

Malta

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Art. 1045 Civil Code (prior to amendments)

1045. (1) The damage which is to be made good by the person responsible in accordance with the foregoing provisions shall consist in **the actual loss** which the act shall have directly caused to the injured party, in **the expenses** which the latter may have been compelled to incur in consequence of the damage, in **the loss of actual wages or other earnings**, and in **the loss of future earnings** arising from any permanent incapacity, total or partial, which the act may have caused

(2) The sum to be awarded in respect of such incapacity shall be assessed by the court, having regard to the circumstances of the case, and, particularly, to the nature and degree of incapacity caused, and to the condition of the injured party.

**Linda Busuttil *et v* Josie Muscat *et*
Civil Court, First Hall, 30 November 2010**

“Ordinary law should be construed compatibly with constitutional values; physical integrity is a basic constitutional value and any damage thereto should attract compensation.”

**Proviso to art. 1045(1)
added by Act XIII.2018.25**

“Provided that in the case of damages arising from a criminal offence, the damage to be made good shall also include any moral and or psychological harm caused to the claimant.”

Proviso to art. 1045(1) substituted by Act XXXII.2018.15

Provided that **in the case of damages arising from a criminal offence**, other than an involuntary offence, and only in the case of crimes **affecting the dignity of persons ... and of wilful crimes against the person** subject to a punishment of imprisonment of at least three years ..., up to a maximum limit of ten thousand euro (€10,000) ... **the damage to be made good shall also include any moral harm and, or psychological harm caused to the claimant.**

Questions:

- Is “psychological harm” to be compensated *per se*, in addition to the compensation for the loss of earning capacity which it entails? and, if not
- Is compensation for the pecuniary loss due to psychological harm to be awarded only when it arises from a criminal offence, and subject to the other conditions mentioned in the proviso?

Questions (2):

“The Court notes that, in certain circumstances, such proceedings [*viz.* those “imputing civil responsibility for damage arising out of criminal acts”] may also attract some of the guarantees applicable in criminal cases.”

(*Carmel Saliba v Malta*, ECtHR 29/11/2016, 24221/13)

- Does this imply that the criminal standard of evidence “beyond reasonable doubt” is to apply in civil tort actions when the *quantum* of damages depends on whether the damages arise from a criminal offence?