

Número 20
ISSN 2182-9381



Psiquiatria, Psicologia & Justiça

Indexada na Latindex

Julho de 2021

Psychological Injury Assessment under Civil Law

Bruna de Melo¹, Mariana Mendonça Bettencourt², Máximo Colón³, Carla Henriques^{4,5}
and Ana Matos^{5,6}

¹Departamento de Psiquiatria e Saúde Mental do Centro Hospitalar Tondela-Viseu

²Departamento de Psiquiatria e Saúde Mental, Unidade Local de Saúde do Nordeste

³Delegação do Centro do Instituto Nacional de Medicina Legal e Ciências Forenses

⁴Centre for Mathematics of the University of Coimbra (CMUC)

⁵Polytechnic Institute of Viseu

⁶Research Centre in Digital Services (CISeD)

Author's Note

Bruna de Melo, Departamento de Psiquiatria e Saúde Mental do Centro Hospitalar Tondela-Viseu. Mariana Mendonça Bettencourt, Departamento de Psiquiatria e Saúde Mental, Unidade Local de Saúde do Nordeste. Máximo Colón, Delegação do Centro do Instituto Nacional de Medicina Legal e Ciências Forenses. Carla Henriques, Centre for Mathematics of the University of Coimbra (CMUC) and School of Technology and Management, Polytechnic Institute of Viseu. Ana Matos, Research Centre in Digital Services (CISeD) and School of Technology and Management, Polytechnic Institute of Viseu.

Corresponding Author: Bruna de Melo, Departamento de Psiquiatria e Saúde Mental do Centro Hospitalar Tondela-Viseu, Av. Aquilino Ribeiro – Abraveses 3510-155. Email: brunamlgd@gmail.com.

Abstract

The objective of injury assessment under Civil Law is to fully compensate all injuries arising from the occurrence, both property and non-property (Article 562 of the Civil Code - “whoever is obliged to compensate an injury must reconstitute the situation that would have existed if the event requiring compensation had not occurred”). In the specific field of Forensic Psychiatry, post-traumatic injury assessment is particularly difficult due to the singularity and subjectivity of the clinical aspects linked to this specialty. The aim of this work is to provide a clinical and socio-demographic description of the individuals assessed in the scope of compensation of injury under Civil Law, in the psychological-forensic context, at the INMLCF Center Delegation, as well as in the Medical-Legal Office Dão-Lafões, in the time period between 2015 and the end of 2018. It is also intended to assess the relationship between the established diagnoses and the valuation. Bearing this purpose in mind, a non-systematic review of the literature on the topic was carried out, as well as consultation of the medico-legal processes concerning the 102 individuals assessed. A description of the sample was carried out, and the association between injury valuation and various sociodemographic and clinical variables was subsequently assessed. In 12.7% of the assessments the diagnosis of Post-Traumatic Stress Disorder was made, in 10.8% of Adjustment Disorders and in 6.9% of Other Reactions to Severe Stress Disorders. The group of individuals diagnosed with “post-traumatic stress disorder” had valuations which tended to be higher than the other groups. The majority of the traumatic events were road accidents, in line with the numbers found in the literature. The higher valuation of Post-traumatic Stress Disorder might be explained by the disability its symptoms entail. In future studies, it would be important to make a more extensive analysis of the examined individual’s premorbid state, such as their previous personality or previous psychopathology.

Keywords: forensic psychiatry, psychological injury assessment, Civil Law, forensic psychological assessment, mental injury

Psychological Injury Assessment under Civil Law

Injury assessment is the expert practice that seeks to ascertain the existence of physical and psychological sequelae resulting from a given event in a particular victim, aiming at different purposes according to the legal framework in which it occurs, be it Criminal, Civil or Labor Law. This assessment is carried out by an expert when, in the magistrate's understanding, specific technical and scientific skills are required to resolve the case under consideration. Under Civil Law, the objective of this assessment is the full reparation of property and off-balance sheet damages arising from that event, reconstructing the situation that would have existed if the latter had not occurred, as stipulated in Article 562 of the Civil Code. Whoever is determined responsible for the event has an obligation to compensate it, after the legal liability for the damage has been determined (Manzo, 2015).

According to Fábregas (1999), psychological injury, a specific injury category, is a disturbance of the pre-existing psychological balance, of a pathological and permanent character, limiting the vital functioning of the individual and inaugural in their biography, related in a causal or concausal way to a sudden event unexpected and illicit, liable for compensation. This change can translate into mental disorder again or into worsening of previous mental illness. In Portugal, tests and expertise in the field of forensic psychiatry and psychology, including damage assessment, are carried out by the National Institute of Legal Medicine and Forensic Sciences, IP (INMLCF, IP) or, if it is impossible to guarantee a response in due time, by specialized services of the National Health Service (article 24 of Law no. 45/2004, of 19 August).

The objective of the injury assessment expertise is to ascertain the existence of injury and a causal link between it and the event that is assumed to be at its origin. However, despite the

expert's opinion on this causal relationship between the event and the symptoms observed, the interpretation of the legal principle of causality (relationship between the responsibility of the author and the factual events under consideration) is the sole competence of the judge (Colón, 2017).

Concerning sequelae assessment, in addition to the concept of causation, the concepts of healing - that is, *restitutio ad integrum* of the injury - and consolidation - understood as the stabilization of the injury without returning to the state prior to the event in question - are also important.

The valuation of sequelae must result from a thorough assessment of the current state, of the expected evolution of symptoms, not forgetting the necessary framing of the state prior to the event and the *concauses*. The assessment is governed by the Permanent Disability Assessment Table in Civil Law (Annex II of Decree-Law No. 352/2007, of 23 October), based on *Guide-barème européen d'évaluation médicale des atteintes à l' intégrité physique et psychique*. The assessment of psychological injury should refer to subchapter B) Psychiatry, part of Chapter I - Nervous System and Psychiatry. According to this table, the assessment of psychological injury should only take place at least two years after the event that is assumed to be causal and the resulting degree of disability is valued through the attribution of points *pontos* (Decreto-Lei n.º 352/2007, de 23 de outubro).

Injury valuation is achieved through the application of medical knowledge to the need to compensate for the change in health resulting from the injury suffered, this being one of the most complex processes in the area of civil liability, with increased difficulty when it comes to assessing psychological injury.

This complexity is related and directly influenced by several factors. If, on the one hand, it is due to the nature of the psychological illness, resulting from a complex and dynamic interaction between personality and individual predisposition and exogenous factors, on the other hand, it is also due to the inherent subjectivity of the symptoms and the inadequacy of the biostatistical normality concept in Psychiatry. If the injury itself is difficult to quantify, the psychological injury assessment cannot, for the reasons explained above, admit absolute objectivity criteria; therefore, there is the need to individualize its valuation (Canadas, 1997).

Another major issue in the valuation of psychological damage is related to the difficulty of establishing a causal link. For these reasons, it is essential to assess the previous state, what the individual was like before the event: previous personality; mechanisms of psychological adaptation; personal and biological vulnerabilities; previous state of physical health; disabilities already existing; history of psychological disorders in the past; life project; and how the event changed them. It is also extremely important to assess complications after the event - causes - that may contribute to the psychological damage observed.

The consolidation of mental illness itself can be difficult to predict. There are several clinical-psychological conditions with gradual evolution of their symptoms and resolution, and, at the date of the assessment, they may not have reached consolidation (Canadas, 1997). Certain life events generate intense stress and negative emotions. It is known that certain living circumstances can be extremely serious and produce very deleterious effects on the functioning of the individual, perpetuating in time even beyond this event. These, given their characteristics and consequences, are considered traumatic events.

Despite this fact, not all people exposed to traumatic events develop psychopathological conditions. This variability is due to a series of risk factors and protective factors potentially

involved, related to the characteristics of the event itself and its context, as well as to certain traits of the individual.

Thus, a traumatic event may result in a psychopathology that fits into two large groups: organic brain syndromes, resulting from brain injury, and functional conditions, originated from the interaction between the victim's pre-morbid personality and the environment, with the contribution of coping mechanisms and stress related to the traumatic event (Serra, 2003). The Permanent Disability Assessment Table in Civil Law (Annex II of Decree-Law No. 352/2007, of 23 October) includes, in Chapter X - Psychiatry, the categories Persistent Mood Disorder, Post-traumatic Stress Disorder, other mental disorders and Mental disorders resulting from organic brain injury, referring, in this case, the valuation to Chapter III - Neurology. The sequelae of a psycho-organic character, such as post-traumatic syndrome, language or memory disorders and other minor cognitive problems, are included in this category (Colón, 2017).

Functional psychopathological conditions that can be classified in psychological damage include anxiety disorders (agoraphobia, specific phobia, acute stress disorder, panic attacks), post-traumatic stress disorder, adjustment disorders (with a predominance of depressive, anxious symptoms, a combination of the two, with changes in behavior, associated with changes in emotions) or depressive disorders (Manzo, 2015). However, there is some discrepancy between these conditions, verified in clinical practice and described in the classifications and categories shown in the Table below, mainly with regard to the category of persistent mood disorders, hardly attributable exclusively to a traumatic event. Equally or more important than establishing a diagnosis is the assessment of the degree of disability that the present symptoms condition in relation to previous functional capacity. In fact, the degree of repercussion on personal, social and professional life conditions the valuation attributed, according to the tables in force.

There are several events recognized in the literature as potentially traumatic, with road accidents, occupational accidents, those related to crimes against sexual self-determination, domestic violence, exposure to violent deaths, natural disasters and war situations being highlighted (Serra, 2003).

In the scarce literature referring to psychological damage assessment in Portugal, road accidents appear to be the main type of event identified, which can be understood within road accident numbers. According to the annual road accident report, in 2018 there were 34235 road traffic accidents with victims in Portugal (including deaths and injuries), resulting in 508 deaths, 2141 seriously injuries and 41356 minor injuries (ANSR, 2018).

Castro and Maia (2010) evaluated 180 expert reports relating to the assessment of psychological injury in all areas of law. In 58% of cases, the event that gave rise to the assessment was a road accident, and in 13.4% it was a work accident. The same authors found an incidence of psychopathology of about 97% in the individuals assessed in the context of civil damage, in the sample used, with the most prevalent diagnosis being that of Adaptation Disorder (27%).

In a study carried out in Argentina with data collected over six years, road accidents were the most frequent cause of Injury Assessment in Civil Law. In 554 assessments of psychological injury after a road accident, the psychiatric pathology related to it was diagnosed in 31% of cases. Another of the most common reasons for requesting expertise in this area was poor medical practice, with 64% of individuals assessed showing psychiatric sequelae (Castelão, 2011).

Objetives

The authors intend to describe and analyze the sociodemographic and clinical characteristics of a sample of individuals assessed in terms of compensation of injury under Civil Law at the Center Delegation of the National Institute of Legal Medicine and Forensic Sciences and in the Medical-Legal Office of Dão-Lafões, characterizing the typology of the event, assessing the time elapsed between the accident and the assessment, which psychiatric diagnoses were found and the relationship between them and the injury valuation established by the expert. It is also intended to assess whether there are significant differences in the injury valuation in the two sites.

Método

In order to develop a descriptive study, the complementary psychiatric expert reports were consulted in the scope of compensation of injury under Civil Law, carried out between January 2015 and December 2018 at the Center Delegation of the National Institute of Legal Medicine and Forensic Sciences (INMLCF) and the Medical-Legal Office of Dão-Lafões. From these reports, information was collected regarding sex, age, marital status, employment status, the type of event that triggered the assessment process, the diagnosis established by the expert, if any, and the value attributed.

Statistical analysis of the data was conducted using IBM SPSS Statistics software (version 26). Percentages are used to describe qualitative variables and means, medians and standard deviations (*SD*) for quantitative variables. In the study of the association between valuation of the injury and sociodemographic and clinical variables, all cases with the diagnosis “No disease” were excluded. This study was carried out in two stages. First, the valuation of the injury was related individually to each of the variables under study. Mann-Whitney and Kruskal-Wallis tests were used to investigate the relation between injury valuation and qualitative

variables and Pearson and Spearman's correlation coefficients in the study of the relation with quantitative variables. In this analysis, the assessment of the association of injury valuation with each variable ignores all the others. Thus, in a second phase, using multiple regression analysis, it was possible to assess the effect of a given variable, assuming that all the others were fixed. In other words, with the regression analysis, the effect of one variable was investigated, adjusting it to the effect of others. The significance of a result was established at $p < .05$.

A non-systematic bibliographic review was carried out on the Medline/Pubmed databases using the keywords: “assessment of psychological injury”, “civil law”, “psychiatric expertise”. Additional references were also included, from articles and books in English, Portuguese, and Spanish, relevant to the present study.

Results

In the aforementioned period, 87 psychiatric-forensic assessments were carried out in the scope of the compensation of injury in Civil Law at the INMLCF Center Delegation and 15 at the Medical-Legal Office of Dão-Lafões. Of the individuals submitted to these assessments, 53.9% were male. The average age was 49.14 years ($SD = 15.42$), with the majority being married (62.7%), 17.6% single, 12.7% divorced, 3.9% in common-law marriage, and 2.9% widowed. Regarding their professional situation, we noticed that 75.2% of the individuals were unemployed, 20.8% were retired, 4.0% were students and none of the individuals were, at the time of the assessment, employed.

With regard to the nosological conditions established in this assessment, the majority (27.5%) fit in the diagnostic group “Other conditions not due to trauma”, 17.6% in the group “Personality disorder and behaviors due to illness, brain injury or dysfunction”, 12.7% were coded as “Post-Traumatic Stress Disorder”, 10.8% as “Adaptation Disorders” and only 6.9% as

“Other reactions to severe stress”. It is also added that a high percentage of cases (24.5%) did not give rise to the attribution of any clinical diagnosis, being attributed the category of “No disease”. Excluding the “No disease” cases, the remaining diagnostic groups were compared (Table 1), with significant differences found in the final valuation attributed to the individual ($p < .001$). The group of “post-traumatic stress disorder” showed significantly higher values (after Bonferroni's adjustment) than groups “Other conditions not resulting from trauma” ($p < .001$), “Adaptation disorders” ($p = .036$) and “Personality disorders and behaviors due to brain disease, injury or dysfunction” ($p = .04$). The comparison with the group “Other reactions to severe stress” provided a value of $p = .106$ (with Bonferroni adjustment); thus, it was not possible to establish significance. However, the regression analysis, described below, made it possible to identify significant differences between these two groups as well.

In addition, no significant association was found between the final valuation and the sociodemographic variables: gender, marital status, age and professional situation.

Table 1

Descriptive Statistics of Injury Valuation by Diagnosis Group

	<i>M</i>	<i>DP</i>	Median
Other non-traumatic conditions	4.61	4.08	4.50
Personality and behavioral disorder due to brain disease, injury or dysfunction	7.17	3.19	8.00
Post-traumatic stress disorder	12.00	2.80	13.00
Adaptation disorders	6.64	3.32	7.00
Other reactions to severe stress	6.43	6.50	7.00

Seventy-four percent of the events that gave rise to a request for assessment of psychological injury consisted of road accidents, and 12.7% of pedestrian accidents, with no significant differences between these two types of traumatic event in the final valuation attributed.

Between the event and the evaluation, a mean of 3.63 years elapsed ($SD = 1.83$), with a minimum of seven months and a maximum of 12 years. No significant association was found between the time elapsed until the survey and the valuation attributed in this assessment.

Regarding the place where the evaluation took place, there are 25 cases of “No disease” diagnosis among those assessed at the INMLCF Center Delegation, but there is no case with this diagnosis at the Medical-Legal Office of Dão-Lafões. Excluding individuals in whom psychiatric illness was not diagnosed, no significant differences in valuations were found in the two sites.

Table 2 resumes the model estimated through regression analysis. For the variable referring to the diagnosis, the reference category is “Post-traumatic stress disorder”. The model estimates the effect of the type of diagnosis on injury valuation, after adjusting for gender, age and location, and provides evidence that injury valuation tends to be higher in the “Post-traumatic stress disorder”, compared to all other diagnoses.

Table 2

Estimated Regression Model to Explain the Variation in Injury Valuation

	Coefficient	Standard Error	<i>p</i>
Age	-0.053	0.030	.080
Female Gender	-1.303	0.905	.154
Place- Center Delegation of the INMLCF	-1.251	1.182	.294
Other non-traumatic conditions	-7.049	1.285	.000*
Personality and behavioral disorders due to brain disease, injury or dysfunction	-4.368	1.441	.003*
Adaptation disorders	-4.170	1.671	.015*
Other reactions to severe stress	-5.472	1.814	.004*

Note. Dependent variable: injury valuation established by the expert

* statistically significant effect

Discussion and Conclusions

The analysis of the demographic characteristics of the population assessed over the four years shows that unemployment is a predominant characteristic, something that has not been valued in the literature found and which can be explained by the permanent functional deficit of the associated physical and/or psychological integrity. It would be important to assess in the group of people with “No illness” the existence or not of physical sequelae, trying to understand the reasons for unemployment, as well as trying to figure out if this work situation is prior to or just following the event.

Corroborating the results presented in the literature, it was also found in this sample that most of the traumatic events that result in psychological injury requiring assessment under Civil Law correspond to road accidents, once again highlighting the expressiveness of the latter and the need to provide assistance to these individuals, namely aiming at an intervention considering the development of disabling post-traumatic conditions such as Post-Traumatic Stress Disorder.

According to the injury valuation tables in force, the psychological injury assessment must take place after at least two years after the event that gave rise to it. The time elapsed until the assessment varied between 7 months and 12 years, with a mean of 3.63 years, which is less than that found in other national studies (Castro & Maia, 2010).

Regarding the diagnoses, being made according to the clinical conditions contemplated in the valuation tables currently in force, they have inherent limitations considering their outdated and decontextualization in relation to current clinical practice. In addition, they add to the difficulties associated with the subjectivity of the assessor and the variability of psychopathology

between individuals, and hence the difficulty of establishing classification criteria and diagnostic certainties.

Although there were no significant differences in valuation between the two assessment sites, we must consider the difference in the number of cases between the two sites as an important limitation of this study.

In spite of this, and due to the discussed difficulty and subjectivity of psychological injury assessments, a future comparison using larger numbers of assessments and assessing in a more in-depth way how the valuation is carried out seems important.

It will be able to guide the expertise practice in the sense of building guiding norms that go beyond the subjectivity of the valuation tables, allowing for greater equity for individuals assessed by different experts.

Since the assessment of psychological damage in Civil Law is contextualized in an event of a potentially traumatic nature, although the prevalence of frameworks concerning diagnoses not due to trauma is higher, these are given less value than the post-traumatic ones in which it is possible to establish causality with the event. Even so, the other frameworks can give rise to an appreciation that can be understood in a context of worsening of a previous psychopathological state.

Post-traumatic stress disorder, found in 12.7% of cases, higher than the values found in the literature, is associated with greater valuation, which can be understood given its characteristics. Among others, avoidance, a common symptom in this situation, can limit the individual in the various areas of their life and the symptoms of sympathetic activation can be paralyzing and induce a lot of suffering. However, there are other anxious conditions of a post-traumatic nature that, not fulfilling criteria for Post-traumatic stress disorder, can also lead to

significant disability and this is not reflected in our analysis, which may be due to immense factors that should be considered in future studies.

The comparison between assessments carried out at two different sites could benefit from a greater number of assessments carried out at the Medical-Legal Office of Dão-Lafões, given that, considering its nature, it has a much lower number of expertise than the Center Delegation, in the same period of time.

In future studies, it would be important to make a more extensive analysis of the examined individual's premorbid state, such as their previous personality or previous psychopathology.

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