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Abstract:

The subject matter of this study concerns the compensation (equalization) of the damage suffered by the injured party through the benefits obtained by party (compensatio lucri cum damno). Contrary to a well-established, centuries-old tradition, compensatio lucri cum damno is not a general principle within the framework of private law. It is limited to the compensation of specific classes or types of pecuniary benefits against the damage suffered by the injured party (or a specifically recognized form thereof) based on particular legal norms. These norms typically arise from provisions governing the recourse claims of the debtor of the injured party arising from a legal relationship other than that of damages against the liable party. This assumption may appear quite radical, yet it aligns predominantly with the prevailing positions in legal scholarship and relatively consistent lines of judicial precedents concerning specific classes or types of pecuniary benefits. Notably, these perspectives and judicial lines of reasoning preclude the compensation of the majority of classes or types of pecuniary benefits that have thus far been subject to consideration for compensation. Conversely, a different approach emerges concerning the pecuniary benefits obtained by the injured party that possess a public law character. It appears conceivable to formulate a concept of compensating such benefits. However, the adequacy of such compensation would be contingent upon prior deliberation on distributive justice formulas. This, in turn, necessitates establishing criteria for the acquisition and allocation of resources constituting public funds from which these benefits are derived by the injured party. The results of this reflection should be complemented by

determinations regarding the participation of the injured party and the liable party, both in the creation of public funds and use of the resources accumulated therein.