 of the Civil Code, as referred to by art. 2056, paragraph 2 of the Civil Code, since it relates to compensation for the prejudice represented by inner suffering, or moral damage (sub specie of pain of the soul, shame, self-loathing, fear, despair...). It is, therefore, a type of damage in which, more than elsewhere, it is necessary to have recourse to equitable liquidation, which the court of merit performs – as occurred in the present case – by assessing the damage itself by means of its ‘personalization’.*²⁷

Confirmation of the difficulties to which the problem of personalisation of damages gives rise, in particular as regards the evidential techniques of moral damages, can be deduced from another recent intervention by

25 In this sense see Court of Cassation 4 February 2020 no. 2461, with a note by Ciommo, 2020, pp. 223 et seq.; also see Ponzanelli, 2020a.

26 See again Court of Cassation 4 February 2020 no. 2461.

27 See Court of Cassation 8 June 2022 no. 18430.

the Court of Cassation.²⁸ In particular, the Court, in the decision now referred to, first reiterated that the personalisation of compensation for damage to health consists in a variation upwards (or, in abstract hypothesis, downwards) of the standard value of the compensation, in order to consider the specific features of the concrete case. These must consist of ‘exceptional and specific circumstances’, with the consequence that ‘no upward variation in the standard compensation envisaged by the “tables” can be granted to take account of injuries that any victim who has suffered the same injuries must bear, according to the *id quod plerumque accidit*, since they are consequences already considered in the settlement of the damage according to the table’.²⁹ This sentence also reiterated the principle, repeatedly shared in previous sentences, of the autonomy of moral damage with respect to biological damage, on the premise that it is a prejudice of an entirely interior and non-relational nature and therefore deserving of additional compensation beyond the personalisation foreseen for the dynamic aspects compromised: therefore, what is being considered here is damage that is not susceptible to

28 See Court of Cassation 10 November 2020 no. 25164 with a note by Ponzanelli, 2021, p. 32; see also Zappatore 2021.

29 In the case in question – observes the judgement now being examined – the territorial court had granted personalisation by stating that ‘no useful elements are to be found in the records that would allow the loss of work capacity, both generic and specific, to be otherwise assessed in economic terms’ and that the victim was in the ‘undoubted impossibility of engaging in physical activities’, and considering that this circumstance should be considered as an element for personalisation within the framework of biological damage. However, in so doing, according to the Court, the Court of appeal has made a twofold error of law: on the one hand, it failed to consider that the personalisation of the damage – as has already been recalled above – must be justified by the positive finding of specific exceptional consequences, in addition to those ordinarily resulting from the impairment and which could not constitute the means of remedying the lack of evidence of damage to the ability to work (particularly since the injury to the general ability to work is included within the scope of the ordinary consequences of damage to health and that relating to the specific ability to work, to be assessed within the scope of pecuniary damage, falls outside the scope of biological damage). On the other hand, the Court twice liquidated the damage relating to the impossibility of performing certain physical acts, first as damage to health and then as personalisation, although without, as stated above, indicating specific and exceptional circumstances.

medical-legal assessment and is substantiated by the representation of a state of mind of inner suffering that is independent of the dynamic-relational events of the injured party's life. Hence, in the sentence that we are reviewing at this point of our discussion, the indication of a series of guidelines that the tribunal and the court of appeal must follow when proceeding to liquidate the damage to health: ascertain the existence, in the individual case, of a possible concurrence of dynamic-relational damage and moral damage; in the event of a positive ascertainment of the existence (also) of the latter, determine the quantum of compensation by fully applying the tables in Milan, which foresee the liquidation of both items of damage, but arrive (incorrectly) at the indication of an overall monetary value (made up of the arithmetic sum of both items of damage) in the event of a negative assessment, and consequent exclusion of the non-material component of the damage, consider only the biological damage item, deprived of the increase foreseen in the table for non-material damage, according to the percentages indicated therein, consequently settling only the dynamic-relational damage; in the event of a positive assessment of the conditions for the so-called personalisation of the damage, proceed to the personalisation of the damage, proceeding to the settlement of the amount of the damage, according to the percentages indicated therein. personalisation of the damage, proceed to increase the value of the biological damage by up to 30%, stripped of the moral component of the damage automatically (but erroneously) included in the table.

From the point of view of the proof of non-material damage, then, and – as mentioned above, with some variety of accents with respect to Cass. 2461/2020 – the Court, in sentence 25164/2020, reiterated that, since the prejudice to an intangible asset is at stake, recourse to presumptive evidence is destined to assume particular importance and may also constitute the sole source of the judge's conviction, although the burden of the injured party remains unchanged to allege all the elements which, in the concrete case, are suitable for providing the concatenated series of known facts, in order to allow the unknown fact to be traced. The subject of this burden of allegation are the primary facts, that is, the facts constituting the right to compensation for the damage; with specific regard to the prejudicial consequences causally ascribable

to the conduct, ‘the assertory activity must consist in the full description of all the suffering for which compensation is claimed’. However, such a precise burden of allegation is not matched by an equally broad probative burden, in the light, also and above all, of the eminently subjective dimension of non-material damage. Hence the possibility of proving non-material damage also by means of maxims of experience that would make it possible to avoid ‘that the party, unable to prove the prejudice of being, that is, of the condition of physical and psychological affliction in which it has found itself as a result of the injury suffered, is forced to articulate exhausting chapters of evidence relating to the significant change of inner states of mind from which the demonstration of the prejudice suffered may be inferred’.³⁰

The most recent jurisprudence of the Supreme Court discusses of the Milan Tables (as already said, ‘*tabelle milanesi*’) with reference to some particular hypotheses of damage such as the so-called damage from loss of parental relationship, that is, the damage suffered in the event that a person to whom one is related by a particularly close family relationship dies or is seriously injured, thus the relationship of life and affection that existed between the primary victim of the offense and the secondary victim of the same was interrupted. In such cases, proof of damage may be given largely on a presumptive basis, when the family relationship is particularly close or it is a relationship of marriage, but it will always be possible for the defendant to offer evidence to the contrary, demonstrating, for example, that the relationship between the primary victim and the secondary victim was in crisis (so Cass. 9010/22).

30 The debate continued with the following affirmation (Court of Cassation, ord. 10 February 2021, no. 3310; previously see also Court of Cassation, ord. 13 January 2021, no. 460); this court has already established that only in the presence of ‘specific and exceptional’ circumstances, promptly put forward by the injured party, which make the concrete damage more serious, under the aspects indicated, compared to the consequences ordinarily deriving from injuries of the same level suffered by people of the same age, the magistrate is allowed to increase the sums due as compensation when personalizing the settlement, with analytical and not stereotyped motivation (...) as of the last sentence of sentence no. 25164 of Civil cassation, no. 3310 of 10 February 2021.

See also, again in the vein of Cass. 25164/2020, Cass. ord. 12 September 2022 no. 26805 and Cass. ord. 9 November 2022 no. 32935.

Thus, and to begin with, it has been specified, with regard to the operation, and the limits, of presumptive evidence with reference to this item of damage that

On the subject of non-asset damage from the loss of a parental relationship, the existence of effective relationships of mutual affection and solidarity with the relative is assisted by a. presumption ‘iuris tantum’, based on the common membership of the same ‘minimum family nucleus’, which can be overcome by contrary evidence supplied by the defendant, also based on presumptive elements such as to eliminate (or attenuate) the aforesaid presumption, the judge in any case having to proceed, pursuant to Article 2729 of the Civil Code an overall assessment of the gravity, precision and concordance of the circumstantial elements at his disposal.

Applying this principle, the Court of Cassation overturned with reference the judgement on the merits that, in compensating a woman for the non-pecuniary damage for the loss of her husband, had not taken into account the uncertainty as to the actual cohabitation between the spouses, the undisputed existence of an extra-marital relationship of the deceased spouse, and the circumstance that, shortly after her husband’s death, the plaintiff had entered into a stable sentimental relationship with another man, from which a child was born.³¹

On the other hand, a slightly later ordinance of the Supreme Court provided an important clarification regarding the concrete physiognomy assumed by the damage from the loss of the parental relationship in relation to other possible lesions of the victim’s personality assets deriving from the same illicit act. It was, therefore, noted that

On the subject of non-pecuniary damage, the liquidation of the damage from loss of the parental relationship – affecting the preservation of the emotional-subjective balance of the injured party and, in a dynamic-relational dimension, on the concrete impediment to the continuation of a personal relationship – and of a further amount by way of compensation for biological damage – as prejudice to the psycho-physical integrity

31 See Court of Cassation 21 March 2022 no. 9010.

caused by the killing of the relative – does not constitute a duplication of compensation, since these are different items of damage deriving from the lesion of logically and ontologically distinct assets that are referred to, respectively, in Article 29 and Article 32 of the Italian Constitution. 29 and Article 32 of the Constitution respectively.

From this angle of view, therefore, the different point of emergence, at the level of the constitutional relevance of the interest, of the damage from the loss of the parental relationship compared with biological damage, excludes that the simultaneous recognition of a compensation benefit for one and the other can give rise to an inadmissible duplication of compensation.³²

Lastly, and again in terms of proving the actual existence of the prejudice that can be described in terms of loss of the parental relationship, it has been clarified that

The loss of the parental relationship, in its non-material dimension, determines the loss of reciprocal affections in progress, which are, unlike subjective moral damage, ‘objective dimensions’ of the prejudice, i.e. ‘utilities’ whose extinction is relevant regardless of the suffering that that loss can produce on the surviving relative. Therefore, the loss of the parental relationship, as the loss of the ‘utilities’ that the relationship allows, is necessarily a present loss, consisting in the definitive impossibility of enjoying that bond, with the consequence that it constitutes relevant prejudice only for the relative who is a party to that relationship, not in the formal sense, but in the sense of being able to draw from the relationship the ‘utilities’ that it offers and that the wrongful act causes to be definitively lost. The infant’s future harm, that is to say, his future suffering from the present loss of his grandparent, is therefore a possible harm that cannot be considered relevant now for then, since if one can recognize, in the abstract, a possible posthumous suffering, one cannot admit a posthumous enjoyment of the goods that the family relationship allows.³³

32 See Court of Cassation 28 March 2022 no. 9857.

33 See Court of Cassation 26 April 2022 no. 12987.

On this basis, the claim for damages made by the parents of a minor child as a result of the death of her grandfather following an accident was rejected in the case at hand. In particular, the plaintiffs complained of the loss of a kind of future parental relationship, that is, the loss that, once conscious, the minor would have felt and that would have taken the form of not being able to have her grandfather with her, that is, to live moments with him as in the normal relationship between grandfather and grandchild.

In a general perspective, we can say that Italian jurisprudence is however constant in stating that a person who intends to obtain compensation for non-pecuniary damage must prove it, even by means of presumptions (Cass. 12249/23), since damage *in re ipsa* is not admissible. From this point of view, there is a significant similarity with the jurisprudence of the CJEU just mentioned: namely, the decision of 4 May 2023 in C-300/21, which excluded that mere violation of the rules of the GPDR can lead to a non-pecuniary damage compensable.

Then, once again, the prospect of liquidation, and its criteria, takes decisive importance when one wonders about the function of compensation for non-pecuniary damage: in fact, the attribution of relevance, in the perspective of the quantification of this item of damage, to aspects also concerning the seriousness of the conduct of the person responsible, from the point of view of the subjective element underlying it, or of the particular merit of protection of the injured interests, offers food for thought of particular significance when it comes to investigating also the possible sanctioning component that the compensation sentence in the field of damage is destined to assume. From this point of view, it has been affirmed, by some scholars, that the measure of compensation for non-pecuniary damage is also related to the seriousness of the fact and the proportionality of the sanction that, overall, the legal system imposes (also in preventive function) on its author. Even in Italy there are questions – but for now it is only a doctrinal debate – on the possibility of introducing, as a competing criterion for the liquidation of non-pecuniary damage from injury to personality rights, that of the profit obtained by the offender who has committed it intentionally and in order to achieve a profit contained, in art. 6.33 § 3 of the Belgian draft reform of civil liability law.

In the background of the approach that attributes importance to the seriousness of the conduct of the person responsible for the purposes of liquidating non-pecuniary damage, there is, once again, a ruling of the Supreme Court (S.U. 5 July 2017 n. 16601), which affirmed the principle according to which ‘in the current legal system, civil liability is not assigned only the task of restoring the patrimonial sphere of the subject who suffered the injury, since the deterrence function and the sanctioning function of the civil responsible are internal to the system’. From this principle, the judgement has affirmed the corollary according to which ‘it is not ... ontologically incompatible with the Italian legal system, the institution of American origin of punitive compensation’, while specifying that ‘the recognition of a foreign judgment that contains such a ruling, it must, however, correspond to the condition that it has been rendered in the foreign legal system on a regulatory basis that guarantees the typicality of the hypotheses of conviction, its predictability and the quantitative limits, having regard, in the deliberation, only for the purposes of the foreign act and their compatibility with public order’.

6. FINAL THOUGHTS

I hope that this short essay has been able to offer a picture of the way in which compensation for non-pecuniary damage has been modified during the 81 years of validity of the Italian Civil Code, by means of the interventions of jurisprudence, in the wake of the contributions of doctrine and through the concretisation of the general principles contained in the Constitution of 1948.

REFERENCES

- Amato, C. (2009) *Il danno non patrimoniale. Guida commentata alle decisioni delle S.U.*, 11 novembre 2008, nn. 26972/3/4/5. Milano: Giuffrè.
- Busnelli, F. D. (2013) 'Verso una giurisprudenza che si fa dottrina. Considerazioni in margine al revirement della Cassazione sul danno da c.d. "nascita malformata"', *Rivista di diritto civile*, 59(6), pp. 1519–1529.
- Castronovo, C. (2008) 'Del non risarcibile aquiliano: danno meramente patrimoniale, c.d. perdita di chance, danni punitivi, danno c.d. esistenziale', *Europa e diritto privato*, [2008], pp. 315–347.
- Castronovo, C. (2015) *Eclissi del diritto civile*. Milano: Giuffrè.
- Castronovo, C. (2018) *Responsabilità civile*. Milano: Giuffrè.
- Cendon, P., Ziviz, P. (eds.) (2000) *Il danno esistenziale. Una nuova categoria della responsabilità civile*. Milano: Giuffrè.
- Cian, G. (1966) *Antigiuridicità e colpevolezza. Saggio per una teoria dell'illecito civile*. Padua: Cedam.
- Ciommo, F. Di (2020) 'Tanto tuonò che piovve. La Cassazione abbandona le tabelle milanesi ritenendole inadeguate a considerare il danno morale', *Il Foro Italiano*, 2020/1, 2014–2028.
- Mazzamuto, S. (2009) 'Il rapporto tra gli artt. 2059 e 2043 c.c. e le ambiguità delle Sezioni Unite a proposito della risarcibilità del danno non patrimoniale', *Contratto e Impresa*, [2009], pp. 589–626.
- Monetti, V., Pellegrino, G. (1974) 'Proposte per un nuovo metodo di liquidazione del danno alla persona', *Il Foro Italiano*, 97, pp. 159–168.
- Navarretta, E. (2001) 'Il danno alla persona tra solidarietà e tolleranza', *Responsabilità civile e previdenza*, [2001], pp. 789–808.
- Navarretta, E. (2002) 'Art. 2059 c.c. e valori costituzionali: dal limite del reato alla soglia della tolleranza', *Rivista Danno e Responsabilità*, [2002], pp. 872 et seq.
- Navarretta, E. (2003a) 'Danni non patrimoniali: il dogma infranto e il nuovo diritto vivente (Nota a Cass. 31 maggio 2003, nn. 8828 e 8827, e 12 maggio 2003, n. 7283 e 7281)', *Il Foro italiano*, 128, pp. 2277–2286.
- Navarretta, E. (2003b) 'La Corte Costituzionale e il danno alla persona "in fieri"', *Il Foro italiano*, 2003/1, pp. 2201–2205.
- Navarretta, E. (2009) 'Il valore della persona nei diritti inviolabili e la sostanza dei danni non patrimoniali', *Il Foro italiano*, [2009], 139 et seq.
- Navarretta, E. (ed.) (2021) *Codice della responsabilità civile*. Milano: Giuffrè Francis Lefebvre.
- Ponzanelli, G. (2020a) 'La crisi delle tabelle milanesi: l'intervento della Cassazione', *Rivista Danno e Responsabilità*, [2020], pp. 231–233.

- Ponzanelli, G. (2020b) 'Rivisitazione delle tabelle milanesi e prova del pregiudizio morale: il nuovo intervento della cassazione', *La nuova giurisprudenza civile commentata*, [2020], pp. 92–95.
- Ponzanelli, G. (2021) 'Tabelle milanesi al vaglio della Cassazione', *Danno e responsabilità*, [2021], pp. 37–39.
- Riccio, A. (2009) 'Verso l'atipicità del danno non patrimoniale: il mancato rispetto dei vincoli derivanti dalla Convenzione europea dei diritti dell'uomo solleva una nuova questione di costituzionalità dell'art. 2059 c.c.?', *Contratto e Impresa*, 2009/2, pp. 277–284.
- Rodotà, S. (1964) *Il problema della responsabilità civile*. Milano: Giuffrè.
- Salvi, C. (1983) 'Il paradosso della responsabilità civile', *Rivista critica del diritto privato*, [1983], pp. 123–128.
- Salvi, C. (2019) *La responsabilità civile*, 3rd edn. Milano: Giuffrè Francis Lefebvre.
- Scognamiglio, R. (1957) 'Il danno morale', *Rivista di diritto civile*, I, pp. 277 et seq.
- Scognamiglio, R. (1969) 'Appunti sulla nozione di danno', *Rivista trimestrale di diritto e procedura civile*, [1969], pp. 464 et seq.
- Zappatore, F. (2021) 'La stabile inquietudine del danno non patrimoniale', *Rivista Danno e Responsabilità*, [2021], pp. 32 et seq.
- Ziviz, P. (2009) 'Il danno non patrimoniale: istruzioni per l'uso', *Responsabilità civile e previdenza*, 74(1), pp. 94–100.

