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# THE CRIME OF BODILY HARM AND THE IMPLICATIONS THEREOF IN THE MENTAL AND EMOTIONAL INTEGRITY OF THE VICTIM

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## ***Abstract***

*The traumatic injuries suffered by victims of bodily harm offences are analysed, from a legal perspective, as a component of the constitutive elements of the offence, namely the immediate consequence. These injuries overlap with the consequences expressly provided for in the criminalisation text, specifically Article 194(1) of the Criminal Code. Thus, the assessment focuses on the extent to which the victim's physical (bodily) integrity has been affected, for the purpose of determining the correct legal classification of the act committed. This allows for an analysis of how the victim's physical (bodily) integrity is affected, for the purpose of legally classifying the specific act committed.*

*How is mental integrity affected by physical trauma assessed from a legal perspective?*

*It is unanimously accepted in the legal doctrine. It is unanimously accepted in the legal sphere and regulated by constitutional and branch rules that there is a symbiosis between the physical and mental integrity of the human being.*

*Regarding the close and inseparable link between the two types of integrity, in light of the provisions of Article 3 of the Charter of Fundamental Rights of the European Union, the renowned professor and researcher at the European Academy of Bolzano, Gabriel N. Toggenburg, stated that "human beings are like*

*ancient amphorae. Each one is unique. Each must be treated with care. Violence leaves permanent marks and causes irreparable damage. The internal and external dimensions of an amphora cannot be isolated from each other. This is why Article 3 of the Charter of Fundamental Rights of the European Union protects not only the physical but also the 'mental integrity' of all human beings."*<sup>1</sup>

*The analysis of the trauma suffered by the victim, both physically and especially psychologically and emotionally, must be carried out in order to establish the damage, using civil law rules and not criminal law rules. The choice of specific criteria for assessing how mental and emotional integrity has been affected, and the means of evidence that can support the existence, severity and duration of the damage to the victim's psycho-emotional balance, is key to the fair resolution of this type of criminal case.*

**Key words:** *bodily harm, damage, mental integrity, emotional integrity.*

## INTRODUCTION

Crimes against bodily integrity have always been a major focus of interest for criminal law specialists, as they occur more frequently than other types of crimes, protect particularly important social relationships, the violation of which through criminal acts has a significant impact on society, and their consequences, which are most of the time objectively measurable traumatic injuries, require an interdisciplinary analysis combining civil law rules, always with the support of auxiliary sciences.

Some of the most complex offences in this chapter are those of bodily harm committed either intentionally or through negligence. The varied picture of consequences involving significant damage to physical integrity, with effects on mental integrity, the need to understand the differences between criminal aspects, which concern the legal classification of the act, and civil aspects, which concern the damage suffered by the victim, make these acts real challenges for practitioners.

Although criminal law does not address it, mental integrity is protected both by the Constitution, alongside physical integrity, and by the Civil Code, which, in the category of personality rights, includes not only the right to life, health and dignity, but also the right to physical and mental integrity<sup>2</sup>.

In addition to Article 22 of the fundamental law, according to which the right to life and the right to physical and mental integrity of the person are guaranteed, the Constitutional Court emphasises that *the right to mental integrity is protected and considered to be of constitutional value, as humans are*

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<sup>1</sup> Gabriel N. Toggenburg, The<sup>3rd</sup> of all EU rights: Integrity and how the Charter contributes/The European Academy of Bozen/Bolzano (EURAC) - <https://www.eurac.edu/en/blogs/eureka/the-3rd-of-all-eu-r-rights-integrity-and-how-the-charter-contributes>

<sup>2</sup> Art. 58 Civil Code of Romania

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*conceived, from a legal point of view, as a complex of elements in which the mental and physical cannot be separated*<sup>3</sup>.

This legislative protection is also reflected in relevant case law. Thus, the Romanian Supreme Court emphasises that: "Physical and mental pain are the most frequent, common and natural, but at the same time the most serious of the negative consequences of bodily harm. *What is compensated is physical pain*, i.e. the unpleasant sensory experience and mental suffering resulting from trauma, manifested by depression, anxiety, sadness and fear. Compensation for physical and mental suffering is referred to as *pretium doloris*."

Any painful physical phenomenon is perceived through the nervous system, so that, objectively speaking, physical pain is accompanied by mental suffering.<sup>4</sup>

Psychological integrity, which implies optimal functioning of the human psychological system with cognitive, volitional and mnemonic functions, within the appropriate parameters, thus not affecting the individual's capacity for socio-professional integration, should be analysed together with emotional integrity, which encompasses the affective side, reflecting the relationship of concordance or discordance between the dynamics of internal events (one's own states of necessity, motivation) and the dynamics of external events (stimuli, objective situations and their properties) (*C. Vasile, 2015, p.53*).

Psycho-emotional integrity is affected by traumatic events involving threats to life, physical integrity or close encounters with violence and death (*N. Turliuc, C. Mairean, 2014, p.19*).

As the offence of bodily harm involves the presence of traumatic injuries of a serious nature, which cause significant and long-lasting morphological and functional disorders, it is clear that the victim's psycho-emotional integrity is also severely affected.

Proving the existence of psychological trauma, in addition to physical trauma, with an impact on psycho-emotional integrity, proves to be a challenge for the legal world.

Practice in this field highlights the existence of major confusion in the process of assessing trauma. Thus, we find that traumatic injuries are assessed using criminal law criteria, including for determining the damage suffered by the victim.

Since, as shown above, criminal law does not specifically ensure the protection of mental integrity, it is clear that psycho-emotional trauma is difficult to incorporate into the legal reasoning underlying the determination of compensation. Moreover, there is a tendency to consider psychological trauma as too difficult to objectify and thus difficult to take into account, which significantly

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<sup>3</sup> Decision of the Constitutional Court of Romania No. 503/2009

<sup>4</sup> Decision of the High Court of Cassation and Justice No. 824/2016.

diminishes its contribution to the process of determining the damage suffered by the victim.

This confusion has increased the degree of subjectivity in assessing damages and, implicitly, the possibility of creating inconsistent practices with significant differences between decisions. Against this backdrop, pressure has emerged, including at the legislative level, to use scales that appear useful for resolving this type of case. Thus, the legal view of the lives of victims of such serious acts tends to treat the human personality as an object that can be measured or weighed, ignoring the scientific reality that attributes uniqueness and originality to the human personality.

### **I. THE WAY IN WHICH PSYCHO-EMOTIONAL INTEGRITY IS AFFECTED.**

*From a psychological point of view, trauma or psychological injury is an intense emotional response to an event that exceeds the individual's ability to process it, leading to persistent disturbances in a person's functioning (e.g. post-traumatic stress, anxiety, depression, somatic disorders).*

But how can we assess psychological trauma from a legal perspective?

Understanding the reality of psychological injuries requires an understanding of the reality of psychological activities, processes and structures (P. Riedesse, G. Fischer, 2007, p. 25).

Unlike the mechanism of a biological function, which is single-level and performs the respective function automatically, the mechanism of a psychological function has a multi-level organisation in which the state of a specific psychological function will depend on the state of the other components of the system. Damage to one component will disrupt the balance of the entire system (C. Vasile, 2015, p.11).

We can thus see how complex the issue of psychological trauma is and how important it is to understand its impact on the victim's life. This impact, in accordance with the principle of proportionality, should take into account both the severity and the duration of the impact on the victim's life.

Without turning this legal material into a psychological analysis of trauma, in order to highlight the severity and duration of the trauma in the victim's life, it is imperative to understand the complexity of the victim's psycho-emotional disorder in order to establish the damage suffered, taking into account both the initial traumatic event and other subsequent events that are directly causally related to it.

Since the physical injuries that trigger psycho-emotional trauma are followed by other traumatic episodes such as periods of hospitalisation involving painful medical procedures, a possible severe diagnosis, the judicial process involving interrogations, often lacking empathy and sometimes aggressive, which also represent a continuous recollection of the harmful event, manifestations of distrust in the victim's statements regarding the event and the pain suffered, the

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diminution or loss of social roles, ely, victims of these types of crimes experience cascading psychological trauma that leads to cumulative traumatisatation, defined by Masud Khan (1963) as a *succession of traumatic events whose consequences remain at a deep, unconscious level, weakening the ego's forces of recovery. A severe trauma occurs that affects the personality throughout its entire system.*<sup>5</sup>

Furthermore, it is useful to know that, during the action of a single risk factor affecting psycho-emotional balance (the initial traumatic event), the possibility of developmental disorders occurring is rather low, but with a second factor it increases approximately fourfold (*P. Riedesse, G. Fischer, 2007, p.162*).

Thus, although apparently difficult to objectify, psychological injuries can be understood, proven and implicitly introduced into the legal syllogism of compensation.

As we have highlighted, psychological injuries are triggered by traumatic injuries that are the subject of criminal proceedings concerning bodily harm, injuries that have the following consequences from a criminal law perspective:

- a) disability;
- b) traumatic injuries or damage to a person's health, which required more than 90 days of medical care to heal;
- c) serious and permanent aesthetic damage;
- d) abortion;
- e) endangering a person's life, shall be punished with imprisonment from 2 to 7 years.

However, it should be emphasised that the concepts found in the criminal law provision criminalising the act are not also found in civil law, as the aspects considered by the criminal legislator do not correspond to the needs of civil law in terms of understanding the complexity of the trauma in order to compensate the victim. From this point of view, it is important to understand that the issue of mental and emotional integrity should also be related to those criteria specific to civil law that analyse trauma as a whole.

Thus, the concept of *disability*, found in criminal law, defines a major and permanent impairment of a bodily function (*D. Dermengiu et al., 2015, p.11*). Since this forensic consequence of criminal law cannot be classified in degrees or percentages (*D. Dermengiu et al., 2015, p.11*) , it does not reveal what needs to be known in terms of civil law, namely the level of functional impairment or degree of disability, aspects that can give an inclusive dimension to psychological trauma, as they highlight the effort made by the victim to carry out daily activities

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<sup>5</sup> D. Vasile, *Psychological Trauma and Its Consequences*. Work funded by the European Union Justice Programme, PROJECT Strengthening multidisciplinary cooperation to ensure an effective referral, assistance, rights protection for victims of human trafficking JUST/2015/JACC/AG/VICT/9221 TRAINING 23-24 FEBRUARY 2018 BUCHAREST. <http://ec.justice-project.prerefugiu.org/wp-content/uploads/2018/02/Trauma-psihiica-Diana-Vasile.pdf>

and, equally, the pain experienced by the victim both in the medical rehabilitation process and in current activities.

Even *days of medical care* do not clarify, in the interest of civil law, the degree of functional impairment or the manner of healing, whether complete or incomplete, adequate or defective, of the traumatic injury, so that they cannot constitute elements of legal analysis based on which physical or psychological trauma can be highlighted.

The legal criterion found in civil law, which represents the solution to understanding the complex issues surrounding the healing process of an injury, is *adaptive incapacity* ( ). This represents a post-traumatic deficiency generated by various morphological and functional disorders and expresses the limits of the person in their effort to adapt to the natural and social environment. It is expressed as a percentage within a system quantified from normal adaptive capacity. Adaptive incapacity correlates with functional deficiency.

The aspect that carries weight, from a legal point of view, in assessing this post-traumatic consequence is the increased effort that the injured person must make to adapt to the natural and social environment.

Even if there is no impairment of working capacity that would imply an adaptive incapacity of more than 50%, the increased efforts that the victim must make to achieve the same performance in family, professional, social, etc. terms involve additional care and, implicitly, additional expenses, which must be assessed by the judge for the purpose of compensation.

The injured party is entitled to compensation equivalent to the additional effort they must make in order to achieve the same income, either by working longer hours or by increasing the intensity of their work, which is likely to accelerate the process of fatigue and physical exhaustion<sup>6</sup>.

As regards *serious and permanent aesthetic damage*, this is a forensic term in criminal law which, by its name, creates confusion with damage in civil law, but does not overlap with it.

Thus, from a civil law perspective, aesthetic damage can be temporary or permanent, serious or less serious. The disharmonious appearance created by the traumatic injury does not necessarily have to be severe in order to produce undesirable effects in the victim's life, including in terms of the existence of significant psychological trauma that constitutes damage that must be recognised and compensated in accordance with civil law.

The individual's perception of disfigurement or scarring is the cause of psychological suffering. The victim is aware of the disfigurement and its consequences, the compassion or disgust of those around them, possible changes in their usual living conditions, professional status, and the reduction or even suppression of opportunities for self-affirmation (*D. Dermengiu et al., 2015, p.15*).

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<sup>6</sup> Supreme Court Criminal Division, Decision No. 2345/1974

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Aesthetic damage particularly affects certain areas of social life, with the consequences being felt mainly in family and professional life, without losing sight of the fact that any person is affected psycho-emotionally by the awareness of unsightly wounds or scars (*C. Jugustru, 2013*).

*Endangering life* as a criminal law term refers to a medical situation in which traumatic injuries or their immediate complications lead to death in the absence of emergency medical treatment.

With regard to civil law's interest in recognising and compensating bodily injury, the concept of endangering life does not meet the needs of this branch of law, as it does not reveal aspects of functional impairment of the body analysed from the perspective of the legal principle of proportionality, namely the severity and duration of the impairment of life. Many severe traumas can heal completely and properly within less than a year, while other traumas, which are apparently not so serious, can cause major functional deficits, thus falling into the category of permanent bodily injury, generating significant and long-lasting psychological trauma, which represents severe stress.

In a psychological assessment report (*A.S. Ionica, 2025*) of a person injured in a road accident, in the conclusions section, the specialist notes:

“The psychological assessment reveals the presence of chronic post-traumatic stress disorder (PTSD), associated with severe depressive disorder, with reactive elements, developed following a major traumatic event. The person shows a markedly depressive emotional state, characterised by persistent sadness, apathy, social withdrawal, a feeling of emptiness inside and an accentuated perception of injustice. There is a decrease in vital motivation, a diminution of the instinct for self-preservation and a tendency towards emotional withdrawal.”

Although the tendency in the legal field is to place psychological trauma on the back burner when determining the damage suffered by the victim of a bodily injury offence, amidst the apparent lack of objectivity, scientific reality shows us that psycho-emotional trauma can be proven and that the links between physical and psychological trauma are more than evident, with a permanent interdependence between them.

Studies on the consequences of traumatic stress show that, in terms of physical health, people experience poor health, sleep disorders, cardiovascular, immune and gastrointestinal disorders, and an increased risk of developing chronic diseases (*M. N. Turliuc, C. Mairean, 2014, p. 31*) . In terms of mental health, people show significantly higher rates of depression and negative emotional mood.

Since, for the purpose of resolving legal issues relating to damages, according to the established case law of the ECHR (*Tolstoy Miloslavsky v. the United Kingdom* and all cases in which violations of the rights provided for in the European Convention on Human Rights have been found), non-pecuniary damage is determined in relation to the negative consequences suffered by the victim, the

importance of the values infringed, the extent to which those values were infringed, the intensity with which the consequences of the injury were perceived, and the extent to which the victim's family, professional and social situation was affected.<sup>7</sup> it is mandatory that the entire traumatic picture, represented by both physical and psychological and emotional trauma, be subject to a thorough analysis by the judge so that the amount of damages awarded is reasonable and fully equitable.

### CONCLUSION

*The offence of bodily harm, resulting in significant traumatic injuries whose consequences, as provided for in Article 194(1) of the Criminal Code, highlight the seriousness of the act and implicitly the significant impact on the physical, mental and emotional integrity of the victim, requires a complex analysis. (1) of the Criminal Code, highlights the seriousness of the act and, implicitly, the significant impact on the physical, mental and emotional integrity of the victim, requires a complex analysis for both the criminal and civil proceedings.*

*Each issue must be resolved using specific tools so that the outcome is consistent with the requirements of a fair trial. In this regard, it is mandatory that the court's legal reasoning include the correct criteria for assessing traumatic injuries and their consequences. Thus, for legal classification, the forensic criteria of criminal law must be used, namely those provided for in Article 194(1) of the Criminal Code, and for determining the damage involving both physical and mental and emotional harm, civil criteria such as functional deficit, adaptive incapacity, working capacity or disability must be used.*

*The way in which the trauma suffered by the victim is understood by the judge and compensated as such determines the victim's psychological and emotional healing process, as well as the fairness of the act of justice.*

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