

# 欧洲侵权行为法原则

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## European Group on Tort Law Principles of European Tort Law

### TITLE I. Basic Norm

#### Chapter 1. Basic Norm

##### Art. 1:101. Basic norm

(1) A person to whom damage to another is legally attributed is liable to compensate that damage.

(2) Damage may be attributed in particular to the person

- a) whose conduct constituting fault has caused it; or
- b) whose abnormally dangerous activity has caused it; or
- c) whose auxiliary has caused it within the scope of his functions.

### TITLE II. General Conditions of Liability

#### Chapter 2. Damage

##### Art. 2:101. Recoverable damage

Damage requires material or immaterial harm to a legally protected interest.

##### Art. 2:102. Protected interests

(1) The scope of protection of an interest depends on its nature; the higher its value, the precision of its definition and its obviousness, the more extensive is its protection.

(2) Life, bodily or mental integrity, human dignity and liberty enjoy the most extensive protection.

(3) Extensive protection is granted to property rights, including those in intangible property.

## European Group on Tort Law 欧洲侵权行为法原则

### 第 1 篇 基本规范

#### 第 1 章 基本规范

##### 第 1: 101 条 基本规范

(1) 给他人造成的损害由法律上被归责者负赔偿该损害之责任。

(2) 损害特别可以被归责于以下人：

- a) 其构成过错的行为引起损害者；或
- b) 从事异常危险活动的行为引起损害者；或
- c) 其辅助者在其职责范围内引起损害者。

### 第 2 篇 一般责任要件

#### 第 2 章 损害

##### 第 2: 101 条 可回复的损害

损害需为对受保护的 legally 利益的物质上或非物质上的侵害。

##### 第 2: 102 条 受保护的利益

(1) 受保护利益的范围取决于该利益的性质；利益价值越高，定义越精确并越显而易见，受到保护范围就越广泛。

(2) 生命、身体或精神上的完整性，人的尊严和自由享受最广泛的保护。

(3) 广泛的财产权保护，包括那些无体资产。

(4) Protection of pure economic interests or contractual relationships may be more limited in scope. In such cases, due regard must be had especially to the proximity between the actor and the endangered person, or to the fact that the actor is aware of the fact that he will cause damage even though his interests are necessarily valued lower than those of the victim.

(5) The scope of protection may also be affected by the nature of liability, so that an interest may receive more extensive protection against intentional harm than in other cases.

(6) In determining the scope of protection, the interests of the actor, especially in liberty of action and in exercising his rights, as well as public interests also have to be taken into consideration.

#### **Art. 2:103. Legitimacy of damage**

Losses relating to activities or sources which are regarded as illegitimate cannot be recovered.

#### **Art. 2:104. Preventive expenses**

Expenses incurred to prevent threatened damage amount to recoverable damage in so far as reasonably incurred.

#### **Art. 2:105. Proof of damage**

Damage must be proved according to normal procedural standards. The court may estimate the extent of damage where proof of the exact amount would be too difficult or too costly.

### **Chapter 3. Causation**

#### **Section 1. *Conditio sine qua non* and qualifications**

##### **Art. 3:101. *Conditio sine qua non***

An activity or conduct (hereafter: activity) is a cause of the victim's damage if, in the absence of the activity, the damage would not have occurred.

##### **Art. 3:102. Concurrent causes**

In case of multiple activities, where each of them alone would have caused the damage at the same time, each activity is regarded as a cause of the victim's damage.

##### **Art. 3:103. Alternative causes**

(4) 纯经济利益或者契约关系的保护范围可能受到更多的限制。在这种情况下,即使行为人的利益必然被评价为比受害人低,但仍然应当注意到行为人与遭受危险者的特别接近关系,或者行为人知道其行为将造成损害的特别的事实。

(5) 保护范围也可受责任性质的影响,所以,对利益的保护在故意的加害的情况下要比在其他情况更广泛。

(6) 当确定保护范围时,还应考虑行为人的利益,特别是在行动的自由与权利的行使方面的利益,以及公共利益。

#### **第 2: 103 条 损害的合法性**

损失涉及的活动或来源被认定为违法的不能得到回复。

#### **第 2: 104 条 预防性费用**

为预防可能发生的损害的威胁而发生的费用,只要是合理引起的就可以计入可回复的损害。

#### **第 2: 105 条 损害的证明**

损害必须是被依照正规的诉讼程序标准证明的。在证明损害的精确数额过于困难或费用过高时,法院可以评估损害的范围。

### **第 3 章 因果关系**

#### **第 1 节 必要条件与限定性条件**

##### **第 3: 101 条 必要条件**

如果某活动或行为(以下称:活动)不存在,则损害就不会发生,那么该行为就是受害人损害的原因。

##### **第 3: 102 条 竞合的原因**

如果存在多个活动,它们中每一个单独地都可以同时引起损害,则每个活动都可被认定为受害人损害的原因。

##### **第 3: 103 条 可选择的原因**

(1) In case of multiple activities, where each of them alone would have been sufficient to cause the damage, but it remains uncertain which one in fact caused it, each activity is regarded as a cause to the extent corresponding to the likelihood that it may have caused the victim's damage.

(2) If, in case of multiple victims, it remains uncertain whether a particular victim's damage has been caused by an activity, while it is likely that it did not cause the damage of all victims, the activity is regarded as a cause of the damage suffered by all victims in proportion to the likelihood that it may have caused the damage of a particular victim.

### Art. 3:104. Potential causes

(1) If an activity has definitely and irreversibly led the victim to suffer damage, a subsequent activity which alone would have caused the same damage is to be disregarded.

(2) A subsequent activity is nevertheless taken into consideration if it has led to additional or aggravated damage.

(3) If the first activity has caused continuing damage and the subsequent activity later on also would have caused it, both activities are regarded as a cause of that continuing damage from that time on.

### Art. 3:105. Uncertain partial causation

In the case of multiple activities, when it is certain that none of them has caused the entire damage or any determinable part thereof, those that are likely to have [minimally] contributed to the damage are presumed to have caused equal shares thereof.

### Art. 3:106. Uncertain causes within the victim's sphere

The victim has to bear his loss to the extent corresponding to the likelihood that it may have been caused by an activity, occurrence or other circumstance within his own sphere.

## Section 2. Scope of Liability

### Art. 3:201. Scope of Liability

Where an activity is a cause within the meaning of Section 1 of this Chapter, whether and to what extent damage may be attributed to a person depends on factors such as

(1) 在存在多个活动，它们各自单独地都足以引起损害，但不能确定事实上是哪一个引起了损害时，可根据每个活动引起受害人损害的相应范围的可能性认定其为受害人损害的原因。

(2) 在有多数受害人，但不能清楚确定特定受害人的损害是否由某一活动引起时，即使该活动可能没有引起所有损害，也应根据该活动引起特定受害人的损害的可能性，认定其为所有受害人所遭受损害的原因。

### 第 3： 104 条 潜在的原因

(1) 如果某一活动明确地且不可避免地致使受害人遭受损害时，其后发生的另一活动即使可单独引起同样的损害，也不予以考虑。

(2) 如果随后发生的另一活动导致额外损害或加重损害，则仍必须加以考虑。

(3) 如果第一个活动造成持续的损害，随后发生的另一活动也可能造成此损害，则从那个时间开始，这两个活动都被视为引起持续损害的原因。

### 第 3： 105 条 不确定部分的因果关系

在有多多个活动，能够确定其中没有一个活动引起全部损害或任何可确定部分的损害的情况下，则那些（至少）可能引起损害的活动应被推定为引起了相同比例的损害。

### 第 3： 106 条 受害人领域内的不确定原因

受害人必须负担与由受害人领域内的活动、事件或其他情况引起的损害的可能性相对应的损失。

## 第 2 节 责任范围

### 第 3： 201 条 责任范围

当某活动构成本章第 1 节规定的原因时，损害是否可以以及在何种程度上能够被归责于某人，取决于下列因素：

- a) the foreseeability of the damage to a reasonable person at the time of the activity, taking into account in particular the closeness in time or space between the damaging activity and its consequence, or the magnitude of the damage in relation to the normal consequences of such an activity;
- b) the nature and the value of the protected interest (Article 2:102);
- c) the basis of liability (Article 1:101);
- d) the extent of the ordinary risks of life; and
- e) the protective purpose of the rule that has been violated.

### TITLE III. Bases of Liability

#### Chapter 4. Liability based on fault

##### Section 1. Conditions of liability based on fault

###### Art. 4:101. Fault

A person is liable on the basis of fault for intentional or negligent violation of the required standard of conduct.

###### Art. 4:102. Required standard of conduct

(1) The required standard of conduct is that of the reasonable person in the circumstances, and depends, in particular, on the nature and value of the protected interest involved, the dangerousness of the activity, the expertise to be expected of a person carrying it on, the foreseeability of the damage, the relationship of proximity or special reliance between those involved, as well as the availability and the costs of precautionary or alternative methods.

(2) The above standard may be adjusted when due to age, mental or physical disability or due to extraordinary circumstances the person cannot be expected to conform to it.

(3) Rules which prescribe or forbid certain conduct have to be considered when establishing the required standard of conduct.

###### Art. 4:103. Duty to protect others from damage

a) 合理人在活动时对该损害的预见能力，特别要考虑加害活动与其结果在时间或空间上的接近性，或者与这种活动导致的通常结果相比较，该损害的严重性；

b) 受保护利益的性质和价值（第 2：102 条）；

c) 责任基础（第 1：101 条）；

d) 生活中通常风险的程度；以及

e) 被违反的原则的保护目的。

### 第 3 篇 责任的基础

#### 第 4 章 基于过错的责任

##### 第 1 节 基于过错的责任要件

###### 第 4：101 条 过错

任何人基于过错因故意或过失违反必需的行为标准都要负责任。

###### 第 4：102 条 必需的行为标准

(1) 必需的行为标准是指合理人在其所处状况下所应遵守的标准，它特别取决于受保护利益的性质和价值，活动的危险性，行为人被期待的专业知识，损害的可预见性，关系人之间的亲近关系或特殊的依赖关系以及预防措施或者其他替代方法的可获得性及费用。

(2) 以上标准由于年龄、精神上或身体上的能力欠缺，或者由于特殊情况无法期待行为人遵守时，可相应调整。

(3) 当确定必需的行为标准时，应考虑规定或禁止某些行为的规则。

###### 第 4：103 条 保护他人免受损害的义务

A duty to act positively to protect others from damage may exist if law so provides, or if the actor creates or controls a dangerous situation, or when there is a special relationship between parties or when the seriousness of the harm on the one side and the ease of avoiding the damage on the other side point towards such a duty.

### **Section 2. Reversal of the burden of proving fault**

#### **Art. 4:201. Reversal of the burden of proving fault in general**

(1) The burden of proving fault may be reversed in light of the gravity of the danger presented by the activity.

(2) The gravity of the danger is determined according to the seriousness of possible damage in such cases as well as the likelihood that such damage might actually occur.

#### **Art. 4:202. Enterprise Liability**

(1) A person pursuing a lasting enterprise for economic or professional purposes who uses auxiliaries or technical equipment is liable for any harm caused by a defect of such enterprise or of its output unless he proves that he has conformed to the required standard of conduct.

(2) „Defect“ is any deviation from standards that are reasonably to be expected from the enterprise or from its products or services.

### **Chapter 5. Strict liability**

#### **Art. 5:101. Abnormally dangerous activities**

(1) A person who carries on an abnormally dangerous activity is strictly liable for damage characteristic to the risk presented by the activity and resulting from it.

(2) An activity is abnormally dangerous if

a) it creates a foreseeable and highly significant risk of damage even when all due care is exercised in its management and

b) it is not a matter of common usage.

(3) A risk of damage may be significant having regard to the seriousness or the likelihood of the damage.

积极作为保护他人免受损害的义务存在于下列情况：法律有规定，或者行为人导致或控制危险情况，或者当事人之间存在特殊关系，或者一方面危害的严重性，另一方面避免损害的容易性均指向这一义务时。

### **第 2 节 过错证明责任的倒置**

#### **第 4： 201 条 一般的过错证明责任的倒置**

(1) 根据活动导致的危险程度，可将过错证明的责任倒置。

(2) 该危险程度应当由在那种情况下可能发生的损害的严重性以及实际发生的可能性决定。

#### **第 4： 202 条 企业责任**

(1) 为经营长久的经济或专业性企业而使用辅助者或技术设备者，应对其企业或其产品的缺陷引起的任何损害负责，除非他能证明他遵守了必需的行为标准。

(2) “缺陷”是指企业、其产品或服务偏离人们合理地期待其达到的标准。

### **第 5 章 严格责任**

#### **第 5： 101 条 异常危险活动**

(1) 如某一异常危险活动具有导致损害的特有风险并且实际导致了损害，那么实施这一活动者应对这种损害负严格责任。

(2) 某一特定活动在下列情况即为异常危险活动：

a) 即使已尽实施该活动所有管理上应尽的注意，仍然会引起可预见的和极高的风险；

b) 并非一些通常的做法。

(3) 损害风险的高低视损害的严重性和发生的可能性而定。

(4) This Article does not apply to an activity which is specifically subjected to strict liability by any other provision of these Principles or any other national law or international convention.

#### **Art. 5:102. Other strict liabilities**

(1) National laws can provide for further categories of strict liability for dangerous activities even if the activity is not abnormally dangerous.

(2) Unless national law provides otherwise, additional categories of strict liability can be found by analogy to other sources of comparable risk of damage.

### **Chapter 6. Liability for others**

#### **Art. 6:101. Liability for minors or mentally disabled persons**

A person in charge of another who is a minor or subject to mental disability is liable for damage caused by the other unless the person in charge shows that he has conformed to the required standard of conduct in supervision.

#### **Art. 6:102. Liability for auxiliaries**

(1) A person is liable for damage caused by his auxiliaries acting within the scope of their functions provided that they violated the required standard of conduct.

(2) An independent contractor is not regarded as an auxiliary for the purposes of this Article.

### **TITLE IV. Defences**

#### **Chapter 7. Defences in general**

#### **Art. 7:101. Defences based on justifications**

(1) Liability can be excluded if and to the extent that the actor acted legitimately

- a) in defence of his own protected interest against an unlawful attack (self-defence),
- b) under necessity,
- c) because the help of the authorities could not be obtained in time (self-help),
- d) with the consent of the victim, or where the latter has assumed the risk of being harmed, or
- e) by virtue of lawful authority, such as a licence.

(4) 本条不得适用于本原则其他条款、国内法或国际条约明确规定了严格责任的活动。

#### **第 5： 102 条 其他严格责任**

(1) 国内法可以对更多种类的危險活动规定严格责任，即使该活动并非异常危險。

(2) 除非国内法另有规定，可将本规定以类推方式适用于其他同类损害风险，从而增加严格责任的种类。

### **第 6 章 对他人的责任**

#### **第 6： 101 条 对未成年人或精神障碍者的责任**

未成年人或精神障碍者的照管者，对其所照管人引起的损害负责，除非照管者能够证明他在照管中遵守了必需的行为标准。

#### **第 6： 102 条 对辅助者的责任**

(1) 任何人都应对其辅助者在职权范围内违反必需的行为标准造成的损害负责。

(2) 独立承揽人不作为本条的辅助者对待。

### **第 4 篇 抗辩**

#### **第 7 章 一般抗辩**

#### **第 7： 101 条 基于正当化事由的抗辩**

(1) 行为人在以下情况下的正当行为可被免责：

- a) 为保卫其自身的受保护利益反对非法攻击（自卫），
- b) 在不得已的情况下，
- c) 因不能及时获得公权力机关救济（自力救助），
- d) 经受害人承诺，或者受害人接受被损害的风险，或者
- e) 根据合法授权，如许可证。

(2) Whether liability is excluded depends upon the weight of these justifications on the one hand and the conditions of liability on the other.

(3) In extraordinary cases, liability may instead be reduced.

#### **Art. 7:102. Defences against strict liability**

(1) Strict liability can be excluded or reduced if the injury was caused by an unforeseeable and irresistible

a) force of nature (force majeure), or

b) conduct of a third party.

(2) Whether strict liability is excluded or reduced, and if so, to what extent, depends upon the weight of the external influence on the one hand and the scope of liability (Article 3:201) on the other.

(3) When reduced according to paragraph (1)(b), strict liability and any liability of the third party are solidary in accordance with Article 9:101 (1)(b).

### **Chapter 8. Contributory conduct or activity**

#### **Art. 8:101. Contributory conduct or activity of the victim**

(1) Liability can be excluded or reduced to such extent as is considered just having regard to the victim's contributory fault and to any other matters which would be relevant to establish or reduce liability of the victim if he were the tortfeasor.

(2) Where damages are claimed with respect to the death of a person, his conduct or activity excludes or reduces liability according to para. 1.

(3) The contributory conduct or activity of an auxiliary of the victim excludes or reduces the damages recoverable by the latter according to para. 1.

### **TITLE V. Multiple Tortfeasors**

#### **Chapter 9. Multiple Tortfeasors**

#### **Art 9:101 Solidary and several liability: relation between victim and multiple tortfeasors**

(1) Liability is solidary where the whole or a distinct part of the damage suffered by the victim is attributable to two or more persons. Liability is solidary where:

(2) 能否被免责一方面取决于抗辩事由的重要性，另一方面取决于具体责任的条件。

(3) 在特殊情况下，责任可予以减缩。

#### **第 7：102 条 对严格责任的抗辩**

(1) 如损害是由以下不可预见和不可抗拒的原因引起的，则可减免严格责任：

a) 自然力（不可抗力），或

b) 第三者行为

(2) 严格责任是否可被减免，以及可以减到何种程度，一方面取决于外部的影响的重要性，另一方面取决于责任的范围（第 3：201 条）。

(3) 当依据本条(1)款(b)项减缩责任时，严格责任与第三者的其他责任依据第 9：101 条(1)款(b)项为连带责任。

### **第 8 章 有作用的行为或活动**

#### **第 8：101 条 受害人有作用的行为或活动**

(1) 在受害人对过错的作用和如果受害人是侵权人等其他影响确定或者减缩受害人责任的相关范围内，责任可被免除或减缩。

(2) 损害赔偿涉及当事人死亡的，可依据本条(1)款根据该死亡者的行为或活动免除或减缩责任。

(3) 受害人的辅助者对损害的发生发挥作用的行为或活动，依据本条(1)款，得免除或减缩受害人可被回复的赔偿金。

### **第 5 篇 多个侵权行为人**

#### **第 9 章 多个侵权行为人**

#### **第 9：101 条 连带和单独的责任：受害人与多个侵权行为人的关系**

(1) 受害人遭受的全部或可明确区分的部分损害可以归因于两个或两个以上行为人时，行为人负连带责任。下列情况下行为人负连带责任：

a) a person knowingly participates in or instigates or encourages wrongdoing by others which causes damage to the victim; or

b) one person's independent behaviour or activity causes damage to the victim and the same damage is also attributable to another person.

c) a person is responsible for damage caused by an auxiliary in circumstances where the auxiliary is also liable.

(2) Where persons are subject to solidary liability, the victim may claim full compensation from any one or more of them, provided that the victim may not recover more than the full amount of the damage suffered by him.

(3) Damage is the same damage for the purposes of paragraph (1)(b) above when there is no reasonable basis for attributing only part of it to each of a number of persons liable to the victim. For this purpose it is for the person asserting that the damage is not the same to show that it is not. Where there is such a basis, liability is several, that is to say, each person is liable to the victim only for the part of the damage attributable to him.

#### **Art 9:102 Relation between persons subject to solidary liability**

(1) A person subject to solidary liability may recover a contribution from any other person liable to the victim in respect of the same damage. This right is without prejudice to any contract between them determining the allocation of the loss or to any statutory provision or to any right to recover by reason of subrogation [cessio legis] or on the basis of unjust enrichment.

(2) Subject to paragraph (3) of this Article, the amount of the contribution shall be what is considered just in the light of the relative responsibility for the damage of the persons liable, having regard to their respective degrees of fault and to any other matters which are relevant to establish or reduce their liability. A contribution may amount to full indemnification. If it is not possible to determine the relative responsibility of the persons liable they are to be treated as equally responsible.

a) 有意参与，或教唆、怂恿他人实施不法行为，致使受害人遭受损害者；或

b) 一人独立的行为或活动引起受害人的损害，而同一损害也可归因于另一人。

c) 在一个人的辅助者对所引起损害应负责任的情况下，该人对辅助者引起的损害负责任。

(2) 当数人承担连带责任时，只要赔偿总额不超过受害人所遭受损害，受害人可向其中任何一人或多人请求全部赔偿。

(3) 在无合理基础只将损害的一部分归责于对受害人负责的人中的每一个人时，损害与上述(1)款(b)项的损害相同。主张该损害与上述损害不同必须证明这种不同。只要有这种合理基础，责任就是单独的，即每人只对受害人损害中被归责于他的相应部分负责。

#### **第 9：102 条 连带责任人的相互关系**

(1) 承担了连带责任的人，可以向对受害人的同一损害负责的任何一人追偿。这一权利不影响当事人之间决定损失分配的合同，或者任何法律规定，或者因法定代位（法定让与）或基于不当得利的追偿权。

(2) 在遵从本条第(3)款的条件下，该偿还额应根据各责任人对损害的相对责任，以及他们各自的过错程度和其他与确立或减缩其责任有关的事项，公平确定。偿还额可以是全额补偿。如果不能确定责任人的相对责任份额，就应按照负均等责任处理。



(3) Where a person is liable for damage done by an auxiliary under Article 9:101 he is to be treated as bearing the entire share of the responsibility attributable to the auxiliary for the purposes of contribution between him and any tortfeasor other than the auxiliary.

(4) The obligation to make contribution is several, that is to say, the person subject to it is liable only for his apportioned share of responsibility for the damage under this Article; but where it is not possible to enforce a judgment for contribution against one person liable his share is to be reallocated among the other persons liable in proportion to their responsibility.

## TITLE VI. Remedies

### Chapter 10. Damages

#### Section 1. Damages in general

##### Art. 10:101. Nature and purpose of damages

Damages are a money payment to compensate the victim, that is to say, to restore him, so far as money can, to the position he would have been in if the wrong complained of had not been committed. Damages also serve the aim of preventing harm.

##### Art. 10:102. Lump sum or periodical payments

Damages are awarded in a lump sum or as periodical payments as appropriate with particular regard to the interests of the victim.

##### Art. 10:103. Benefits gained through the damaging event

When determining the amount of damages benefits which the injured party gains through the damaging event are to be taken into account unless this cannot be reconciled with the purpose of the benefit.

##### Art. 10:104. Restoration in kind

Instead of damages, restoration in kind can be claimed by the injured party as far as it is possible and not too burdensome to the other party.

#### Section 2. Pecuniary damage

##### Art. 10:201. Nature and determination of pecuniary damage

(3) 根据第 9:101 条对辅助者引起的损害承担责任的人，在他和除他的辅助者之外的其他侵权行为人的责任分配关系上，应当被认为承担其辅助者的全部责任份额。

(4) 偿还债务是分担的单独债务，即偿还债务人按照本条规定仅对损害中其应承担的部分负责；但是，在无法对责任人中的一人执行判决所认定偿还义务时，他的分担部分应在其他责任人之间按他们应负责任的比例进行再分配。

## 第 6 篇 救济方式

### 第 10 章 损害赔偿

#### 第 1 节 一般的损害赔偿

##### 第 10:101 条 损害赔偿的性质和目的

损害赔偿是以货币方式赔偿受害人，即，在货币可能的范围内，使受害人回复到如果伤害未发生的状态。损害赔偿同样要达到预防损害的目的。

##### 第 10:102 条 一次性赔偿及定期支付

损害赔偿，应当根据受害人的利益，适当选择一次性支付总额或定期支付。

##### 第 10:103 条 通过损害事件受益

在决定损害赔偿金额时，必须计入受害方通过损害事件所获得的利益，除非这种做法与受益的目的不一致。

##### 第 10:104 条 恢复原状

只要可能，并且不会给另一方增加当事人过多的负担，受害人有权不要求损害赔偿而要求恢复原状。

#### 第 2 节 财产损害

##### 第 10:201 条 财产损害的性质与确定

Recoverable pecuniary damage is a diminution of the victim's patrimony caused by the damaging event. Such damage is generally determined as concretely as possible but it may be determined abstractly when appropriate, for example by reference to a market value.

#### **Art. 10:202. Personal injury and death**

(1) In the case of personal injury, which includes injury to bodily health and to mental health amounting to a recognised illness, pecuniary damage includes loss of income, impairment of earning capacity (even if unaccompanied by any loss of income) and reasonable expenses, such as the cost of medical care.

(2) In the case of death, persons such as family members whom the deceased maintained or would have maintained if death had not occurred are treated as having suffered recoverable damage to the extent of loss of that support.

#### **Art. 10:203. Loss, destruction and damage of things**

(1) Where a thing is lost, destroyed or damaged, the basic measure of damages is the value of the thing or the diminution in its value and for this purpose it is irrelevant whether the victim intends to replace or repair the thing. However, if the victim has replaced or repaired it (or will do so), he may recover the higher expenditure thereby incurred if it is reasonable to do so.

(2) Damages may also be awarded for loss of use of the thing, including consequential losses such as loss of business.

### **Section 3. Non-pecuniary damage**

#### **Art. 10:301. Non-pecuniary damage**

(1) Considering the scope of its protection (Article 2:102), the violation of an interest may justify compensation of non-pecuniary damage. This is the case in particular where the victim has suffered personal injury; or injury to human dignity, liberty, or other personality rights. Non-pecuniary damage can also be the subject of compensation for persons having a close relationship with a victim suffering a fatal or very serious non-fatal injury.

可回复的财产损害指受害人在损害事件中遭受的财物的减少。这种损害通常应当尽量具体地确定，但在某些适当的情况下也可以抽象地加以确定，例如，参照市场价格。

#### **第 10： 202 条 人身伤害与死亡**

(1) 人身伤害的情况，包括可识别的伤害身体健康和精神健康的所有疾病，财产损害包括收入损失，劳动能力的丧失（即使不伴随任何收入损失）以及合理的开支，例如医疗上的照料等。

(2) 在死亡的情况下，家庭成员等死者生前抚养或如果死亡未发生将抚养的人，可获得与其抚养丧失程度相等的赔偿。

#### **第 10： 203 条 物的丧失、灭失和损坏**

(1) 在物的丧失、灭失或损坏的情况下，损害赔偿的基本尺度是该物的价值或其价值的减少，与受害人是否想要替换或修理该物无关。但是，如果受害人已经（或决定）替换或修理该物，只要是合理进行的，他因此而支出的更高费用就可以获得赔偿。

(2) 损害赔偿同样适用于对物的使用的丧失，包括因这种结果而产生的交易上的损失。

### **第 3 节 非财产损害**

#### **第 10： 301 条 非财产损害**

(1) 考虑利益的保护范围（第 2： 102 条）时，应当对受侵害利益的非财产损害做出赔偿。这尤其适用于受害人遭受人身伤害或人的尊严、自由或其他人格权利的侵害的情况。非财产损害赔偿同样可以适用于与遭受致命或严重非致命伤害的受害人有亲近关系的人。

(2) In general, in the assessment of such damages, all circumstances of the case, including the gravity, duration and consequences of the grievance, have to be taken into account. The degree of the tortfeasor's fault is to be taken into account only where it significantly contributes to the grievance of the victim.

(3) In cases of personal injury, non-pecuniary damage corresponds to the suffering of the victim and the impairment of his bodily or mental health. In assessing damages (including damages for persons having a close relationship to deceased or seriously injured victims) similar sums should be awarded for objectively similar losses.

#### **Section 4. Reduction of damages**

##### **Art. 10:401. Reduction of damages**

In an exceptional case, if in light of the financial situation of the parties full compensation would be an oppressive burden to the defendant, damages may be reduced. In deciding whether to do so, the basis of liability (Article 1:101), the scope of protection of the interest (Article 2:102) and the magnitude of the damage have to be taken into account in particular.

(2) 在确定这种损害赔偿时一般应考虑该案的所有情况，包括该痛苦的严重性、持续时间和后果。侵权行为人的过错程度只有在对造成受害人的痛苦起到了显著作用时才加以考虑。

(3) 在人身伤害的情况下，非财产损害应与受害人的苦痛及其身体或精神健康损伤相符。在确定损害赔偿时（包括因与死亡或受重伤的受害人有亲近关系的人的损害赔偿），客观上相似的损失应给予相似的总额。

#### **第 4 节 损害赔偿的减缩**

##### **第 10: 401 条 损害赔偿的减缩**

在例外的情况下，如果根据当事人的经济状况，全部赔偿将对被告形成难以承受的负担，损害赔偿可以减缩。判断是否减缩损害赔偿，特别要根据责任基础（第 1: 101 条）、该利益的保护范围（第 2: 102 条）和损害的大小。