

State's Obligation to Compensate for Bodily Harm in the Absence of a Responsible Party

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Abstract:

Given the rise in accidents inherent to life in society, regardless of the origin of the harm suffered by the victim, its effects will be felt in the same way because it affects bodily integrity. The legislator was obliged to come to the aid of these victims—in the absence of a responsible party—by prescribing specific compensation schemes that comply with particular imperatives. This is, in fact, a socialization of risks, involving the State's assumption of certain so-called social risks based on the solidarity at the foundation of any social group.

The general principle prevailing in the world at the end of the last century was that the state was not responsible, because it was not conceivable that the state would commit a mistake while it was sovereign, and it was a result of the prevailing ideas at that time, which rejected the principle of state responsibility for fear of harming the interest of the public treasury. But this principle began to disappear little by little under the weight of the principle of social solidarity, as the injured person is not left alone to bear the damages, especially the physical ones, that befell him.

Keywords: Bodily Harm, State Responsibility, Compensation Composition, Doctrinal Controversies.

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INTRODUCTION:

Historically, the rules of liability were based on attributing the responsibility for a criminal act to the perpetrator, based on their personal fault, which led to harm to others. This was followed by the emergence of a right for the injured party to have the perpetrator compensate them as determined by the courts. The role of the courts, and let's also say the community, stopped there.

If the convicted had financial solvency, the judgment ordering compensation was executed, either willingly or by force, by seizing and auctioning off their assets. However, if they were not solvent and did not have the necessary money to fulfill their obligation, the injured party remained uncompensated and had to bear their fate alone without help.

But in an era where accidents have become more frequent due to economic developments and the spread of mechanical devices, which have played a prominent role in increasing cases where people are harmed due to the use of these devices, in addition to victims of medical accidents, terrorist acts, defective products, and car accidents. There's no need to enumerate the effects these accidents have on their victims and the personal and social disasters that befall them if they do not find anyone to rescue and compensate them, as these effects are known to all and touch the collective conscience in every country.¹(Desouki, n.d,p167)

Starting from this sense of social and collective responsibility towards accident victims, and also because contemporary humans no longer simply accept fate and bear its consequences passively for the pain inflicted on them, some countries have enacted legislations that created a special fund to compensate accident victims in cases where the perpetrator is unknown or insolvent.

Algeria has joined these countries by enacting legislation that ensures compensation for victims of bodily harm².(Order No. 75-58, 1975, p. 78) Although there is no problem regarding compensating victims of transport accidents and terrorist acts for bodily harm, the issue remains unresolved regarding harm caused by defective products, due to the lack of an executive decree related to the establishment of a compensation fund.

Thus, the problem lies in: How is bodily harm compensated in the absence of a responsible party? We will answer our question through the following two sections:

1. The content of bodily harm and the purpose of its compensation.

2. The doctrinal stance on the state's obligation to compensate and how it intervenes.

1. The Content of Bodily Harm and the Purpose of Compensation

If the function of compensation is to repair damage, by restoring the injured party to the state they were in before the assault occurred, this becomes challenging in the case of bodily harm. This leads us to the necessity of identifying the elements of bodily harm that are compensated.

This provides an additional guarantee to the citizen as part of a policy that enshrines human rights in society, ensuring their security in terms of self, body, safety, and freedom.

1.1 The Content of Bodily Harm

Bodily harm has two meanings: a narrow meaning—firstly, and a broad meaning—secondly.

1.1.1 The Narrow Meaning:

Bodily injury, in its narrow or exclusive sense, refers to damage inflicted on the body's integrity and wholeness. It encompasses the actual bodily injury and the resulting disability or weakness in performing the body's natural functions or the inability to be active, whether or not this results in financial loss.

Any diminution of the body's integrity that leads to a decrease in the capabilities, advantages, and powers that the injured person previously enjoyed means that bodily harm is realized, regardless of whether this diminution has an effect on the injured party's financial resources or not.

That is, the infringement of bodily integrity is akin to the loss of physical means and capabilities and not merely the loss or reduction of income source. It is an immediate and certain damage that can be monetarily assessed through all aspects of a person's life, independently of its impact on financial income.

The narrow sense of material bodily harm includes the disabling (permanent disability) resulting from an injury, such as organ damage or amputation, even if partial, loss of a sense, or permanent disability that diminishes the physical or mental strength of the injured party, even if only partially, rendering them unable to work and earn as before the injury. Consequently, their current and future productive capacity is weakened due to the permanent disability or permanent handicap.

Therefore, the material bodily harm in the narrow sense is the original damage that does not go beyond the physiological harm in the body of the injured, and it is the bodily harm itself that affects the body and its powers. This harm is estimated according to a general objective standard that applies to everyone, determining the degree of organ injury, the percentage of disability, and the extent of the injury, and then the compensation amount is estimated based on this.

1.1.2 The Broad Meaning:

The broad meaning of material bodily harm encompasses all non-physiological damages and all financial losses suffered by the injured as a result of the bodily injury. That is, the damage resulting from the reflection of bodily harm on the financial aspect of the injured party constitutes the broad meaning of material bodily harm.

All the negative financial or economic effects that befall the injured party, which follow the physiological damage and result from it, represent bodily harm in its broad sense. This meaning includes all treatment expenses, and what a person spends to improve their health condition, healing, and rehabilitation, such as doctor's fees, hospital stay expenses, medication prices, surgical operation expenses, medical analyses, radiographic imaging, ambulance fees, prices of prosthetics and medical aid devices like wheelchairs for the disabled.

In France, the person responsible for the damage has been charged with the expenses of purchasing a car for the disabled or covering the injured's lifelong care home expenses or the salary of a nurse assistant throughout their life.

1.2 The Objective of Compensating for Bodily Harm

The person injured in their body resorts to the court for compensation for the resultant harm. The injury may be minor, may have caused a physical disability, the damage may worsen, or the injury may lead to death. Compensating for the harm nowadays poses a complex problem that legal professionals—scholars, legislators, and judges—continuously strive to solve, especially since harm is no longer just an incidental individual event but has become a negative social reality phenomenon that human effort cannot eradicate or even prevent its occurrence.

The causes of harm are numerous in the context of technological development, including daily occurring traffic accidents that, unfortunately, may result in— if not death— serious bodily injuries, machine accidents, assaults by others, and other causes of harm (Al-Duwaik, 2016,p26).

The human right to protect their body means their interest in maintaining their body's integrity, the share of health they have, and their enjoyment of physical and mental peace. This physical integrity has two values: an individual value and a social value.

The human right to protect their body is a human right regulated by law, neither granted nor denied by it. Compensation for bodily harm in the modern era has become one of the most important topics related to the right to life and the integrity of human bodily integrity. Its importance has increased due to the rising number of accidents caused by cars, factories, industrial products, medical errors, and others.

Injuries have become multiple and varied, with degrees of severity and significance, as there are various types and elements of harm that can be inflicted on the human body.

Bodily harm is of great concern at present, and the reason for this:

- The increase in the number of victims in physical accidents and the magnitude of the damages due to the increase and complexity of their causes. The widespread use of machinery has led to an increase in human injuries, as a person can be injured in a street traffic accident, at a factory due to a work injury, in a hospital due to a medical error by a doctor or medical devices, or at home due to a malfunction or explosion of an electrical device.
- The increased awareness of people about their rights has led to the refusal to accept the idea that physical harm is just fate, but rather, they began to seek a responsible party to pay compensation.
- The notion that seeking compensation for harm suffered is tantamount to trading one's body and pain has dissipated. While it is true that a person cannot be valued in money, physical harm is compensable in monetary terms.

Given that the principle of full compensation for harm is one of the fundamental principles in civil liability, especially when it comes to compensation for physical harm, modern jurisprudence has elaborated on searching for the various elements and types of physical harm arising from a single accident, working to highlight and distinguish each type from the others, ensuring that the physically harmed person receives full compensation for the damage they suffered. But what is the solution regarding the compensation granted by the state to the victim?

2. The Jurisprudential Stance on the State's Obligation to Compensate and How It Intervenes

Legislatively, the legislator resolved the matter by affirming the state's obligation to compensate the physically harmed individual in case of unknown responsibility for the harm, as stipulated in Article 140 bis 1 of the Civil Code³, despite the jurisprudential debate. Therefore, it is necessary to understand how compensation is made).

2.1 The Jurisprudential Stance on the State's Obligation to Compensate

A jurisprudential debate arose between supporters and opponents. Some supported the idea of the state's obligation to compensate, and others opposed the state's obligation to compensate.

Compensation depends on the existence of the person who caused the harm, as they can be approached for compensation, and their ability to commit to paying compensation. However, the question arises if the responsible party for the harmful act escapes and remains unknown, then who is responsible for compensating the victim? The assumption here is that there is a victim who cannot find anyone to turn to for compensation, as in road accidents, or being injured by a stray bullet fired by an unknown person during a wedding procession, leading to the death of a passerby.

The result of such an assumption is the existence of a harmed person who cannot find anyone to claim compensation from. Does this mean the victim's chance of obtaining their right to compensation vanishes? And is it fair for the victim's right to be lost? What is the basis for differentiating between a victim whose harm's cause is known and another whose responsible party is unknown, resulting in the former obtaining their full right while the latter is deprived without fault? And the responsible party may be insolvent and unable to afford their daily bread, so should the victim's right be disregarded, or should the state play a role in such cases and intervene to give the victim their right to compensation?(Abu Kalloub, 2014, p 22)

Some jurists have called for the state's obligation to intervene and compensate victims of crimes in situations where circumstances prevent them from obtaining compensation, in addition to its duties to provide security and protection for citizens. In its modern concept, compensation has come to be based on the principle of equality before public burdens or on the principle of national solidarity, resulting in the victim feeling a sense of justice.

Despite its ancient concept, jurisprudence is divided between supporters and opponents of the state's intervention in compensation, and we will present the jurists' opinions and their justifications.

2.1.1 The Direction Supporting the State's Obligation to Compensate

It is known that modern life has become dangerous and complex due to the surrounding progress and technological development, increasingly becoming a source of these harms. Most of these harms are physical, and thus, jurisprudence and judicature have strived for this goal, which is to assist the physically harmed and guarantee their right to compensation. Proponents of this direction argue for the state's obligation to intervene to compensate the victims in cases where the victim cannot obtain compensation due to the inability to identify the responsible party for their harm or due to the inability to obtain compensation because of the responsible party's insolvency. Proponents of this view rely on several arguments, among the most important are:

The modern trend towards creating special funds, fed by taxes, the state, or insurance companies, compensates the victim in cases of unknown perpetrators or their insolvency. Often, the perpetrator of the crime is insolvent, and the advanced human society does not allow the innocent victim to bear the burden of the damages incurred without anyone turning to assist and help them overcome the difficulties they face, especially when they need medical treatment and rehabilitation, in addition to loss of income and the physical and psychological pain they suffer from. (Al-Ouji, 2004,p775)

The basis of compensation from the fund does not rely on the principles of civil liability but on considerations of social solidarity or security, and thus, the amounts granted by the fund are not considered true compensation but rather assistance provided by the state as an expression of the duty of social solidarity.

If the responsible party for the damage is known, the fund substitutes the victim in reclaiming from the responsible party, and the victim has the right to claim compensation for damages to property according to civil liability rules, if it is not one of the cases where the fund does not compensate for property damages, or if the compensation received by the victim for material damages is insufficient to fully repair the harm.

- The state has prohibited victims from seeking justice themselves and has taken upon itself the prevention of crime and restoring the balance disrupted by the crime or unlawful act. One of the requirements for restoring this balance is to pay the victim the compensation they would have received from their adversary if known or financially capable.
- In line with the principle of equality enshrined in the constitutions and laws of states, no person should be deprived of their rights due to the inability to identify the responsible party for their harm. Therefore, to uphold this principle, the state must intervene and compensate those victims who cannot identify the responsible party for their harm or are unable to obtain compensation due to insolvency, with the state stepping in for the victim upon identifying or the financial ability of the responsible party to provide the compensation paid.
- State policies support citizens in cases of unemployment, incapacity to work, or loss of a provider, and thus, the state should not leave the victim, their dependents, or their heirs to suffer the consequences of the crime. If they are unable to obtain compensation, the state should extend a helping hand to the victim by granting them full compensation.
- The state imposes certain duties on its citizens, such as reporting crimes and their perpetrators and testifying before the judiciary, and assisting the authority in executing its duties, like aiding in the apprehension of criminals. If a citizen is harmed while performing such duties, it is incumbent upon the state to provide them with compensation.(Abu Kalloub, 2014, p. 22)

- The ideas of civil liability in this regard have changed in two ways: firstly, the increased value of the individual in debt by liability, or the focus on and protection of the individual as a supreme goal of liability, and secondly, the elimination of individualism from debt by liability, meaning that the victim's receipt of compensation does not depend on the existence of an individual responsible.

As for the first aspect, which is the increased value of the individual in civil liability, the goal of civil liability must first and foremost be to protect the human body and entity before protecting their financial status, without allowing fault or the content of the obligation to become an obstacle to compensation.

The individual should receive compensation for any damages to their body or entity without requiring fault on the part of the person causing the harm. The damage alone suffices for the entitled individual, who suffered harm to their body or entity, to receive compensation, as no law or agreement allows harm to an individual's body or entity; merely the assault constitutes a lawful act that obligates compensation.

As for the second aspect, eliminating individualism from debt by liability means that traditional ideas of attributing liability to a specific individual identified by the fault causing the harm no longer suffice in the face of modern society's development. The debtor by liability or the party obliged to compensate is no longer that individual at fault, but the community represented by a collective obligation to compensate.

This is achieved by not restricting the obligation to compensate to an individual debtor, as this individual debtor is the first door we knock on. If that door does not aid in achieving compensation for the victim, we turn to the employer, then to the insurer of liability, or to social insurance or compulsory insurance, and finally to the state as the last responsible for compensating damages that find no obligor for compensation, like war risks and natural disasters. There is a graduated scale of obligation to compensate covering all damages.(Desouki, n.d,p137.)

- The significant increase in common mistakes, as today's economic and industrial complexity does not allow for identifying the wrongdoer among the many involved in the harmful activity. There are systems of consecutive shifts in factories, and the sequence of operations on a single product from the manufacturer to the processor to the transporter to the distributor. If a person is injured in an accident and receives a blood transfusion of the wrong blood type, it may be due to a mistake in packaging or analysis by hospital doctors or the pharmacist. Given the prevalence of mistakes, which are characteristics of industrial development, it became necessary to move away from the fault standard and establish responsibility without the need to identify the responsible individual.

These reasons, emerging and being confirmed with the progress of the industrial society, led to the appearance of other liabilities committed to compensation alongside or instead of the responsible party. Since this century, society has begun to create new systems, or support existing ones - within and outside the framework of civil liability - that ensure the injured party receives compensation for the harm suffered, regardless of the absence of fault or the insolvency of the responsible party.

This approach, imposed by the progress of civilization, was embraced by substantive jurisprudence - with the jurist Savatier at the forefront - to affirm that the modern era is moving towards the socialization of responsibility. That is, the social entity strives by all means to achieve appropriate compensation for damages inflicted on the individual, without being bound by the necessity of fault as dictated by individual responsibility, and without confining the obligation to compensate within the debtor's liability.(Desouki, n.d,p169.)

2.1.1 The Direction Opposing the State's Obligation to Compensate

A portion of jurisprudence denies the state's obligation to compensate victims of crime in general and justifies this with several arguments:

- ✓ The personal liability system of the perpetrator is sufficient to protect the victim, in addition to compensation provided by insurance systems. Examples include the guarantee fund in compulsory insurance law, the social insurance system, and the public assistance system. These systems ensure the victim's right to obtain their compensation.
- ✓ According to this view, establishing the state's responsibility would discriminate between victims, such as victims of natural disasters and deadly diseases. There's no justification for distinguishing victims of terrorist crimes with special provisions, as the social protection network is capable of assisting these victims like any others.
- ✓ The state's obligation to compensate could lead to the neglect of individual responsibility and the personalization of punishment. It might also reduce victims' diligence in preventing crime or cooperating with state agencies in reporting criminals.
- ✓ Imposing additional financial burdens on the state budget allocated for crime prevention could render the state incapable of effectively dealing with crime.
- ✓ Obliging the state to compensate would add a new financial burden to the state, alongside other burdens it carries. Accepting this implies accusing it of failing to maintain security.
- ✓ State intervention in compensation could encourage criminals to flee after committing unlawful acts. On the other hand, it might lead to citizens' carelessness in securing compensation, thereby increasing the number of crimes.

The obligation of the state to compensate finds its source in the constitution, which mandates it to provide compensation to anyone whose personal freedom, privacy of life, or other public freedoms and rights guaranteed by the constitution and other laws are violated. Article 28 of the Constitution - 2020, which includes the constitutional amendment, states, "The state is responsible for the security of persons and property. Additionally, the social solidarity that society is based upon requires the state to compensate those who cannot be compensated for any reason. Moreover, obliging the state to compensate revives the legal principle "No blood shall go in vain in Islam" and the principle "Harm must be removed." (Abu Kalloub, 2014, p. 22)

This is the same approach of the Kuwaiti legislator, as Article 25 of the Kuwaiti constitution stipulates that: "the state guarantees the solidarity of society in bearing the burdens resulting from disasters and public tribulations, and compensating those injured by war damage or as result of performing their military duties".

We say that the state is the heir of those who have no heirs, and just as it collects taxes and fees, it is similarly obligated to compensate those who have no other way to obtain compensation, and this is a necessary intervention to fulfill its duty in achieving social justice.

2.1.2 The Manner in Which Compensation for Bodily Harm Is Made

Compensation for bodily or physical harm is multifaceted; it does not only cover the direct impact of the assault, such as wounds, injuries, permanent or temporary disability, or loss of life, but also includes, in addition, compensation for the harmful financial and non-financial consequences, both current and future, resulting from the assault or injury, such as medical expenses, transportation, medication, surgical operations, doctor's fees, and more. The injured has the right to claim for the certain future effects of the harm due to the injury.

➤ Contents of Compensation for Bodily Harm

Compensation aims to correct the imbalance caused and wasted due to the occurrence of harm by restoring the injured party, at the expense of the responsible party obligated to compensate, to the state they were supposed or expected to be in had the harmful act not occurred. Compensation for bodily harm is intended to provide a financial substitute, mostly for that harm and to repair the damage; compensation is the recompense and counterpart for the damage suffered by the injured.

As harm consists of eliminating the impact of the assault on a right or interest of the injured and compensating them with a monetary amount to alleviate the harm inflicted by the injury. If the function of compensation, as a rule, is to repair the harm, by satisfying the injured and trying to return them to the situation they were in before the harmful act occurred to restore the balance in social relations disrupted by the unlawful act, a physical injury may

have resulted in a disability affecting their general strength and disrupting their social and financial status. For compensation to achieve this function, it must be fair, covering all elements of the harm, be prompt, and have a financial backing capable of fulfilling it to truly repair the damage.(Al-Duwaik, 2016,p28.)

Assault on a person's life, safety of their organs and body - like breaking a leg, cutting off a hand, mutilating the nose, or any injury to body parts or causing a wound, or any harm to the body, which negatively affects the person's earning capacity, or makes them incur expenses for treating the injury, or deprives them of what they enjoyed before the injury - is considered physical harm compensable. Assault on the body means affecting the advantages granted by the right to bodily integrity or the right to life, and it entails financial or non-financial effects. (Al-Amawi, 2012,p35.)

If the victim was injured due to a traffic accident, the entity originally obliged to compensate is the insurance company, considering this field is subject to compulsory insurance. However, victims or their rights holders might not be able to obtain compensation if the perpetrator of the accident remains unknown, is uninsured, or if their coverage is insufficient. Wishing to improve the situation of the victims or their rights holders in cases where they are unable to obtain compensation from the responsible party, their insurer, or any other source, the Algerian legislator established a legal entity endowed with civil personality, the Special Compensation Fund.

This fund is known as the Automobile Guarantee Fund⁴, (Executive Decree No. 04-103, 2004, p. 21) and its purpose is to compensate physically harmed victims or their rights holders in cases where they cannot claim compensation from the insurance company to repair the damage incurred. For the Automobile Guarantee Fund to intervene and pay compensations, certain conditions and procedures must be met and followed.

Article 4 of Executive Decree No. 04-103 states: *"The fund undertakes the task of bearing all or part of the compensations granted to victims of physical accidents or their rights holders, caused by land vehicles with engines in cases where the responsible for the damages remains unknown, or the guarantee is dropped, or their coverage is insufficient, or uninsured and proven to be partially or fully unable to pay."*

- ✓ The accident must be caused by motor vehicles,
- ✓ The person responsible for the accident remains unidentified,
- ✓ The insurance coverage provided is insufficient, although this condition cannot be fulfilled since civil liability is guaranteed by an unspecified amount,
- ✓ Conditions of losing the right to guarantee stipulated in Article 7 of Paragraph 1 of Decree 80/37, "The driver who does not possess a driving license at the time of the accident or has not reached the required age to drive the vehicle at the time of the

accident, the driver who is judged to have driven the vehicle while intoxicated or under the influence of alcohol, drugs, or prohibited sedatives."

- ✓ The responsible party for the accident is uninsured and proven to be partially or fully unable to pay.

Compensation is estimated according to the practices in the Social Security Fund, referring to the legislation in force for compensating work accidents and occupational diseases. The injured is compensated in case of temporary disability to work, if their injury is temporary. Compensation for temporary disability is based on 100% of the victim's job salary or professional income. If the victim is unemployed, the national minimum guaranteed wage is multiplied by the duration of the disability.

In case of permanent or total disability, compensation is calculated by multiplying the index corresponding to the victim's annual income or the national minimum guaranteed wage by the rate of permanent total or partial disability. This includes medical and pharmaceutical expenses. Compensation for aesthetic damage and any damage affecting the victim's profession causing scars or deformities is proven by expertise. Compensation for aesthetic financial damage determined by medical expertise.

If the car accident results in the death of the victim, the rights holders have the right to compensation. It would be better to expand the role assigned to the fund related to the guarantee fund for car accidents, where the victim's right to claim from the fund is limited to road accidents, while there are many cases where a victim exists without anyone to claim from, neither the state nor individuals.

The state also bears the risks of demonstrations and gatherings, as social demands are often expressed through demonstrations, and these demonstrations often result in riots and violence and lead to loss and damage to lives and property. For example, the Kabylie region witnessed many demonstrations and events that began in April 2001. In which several citizens were killed, several properties were destroyed, and the resulting significant damage was caused. The state tried to address them by considering them social dangers and developing special legislation, including presidential Decree No.02-125, which defines the rights of the victims of the events that accompanied the movement in order to complete the national identity. Establishing a victims compensation fund and promoting the rights of victims of the events.

➤ **Distinguishing Compensation under Civil Liability from the State's Obligation to Compensate**

As for obtaining compensation in the special compensation system, it primarily compensates for bodily harm rather than material damages, and the compensation has a lump

sum nature that does not cover all the damages suffered by the victim as in the civil liability system, which includes compensation for loss and missed earnings, or what is called the principle of full compensation.

Moreover, this compensation is automatic and predetermined before the occurrence of bodily harm by legal provision and does not subject to the discretionary power of the judge since it is an undisputed right obtained amicably and administratively to ensure speed and simplicity after reconciliation, investigation, and medical examination procedures for bodily harm.(Qajali, 2014-2015,p12.)

The civil liability system differs from the special compensation system in terms of the purpose each system aims to achieve. The purpose of the liability system is to determine the conditions of compensation on one hand and to identify the responsible person who bears the debt on the other. On the other hand, the purpose of the compensation system, which considers damages merely social notifications borne by society, is to define the scope in which society bears the compensation burden.

If fault is the basis of compensation within civil liability, the basis of compensation under collective protection systems is based on considerations of social solidarity, far removed from the idea of fault.

Conclusion:

Bodily harm is a vital topic that delves into the fabric of society and, considering it touches upon human rights issues, which are often governed by public order, this subject represents the highest right a human possesses, their right to bodily integrity and life against any assault. This right necessitates legal protection.

Therefore, today civil liability - in the view of jurisprudence - has transformed into a collective responsibility where the social entity commits to compensating for damages without being confined by the provisions of individual liability, which has seen a trend towards collapse in modern times. Since the collective entity ultimately bears all these compensations, to protect the society itself from increasing burdens and damages due to the loss of a sense of responsibility among individuals, individual liability should not completely vanish. It must remain alongside collective responsibility as an expression of civil liability's secondary goal, which is to deter mistakes.

It is unjust to compensate victims of certain damages while leaving others without any compensation, as bodily harm remains the same regardless of the cause. Therefore, it is crucial that the Automobile Guarantee Fund's tasks include compensating all victims in the absence of a responsible party and that its role is not limited to a specific group of victims.

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Notes:

¹When the rules of civil liability were formulated in the French Civil Code in 1804, the sole basis for a victim to obtain compensation for harm to their body or property was the civil liability rules pointing to a person responsible for this compensation based on their established or presumed fault. In seeking compensation for the harm suffered, the victim finds no one but the responsible individual defined by the rules of civil liability. If the victim finds no responsible party to bear the compensation, that is their fate, and they alone bear the damages incurred.

Similarly, if the victim fails to prove the fault or attribute it to a specific person, or if the responsible party is insolvent, the society has no relation to compensating these damages, which remain confined to the relationship between the victim and the responsible party. This expresses individual liability, meaning the obligation to compensate is related solely to the responsible individual and does not extend to the social entity. This individual liability was consistent with the living conditions at the beginning of the 19th century. At that time, it was easy to avoid fault, and if fault occurred, it was easy to prove, and its harmful effects were usually limited and bearable by the responsible party. This individual liability was sufficient to protect the victim.

³Article 140 bis 1 of the Penal Code states: "If the responsible for bodily harm is unknown and the victim is not at fault, the state shall cover the compensation for this harm."