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***Civil liability within the family:
a legal experiences comparison***

ABSTRACT

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The family, subject of legal regulations, proves to be the reality that more resists to uniform regulation.

Its location in the public and in the private, in the moral sphere and that of the law, in facts, makes it sometimes difficult to identify principles and rules of law applicable to reports on which has profoundly affected the evolution of manners.

The concept of the family has experienced in recent years, significant changes in our legal system, having replaced the patriarchal model of the family, a system that looks, with the reform of family law, the constitutional model laid down in Articles 2, 29 and 30 of our fundamental charter, and, therefore, a privileged social formation, based on the free choice of individuals who are part of it, of the bonds of affection and solidarity, in which promotes and protects the rights of each member .

In the evolution of the concept of the family insert itself, then, the renovated conception of non-contractual liability, with the solutions, more and more large, offered by the jurisprudence on compensation for damage for unlawful non-contractual act.

This study resolves to analyse, in a compared perspective, the effects that the application of tort instrument produces in a delicate area such as family relationships, in which are collected conflicts characterized by emotional engagements, and where interests of the individual must necessarily be assessed according to the need to ensure the development of family *societas*.

The discussion is divided into three parties.

First of all is analysed the Italian legal experience, particularly the introduction of compensation in marital relations.

First and foremost it is necessary to consider the social and legal procedure which affected the family as institution and the marriage. At a later time is addressed the central issue of this work: the entrance of civil liability in the household.

The affirmation of fundamental human rights, no longer limited in family environment raised, at the outset, the question about their violation within the family: doctrine and jurisprudence shall evaluate the possibility of compensate the damage through the application of rules of common law.

Its assessment is opposed to another line of thought: it was believed, in fact, that in accordance with the principle *lex specialis derogate legi generali* to be banned the interaction between common law and non-contractual remedy.

An important turning point in home civil liability is certainly to ascribe to the impulse of the law in the early 2000s that, expanding legal situations of damages, it has affected the applicability of damage remedy in the family environment.

The law, in line with legislative developments of personal relations between spouses and of protection of the individual, has led fully in 2005 to recognition of compensation of the offence in the family.

In the first part of treatise is analysed also the “nature” of the responsibility in the family, shows that part of doctrine delivered an agreeable solution, that is to identify the compensation of non-patrimonial damage in the classic hypothesis, especially for limit classic compensatory hypothesis.

At the end of first part of the work, look into acceptance of the rules of responsibility within the family, focus on the avoid any compensatory automatism.

The second part focuses on responsibility within the family in the framework of parent-child relationship. At the beginning is paid to the parent-child relation and to its development, with reference to the law number 219/2012.

In this regard is analysed, in particular, remedies provided for by family law and, successively, those of civil non- contractual liability.

In the third part of this work is analysed the comparative profile and is examined the role of civil liability in the family in the French law.

In the French legal rules the civil liability is permeated very naturally in the home, thanks to a “structural” element of the article 1382 of the civil code that, doesn’t make distinction between financial and non-financial loss and doesn’t inspect injustice of damage. Therefore, the general clause of tort has been used in French law to compensate all types of damage that is hardly convertible to cash; this attitude has led to an excessive application of the norm, so that currently you are try to use it less.

After the analysis of the historical and legislative context, you deal with instruments of French family law to face the offences within the family and then focus on utility of civil liability in the family environment.

In France, to achieve the element of the fault made it easy to introduce the principle of civil liability in the family; in Italy, however, it was law’s job to adopt a position on it, spreading uncertainties about the function of civil liability within the family and the implementation criteria of article 2043 of the civil code.

For these reasons is necessary a legislative action for defining compensable cases and validation criteria of the damage, creating special figures of civil liability.

The rules of civil liability in the family environment must, however, be filtered by the requirement of refunding the damages only in specific cases to prevent the spread of commercialization of relations between persons.

Finally, the compensatory instrument in the family context is useful, but it’s necessary to pay attention to abuses or excesses in this respect. The judge has to restrict the commercialization of feelings because such suffering can’t become compensable damages.