From Medical Harm to Constitutional Remedy: Reassessing Compensable Damage in Algeria after the 2020 Constitutional Revision

من الضرر الطبي إلى الجبر الدستوري: الضرر الموجب للتعويض في المسؤولية الطبية في ضوء المراجعة الدستورية الجزائرية لسنة 2020

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Abstract:

The 2020 constitutional revision offers Algeria a renewed framework for protecting life, bodily integrity, dignity and health. This article explores how that framework shapes the legal treatment of compensable medical damage without replacing the ordinary requirements of civil liability. It focuses on material and moral damage, certain future damage and the loss of a real and serious chance. Special attention is given to proof, medical expertise, causation and judicial assessment. The study concludes that the constitutional revision strengthens the interpretative protection of patients but does not create an autonomous constitutional regime of medical liability.

Keywords: Medical liability; Compensable damage; Physical integrity; Constitutional protection; Loss of chance.

ملخص:

تتناول هذه الدراسة الضرر الموجب للتعويض في المسؤولية الطبية في الجزائر في ضوء المراجعة الدستورية لسنة 2020. وتركز على حماية الحياة وسلامة الشخص وكرامته والحق في الصحة، مع بيان أثر ذلك على قواعد المسؤولية المدنية. كما تتناول الضرر المادي والمعنوي والضرر المستقبلي المحقق وتفويت الفرصة الحقيقية والجدية. وتبرز الدراسة أهمية الخبرة الطبية وإثبات العلاقة السببية ودور القاضي في تقدير التعويض. وتنتهي إلى أن الحماية الدستورية تعزز البعد الحقوقي لجبر الضرر دون أن تنشئ، في حد ذاتها، نظاماً مستقلاً للمسؤولية الطبية.

الكلمات المفتاحية: المسؤولية الطبية؛ الضرر القابل للتعويض؛ السلامة الجسدية؛ الحماية الدستورية؛ فوات الفرصة.

INTRODUCTION

Medical liability sits at the crossroads of rights and responsibilities. A medical act touches the body and health of a person, yet its consequences often reach far beyond the clinic: they affect dignity, family life, work, autonomy and the future. Because of this, compensation in medical cases cannot be reduced to a simple reimbursement of bills. It requires a careful reflection on what has truly been lost and on the legal link between that loss and the medical conduct at issue.

Civil liability teaches a basic lesson: fault alone is not enough. There must be damage affecting a legally protected right or a legitimate interest. In the medical field, this distinction matters even more. The mere fact that a treatment did not achieve the expected result does not automatically mean that the physician was at fault. Doctors are not, as a rule, guarantors of a cure. What matters is whether the care provided met the required standard and whether the injury can legally be attributed to a failure in that care.

The 2020 constitutional revision places this classical analysis within a broader normative context. Article 38 protects the right to life. Article 39 guarantees the inviolability of the human person and prohibits physical and moral violence, as well as attacks on dignity. The Constitution also recognises health as an area of public responsibility. These provisions do not grant an automatic right to compensation for every adverse medical outcome. Their

real significance lies in the value they attach to the interests that medical liability is meant to protect.

This makes the topic both theoretically rich and practically important. On the theoretical level, it is useful to understand how constitutional protection interacts with the civil-law idea of damage. On the practical level, patients often suffer several types of harm at once: medical expenses, lost income, permanent disability, pain, disfigurement, psychological suffering, loss of autonomy, or the loss of a genuine chance of recovery. Some consequences are immediate, others appear later, and some involve probabilities rather than certainties. A coherent legal approach must be able to distinguish between these situations.

The central question is therefore the following: **to what extent does the constitutional framework established by the 2020 revision influence the understanding and compensation of medical damage in Algerian law, while preserving the classical requirements of liability?**

The study starts from the hypothesis that the 2020 constitutional revision strengthens the interpretative protection of victims of medical harm without replacing the ordinary civil-law conditions of fault, damage and causation. It adopts a doctrinal and analytical method, examining the constitutional framework alongside the statutory rules on health and civil liability, and then revisiting the main categories of compensable medical damage. The analysis is divided into two parts. The first considers the constitutional and legal foundations of protection against medical

harm and the general conditions for compensation. The second examines the forms of compensable medical damage and the ways in which courts assess them.

1. Constitutional Foundations and Legal Requirements for the Compensation of Medical Harm

1.1 The Constitutionalisation of Patient Protection

1.1.1 – Protection of Life, Bodily Integrity and Dignity

The 2020 constitutional revision is important for medical liability because it gives explicit constitutional recognition to interests that are at the heart of the patient–care relationship. Article 38 protects life. Article 39 protects the inviolability of the human person and prohibits physical and moral violence as well as attacks on dignity. These provisions place the person, rather than the economic transaction surrounding medical care, at the centre of legal protection[1]

This perspective is particularly relevant to the concept of damage. An injury to the body may entail an economic loss, but its significance is not exhausted by its financial consequences. A permanent impairment may restrict movement, alter everyday activities or reduce independence. A visible injury may affect personal and social life. Serious treatment-related pain may have a lasting psychological dimension. The constitutional reference to dignity therefore provides a strong normative basis for taking these consequences seriously.

At the same time, constitutional protection should not be confused with automatic liability. Medical practice necessarily involves uncertainty, and an unsuccessful treatment is not, by itself, proof of negligence. The legal assessment must still identify the professional obligation, determine whether it was breached, establish the injury and examine causation. The constitutional norm strengthens the protection of the patient; it does not remove the legal conditions governing responsibility.[2]

1.1.2. The Right to Health and the Complementarity of Legal Sources

The constitutional treatment of health adds a public dimension to the medical relationship. Article 63 recognizes the State's responsibility in the field of health and provides a constitutional basis for access to health care and the protection of public health. This places medical care within a framework that goes beyond a purely private exchange between professional and patient.[3]

Law No. 18-11 of 2 July 2018 relating to health remains a central statutory reference. It regulates patient rights, professional obligations, consent, information, medical ethics and professional responsibility. The law is therefore essential when determining what conduct is expected from a practitioner and what consequences may follow from a proven medical fault.[4]

The interaction between the Constitution and ordinary legislation is best understood as complementary. The Constitution protects fundamental interests; health legislation organizes their practical protection; and civil liability provides the legal mechanism

through which an injured person may seek reparation. This distinction prevents an overextension of constitutional language while allowing constitutional values to guide the interpretation of ordinary rules.

The Algerian Civil Code remains the general foundation of civil liability. Article 124 of Ordinance No. 75-58 establishes the principle that a wrongful act causing damage to another entails an obligation to repair that damage.[5] In medical cases, the rule must be read together with the special provisions governing health professionals and health establishments.

1.2. Legal Requirements for Compensation

1.2.1. Compensable Damage: Certainty, Directness, Personal Character and Legitimacy

Damage is the second essential element of liability. It may affect the body, property, feelings, dignity or another legally protected interest. This broad conception is consistent with the classical distinction between material and moral damage developed in Algerian legal scholarship.[6]

The medical context makes the distinction especially important. A patient may incur treatment costs and lose income while simultaneously suffering pain, disfigurement or psychological distress. These consequences do not necessarily overlap. A sound assessment of compensation must therefore identify each legally relevant form of damage and avoid both under-compensation and double recovery.

For damage to be compensable, it must satisfy several conditions:

- Certainty: The damage must be established or sufficiently certain in its occurrence. Purely hypothetical or speculative harm is not compensable.
- Directness: The damage must result directly from the wrongful conduct.
- Personal character: The damage must affect the claimant's own legally protected interests.
- Legitimacy: The interest affected must be legally protected.

These conditions apply equally to medical liability. The constitutional framework does not dispense the claimant from establishing them.

1.2.2. Consent, Information and the Protection of Patient Autonomy

The patient's consent provides another point of contact between constitutional protection and medical responsibility. Law No. 18-11 requires free and informed consent before medical acts or treatment, subject to the exceptions provided by law. It also requires information concerning the proposed care, its purpose, risks and alternatives.[7]

Consent is not a waiver of professional responsibility. A patient who agrees to treatment accepts the intervention within the limits explained and authorized; the patient does not authorize negligence or waive the right to bodily integrity. Where consent is absent or inadequately informed, the legal consequences depend on the facts and the applicable cause of action, but the issue clearly concerns personal autonomy as well as physical integrity.

This point is particularly significant where the intervention itself produces harm. The relevant injury may include not only a physical consequence but also the infringement of a protected personal interest. The constitutional protection of dignity reinforces the importance of examining the patient's autonomy rather than treating consent as a purely formal step.

1.2.3. Proof, Causation and Medical Expertise

Medical disputes often turn on matters that a court cannot resolve without technical assistance. Was the treatment appropriate? Was the diagnosis sufficiently careful? Was the complication unavoidable? Did the alleged error contribute to the injury? What is the degree and duration of incapacity? These are questions in which medical expertise can be indispensable.

Law No. 18-11 itself refers to expertise when dealing with established medical error or fault and its consequences.[8] Yet the expert and the judge perform different functions. The expert clarifies the medical facts; the judge determines their legal significance. This distinction becomes especially important where several possible causes exist.

The evidence may include medical records, expert reports, treatment expenses, employment documents and other relevant material. Damage is ultimately a factual matter, but its classification as legally compensable is a judicial question. A careful evidentiary approach is therefore necessary to prevent both unjustified claims and the denial of genuine injuries.

Causation is often the most difficult issue in medical litigation.

Patients may have pre-existing conditions, several risk factors or complications that can occur even when care is appropriate. A diagnosis that proves to have been wrong is therefore not enough by itself. The court must examine whether the diagnosis resulted from a failure to meet the required standard of care and whether that failure caused the injury alleged.

Expertise is particularly valuable at this stage. It can clarify the patient's condition before treatment, the expected medical course, alternative explanations and the probable consequences of the alleged error. But the legal conclusion remains a judicial one. An expert may establish medical probability; the court determines whether the evidence satisfies the legal test of causation.

The same reasoning applies to loss of chance, although the causal question is framed differently. The claimant seeks recognition of the loss of a real opportunity, not certainty that the favourable outcome would otherwise have occurred. The court must therefore assess the seriousness of the chance and the extent to which the professional conduct affected it.

2. Categories and Judicial Assessment of Compensable Medical Damage

2.1. Main Categories of Medical Damage

2.1.1. Material Damage and Economic Consequences

Material damage is generally the easiest form of injury to identify, but medical cases show that it can extend well beyond an initial bill. Treatment expenses, rehabilitation, medication, transport,

assistive devices and continuing care may all form part of the economic consequences of an injury where they are established and causally connected.

Loss of earning capacity may be equally significant. Temporary incapacity can interrupt employment and reduce income; permanent incapacity may affect future professional activity. The source scholarship on medical liability emphasizes that inability to work, whether partial or total, can constitute a real material loss.[9]

The important point is that the assessment must follow the actual consequences of the injury. Compensation should not be limited to what is immediately visible if a permanent impairment will necessarily generate future expenses or reduce earning capacity. Conversely, future losses must be sufficiently established and cannot rest on speculation.

This issue also shows why the assessment of bodily damage should not depend exclusively on the existence of a conventional salary. A person who is not formally employed may nevertheless suffer substantial economic consequences from loss of functional capacity, increased care needs or additional expenses. The legal assessment should focus on the injury and its consequences rather than on a single economic indicator.

2.1.2. Moral Damage and Non-Economic Harm

Medical injury also has a personal dimension that cannot be captured by invoices. Moral damage encompasses harm to feelings, emotions, dignity and psychological well-being. In medical cases, it may be associated with pain, disfigurement,

functional disability and the consequences of a serious injury.[10]

The 2020 constitutional revision gives this category particular importance because Article 39 expressly protects the person against moral violence and attacks on dignity. The Constitution does not establish a fixed amount of compensation for such harm, but it confirms the legal importance of the non-economic dimension of personal integrity.

Moral damage is inherently individual. The same physical injury may have very different consequences depending on the person's age, occupation, social circumstances and the degree to which the injury affects ordinary life. Algerian legal scholarship has long recognized this individualized character of moral harm.[11]

Judicial assessment should therefore remain concrete and reasoned. The purpose is not to place a price on human suffering in any literal sense. Monetary compensation is a legal form of reparation and recognition, intended to acknowledge a loss that cannot be physically restored.

2.1.3. Death and Damage Suffered by Relatives

When medical injury results in death, the consequences extend beyond the patient. The death of a close relative may produce legally recognizable moral harm for parents, children or a spouse. The source scholarship identifies this emotional injury as a distinct consequence of the patient's death.[12]

The analysis should nevertheless distinguish the injury suffered by the deceased from the independent injury suffered by relatives. The first concerns the consequences experienced by the patient

before death; the second concerns the personal loss suffered by those entitled to invoke it. This distinction helps identify the legal basis of each claim and prevents duplication.

The constitutional protection of life reinforces the seriousness of the interest involved. Article 38 places life within the highest level of constitutional protection. The constitutional provision does not determine the amount of civil compensation, but it provides a clear normative context for the legal protection of life.

2.2. Damages Involving Uncertainty

2.2.1. Certain Present and Future Damage

The requirement of certainty draws an important boundary around compensation. Damage that has already occurred is ordinarily compensable when the other elements of liability are established. Future damage may also be compensable where its occurrence is sufficiently certain, even though its financial or physical consequences have not yet fully materialized.[13]

This distinction is particularly relevant to permanent medical injuries. A patient may already have suffered an established bodily impairment while the full consequences of that impairment will continue into the future. Continuing treatment, rehabilitation, assistance or loss of earning capacity may therefore form part of the compensable harm.

The difficult case is damage that remains merely possible. A risk is not necessarily an injury. The fact that a patient might suffer a complication in the future does not, without more, establish a present entitlement to compensation. The law must distinguish a

certain future consequence from a hypothetical possibility.[14]

This distinction is not contrary to effective constitutional protection. On the contrary, it provides a disciplined method for protecting real future interests without converting civil liability into compensation for every conceivable medical risk.

2.2.2. Loss of Chance: Between Probability and Certainty

Loss of chance occupies an intermediate position. The claimant does not establish that the favorable outcome would certainly have occurred; rather, the argument is that a genuine opportunity to obtain that outcome was lost because of the professional fault.

The distinction is important in medical cases involving delayed diagnosis, inadequate treatment or an avoidable therapeutic error. A patient may be unable to demonstrate that correct treatment would definitely have produced recovery. It may nevertheless be possible to establish that the patient had a real and serious opportunity of a better outcome and that the medical error caused that opportunity to disappear or diminish.

The source legal scholarship expressly distinguishes loss of chance from merely possible damage and reports that Algerian judicial practice has accepted compensation when the lost chance was real and serious.[15]The compensable object is therefore the lost opportunity, not the full hypothetical result.

This approach also avoids two opposite errors. If the law demanded certainty of the favorable outcome, many genuine injuries associated with diagnostic delay would become practically uncompensable. If every possibility were treated as a

compensable chance, however, the requirement of causation would lose much of its meaning. The requirement that the chance be real and serious provides a necessary threshold.

French jurisprudence is relevant as comparative material because the doctrine of loss of chance developed significantly in that legal system. The source material refers to the Cour de cassation's historical treatment of the issue.[16] Its value for the present study is comparative rather than normative: Algerian courts must be understood primarily through Algerian law and Algerian judicial practice.

2.3. Judicial Assessment, Institutional Liability and Prevention

2.3.1. Assessment of Compensation and the Principle of Full Reparation

The ultimate purpose of compensation is reparation, but bodily and moral injuries cannot always be restored to their previous condition. A permanent disability cannot simply be undone by a monetary award. The role of compensation is therefore to provide legal and material redress for the consequences of the injury.

A sound judicial assessment should begin with the injury actually established in the case. It should distinguish economic consequences from non-economic consequences, identify future consequences where sufficiently certain, and treat loss of chance according to the opportunity actually lost. The same injury should not be compensated twice merely because it can be described under several headings.

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effectiveness of rights matters. The provisions concerning life, bodily integrity, dignity and health reinforce the idea that the injured person is not merely seeking a commercial payment. Comp The ultimate purpose of compensation is reparation, but bodily and moral injuries cannot always be restored to their previous condition. A permanent disability cannot simply be undone by a monetary award. The role of compensation is therefore to provide legal and material redress for the consequences of the injury.

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The constitutional framework supports an approach in which the effectiveness of rights matters. The provisions concerning life, bodily integrity, dignity and health reinforce the idea that the injured person is not merely seeking a commercial payment. Compensation is a legal response to an infringement of protected interests.

At the same time, effective reparation requires predictability. Similar injuries should be assessed according to intelligible criteria, while legitimate differences between cases should be explained. Greater transparency in judicial reasoning could

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2.3.2. Institutional Liability and Preventive Approaches

Modern medical care is rarely the work of one person alone. Hospitals and clinics involve physicians, nurses, technicians, administrators, equipment, protocols and organizational decisions. Law No. 18-11 recognizes, in specified circumstances, responsibility involving the health establishment and/or the practitioner.[17]

This is important for the injured person because the source of the harm may be individual, institutional or a combination of factors. A failure in organization or traceability may be as relevant to the causal chain as an individual clinical decision. The law should therefore avoid an overly narrow focus on the person who physically performed the medical act when the evidence points to a broader institutional problem.

At the same time, institutional responsibility should not become automatic responsibility for every unsuccessful treatment. The requirements of legally relevant fault, damage and causation

continue to perform their essential function. Constitutional protection strengthens the objective of protecting the patient; it does not eliminate the need for a legally established basis of responsibility.

Damage becomes compensable only when it can be legally connected to the conduct giving rise to responsibility. This is often the most difficult issue in medical litigation. Patients may have pre-existing conditions, several risk factors or complications that can occur even when care is appropriate.

A diagnosis that proves to have been wrong is therefore not enough by itself. The court must examine whether the diagnosis resulted from a failure to meet the required standard of care and whether that failure caused the injury alleged. The source material gives the example of an erroneous diagnosis leading to inappropriate treatment and ultimately to bodily impairment.[18]

Expertise is particularly valuable at this stage. It can clarify the patient's condition before treatment, the expected medical course, alternative explanations and the probable consequences of the alleged error. But the legal conclusion remains a judicial one. An expert may establish medical probability; the court determines whether the evidence satisfies the legal test of causation.

The same reasoning applies to loss of chance, although the causal question is framed differently. The claimant seeks recognition of the loss of a real opportunity, not certainty that the favorable outcome would otherwise have occurred. The court must therefore assess the seriousness of the chance and the extent to which the

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cases.

The constitutional protection of the person and the statutory duties imposed on health professionals support a broader approach based on informed consent, patient information, professional standards, medical record keeping, quality assurance and appropriate internal reporting of adverse events. These measures do not replace civil liability. They complement it by reducing the conditions in which damage may arise.

The most convincing role for the post-2020 constitutional framework is therefore to connect individual remedies with a wider culture of protection. The patient should be protected before, during and after treatment. The law should provide a route to compensation when injury occurs, but it should also encourage practices that make avoidable injury less likely.

CONCLUSION

The study leads to a clear result: the 2020 constitutional revision strengthens the legal environment in which medical damage is understood and repaired, but it does not create an autonomous constitutional regime of medical liability. The classical requirements of responsibility remain indispensable. A compensable claim requires a legally relevant injury and a sufficient connection between that injury and the conduct giving rise to responsibility.

The constitutional contribution is nevertheless important.

The protection of life, bodily integrity and dignity gives a stronger normative foundation to the protection of patients. It also helps explain why compensation cannot be confined to direct financial losses. Pain, disfigurement, loss of autonomy, psychological suffering and loss of a genuine therapeutic opportunity belong to the wider legal reality of medical harm.

The analysis also confirms the continuing relevance of the traditional distinctions developed in Algerian legal scholarship. Material damage includes expenses and economic consequences of bodily injury. Moral damage concerns the personal and non-economic consequences of harm. Certain future damage may be compensated even before all of its effects have materialized. Purely hypothetical damage remains outside compensation. Loss of chance occupies a distinct position and requires a real and serious lost opportunity.

Several recommendations may be drawn from these findings. First, judicial and legislative practice would benefit from clearer criteria for distinguishing the principal heads of medical damage. Second, medical expertise should be independent, adequately reasoned and sufficiently transparent for the court and the parties. Third, judgments should explain more clearly how the existence, extent and causation of future damage or loss of chance have been established. Fourth, health establishments should strengthen informed-consent procedures, patient information, medical record keeping and systems for reporting adverse events. Fifth, interdisciplinary training should bring legal and medical

professionals closer together on questions of causation and damage assessment. Finally, the constitutional protection of dignity and bodily integrity should be used as a practical interpretive principle: compensation should recognize the injured person's protected interests while remaining firmly grounded in evidence and law.

Marginalization

[1]Presidential Decree No. 20-442 of 30 December 2020 promulgating the constitutional revision adopted by referendum on 1 November 2020, Official Journal of the Algerian Republic, No. 82, 30 December 2020, Arts. 38–39.
[2] See Ahmed Hassan Abbas Al-Hayari (2005), Civil Liability of the Physician in the Light of Algerian and Jordanian Law, Dar Al-Thaqafa for Publishing and Distribution, Amman, p. 126.
[3] Constitution of Algeria, 2020 revision, Art. 63.
[4] Law No. 18-11 of 2 July 2018 relating to health, Official Journal of the Algerian Republic, No. 46, 29 July 2018.
[5] . Ordinance No. 75-58 of 26 September 1975 containing the Algerian Civil Code, Art. 124, as amended and supplemented.
[6] Saïd Mokaddem (1992), Theory of Compensation for Moral Damage, National Book Publishing House, Algiers, p. 35.
[7] Law No. 18-11, provisions relating to free and informed consent and patient information.
[8] Law No. 18-11, Art. 353, concerning established medical error or fault and expertise
[9] Belhaj Larbi (1997), General Theory of Obligation in Algerian Civil Law, Part II, Office des Publications Universitaires, Ben Aknoun, p. 145.
[10] Ahmed Hassan Abbas Al-Hayari, op. cit., p. 132.
[11] . Mohamed Hussein Mansour (1999), Civil Liability of Physicians, Dar Al-Jami'a Al-Jadida, Alexandria, pp. 165–166.
[12] Mohamed Hussein Mansour, op. cit., pp. 165–166.

[13] Belhaj Larbi, op. cit., pp. 145 and 163.
[14] Ibid., p. 163.
[15] . Belhaj Larbi, op. cit., p. 165. The source material reports Algerian judicial practice as recognizing compensation where the lost chance is real and serious.
[16] The source material refers to the French Cour de cassation decision of 17 March 1961 concerning loss of chance. This reference is used only for comparative purposes.
[17] Law No. 18-11, Art. 353.
[18] Mohamed Raïs (2005), Civil Liability of Physicians, Doctoral Thesis, Djillali Liabès University, Sidi Bel Abbès, p. 131.

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