

Commentary on the Mitigation of Full Compensation of the Courts : A Comparative Study of the Reduction Clauses in the Civil Codes of European Countries and the Art. 218 Civil Code of Taiwan

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Abstract

According to the Art. 218 Civil Code of Taiwan, it grants courts the power to reduce the amount of compensation, if the awarding full compensation would lead to substantial influence on existence ability of the compensation debtors. This reduction clause was adopted from the Art. 44 para. 2 of the Swiss Code of Obligations of 1912. The first contest of this article is using the comparative studies to analyze how different legal systems decide the amount of compensation, after the sum of damages has been confirmed, and explaining the necessity of introducing the reduction clauses into the civil codes. The next part of this article is to analyze the background and the conditions of provisions in the countries, which grant the power to the courts to reduce the amount of compensation. Among them are the Swiss Code of Obligations, the new Civil Code of the Netherlands of 1992 and the provisions in the eastern European and Scandinavian countries. The new academic drafts to integrate the European tort and contract law are also included. In the final part, the conditions of mitigation from the courts according to the Art. 218 Civil Code of Taiwan will be analyzed. This article clarifies object of this provision, distinguishes “the existence of the mitigation reasons” from “the discretion of the courts to exercise this mitigation power” and explains the content of suitable conditions. The

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exclusion of the mitigation power to the courts in the present Art. 218 Civil Code of Taiwan, provided the damage was caused willfully or by gross negligence, is not consistent with the purpose of this provision, i.e. to maintain the existence ability of the compensation debtors. This is relatively strict from the view-point of comparative law. After analyzing the recent cases and opinions of the courts in the past, this article finds on one hand the potential trends of the courts to expand the exclusion in the Art. 218 Civil Code of Taiwan. On the other hand the courts should also prevent a general equitable mitigation, because this will undermine the foundation of the liability.

Keywords: damage, compensation, full compensation, all or nothing principle, reduction clause, mitigation of compensation, reduction of damages, Art. 218 Civil Code of Taiwan, the Swiss Code of Obligations, the Dutch Civil Code, Principles of European Tort Law, draft of the European Contract Code, existence ability of the debtors, equitable circumstances