

Victims of assault: a Europe-wide review of procedures for evaluating the seriousness of injuries

M Gignon MD, S Paupière JD, O Jardé MD PhD and C Manaouil MD PhD

Forensic Unit, Amiens University Hospital, Place Victor Pauchet, F-80054 Amiens cedex 1, France
Correspondence: Dr Maxime Gignon. Email: gignon.maxime@chu-amiens.fr

Abstract

In France, victims of assault receive a medical certificate describing their injuries. This certificate must fulfil certain criteria because it plays a major role in the subsequent judicial proceedings – notably the establishment of a period of ‘total incapacity for work’, which determines the court in which the case will be heard. Determination of the duration of this period of incapacity is complex. We decided to review medical examination procedures for victims of assault in a number of other European countries (England and Wales, Belgium, Germany, Switzerland and Spain). Our study revealed that only in France do physicians have to make a quantitative assessment of injuries, which is supposed to reflect the extent of the injuries and the intensity of the violence – despite the difficulties this may pose. We discuss the relevance of this quantitative assessment.

Med Sci Law 2010; 50: 145–148. DOI: 10.1258/msl.2010.010020

Introduction

In France, a victim of assault can obtain a medical certificate describing the injuries suffered. This certificate is important for the victim and the courts; it describes the type, site and extent of the injuries and defines a period of total incapacity for work (TIW). In France, this concept is often confusing for doctors and lawyers because a distinction is drawn between ‘temporary incapacity for work’ (a civil matter, related to the attribution of compensation) and TIW itself, which is a criminal concept¹ in which the guilty party must be punished. The notions of ‘civil TIW’ and ‘penal TIW’ thus do not have the same objective. Penal TIW is quantified as a number of days and corresponds to the functional impact of the injuries on the victim’s activities of daily living and the intensity of the violence.

The magistrate uses the medical certificate to assess the seriousness of the facts and refers the case to the appropriate court. For ‘involuntary’ acts (such as road accidents) and a penal TIW of more than three months, the case proceeds in the *Tribunal de Correction* (the Magistrates’ Court). If the penal TIW is less than three months, the case is tried in a police tribunal. For violence with intent, the penal code distinguishes between periods of less and more than eight days.

Hence, the physician plays an important role in the judicial process, even though the medical certificate is only one of the many factors taken into account by the magistrate. Given the lack of professional consensus on establishing the TIW, there is probably significant interoperator variability in setting the duration of incapacity for a given injury. Faced with this difficulty, we thought that it would be useful to examine how our European neighbours evaluate

the trauma suffered by victims of violence. Our aim was to stimulate discussion on the TIW concept as part of the provision of medical care to victims of violence.

Material and methods

We focused on the evaluation of injuries in victims of violence in England and Wales, Belgium, Germany, Switzerland and Spain by emailing a letter with four main questions to the Ministries of Justice and leading forensic institutes in each country.

The four main questions on care provision were as follows:

- Is there a specific medical assessment procedure for victims of assault?
- Is a medical certificate drawn up and, if so, by whom?
- What items of medical information are used in the judicial process to describe the seriousness of the facts?
- Are the injuries quantified in terms of a TIW?

The various responses from a given country were cross-checked in order to obtain as much information as possible. In light of these data, we then reviewed the current French legislation in order to stimulate debate on the TIW concept.

Results

England and Wales

In the UK, forensic medical practitioners will examine victims if the latter present themselves at a police station. If a victim reports the assault to the police, then a police

officer will take a statement regarding the incident and photographs may be taken. General practitioners (GPs) and emergency medicine physicians may also examine victims. These medical practitioners will provide a statement of their findings when so requested. The statement is the equivalent of the French medical certificate, except that it does not quantify the injury.

The Crown Prosecution Service (CPS, <http://www.cps.gov.uk>) is responsible for public prosecutions of people charged with criminal offences in England and Wales. The police report, photographs and statement are submitted to the CPS for review. The CPS advises the police on the charges to be brought (apart from a few simple charges covered by the 2003 Criminal Justice Act, such as begging). It is also responsible for preparing and presenting cases for the magistrates' courts and, increasingly, the Crown Court. However, the CPS will only prosecute a case if it is in the public interest and if there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge.

In England and Wales, there are various types of offences related to assault and battery. All criminal cases are initially tried in the Magistrates' Court. There are three main categories of criminal offences. Summary offences are the least serious (e.g. driving offences, drunk and disorderly, common assault and criminal damage which has caused less than £5000 worth of damage) and are tried in the Magistrates' Court. Triable-either-way offences can be regarded as middle-range crimes and include a wide variety of acts, such as theft and assault causing actual bodily harm. These can be tried in either the Magistrates' Court or the Crown Court. Lastly, indictable offences are the most serious crimes and include murder, manslaughter and rape. Although all indictable offences must be tried at the Crown Court, the first hearing takes place at the Magistrates' Court. The magistrate will decide if the defendant should be given bail. The case is then transferred to the Crown Court.

Belgium

The Belgian criminal justice system is similar to the French system. Under Belgian law, all cases of assault and battery are tried in a Magistrates' Court. The seriousness of the facts is used to indicate the Penal Code article to which the judge refers when determining the sentence. For this reason, the victim of violence has to provide an 'initial observation certificate', which can be issued by an emergency medicine service or by a GP. If the victim does not choose or seek to obtain an initial observation certificate, it can be requested by the police dealing with the case. In a second step, the designated magistrate (the Crown Prosecutor or a magistrate appointed by the Prosecutor) will request that a forensic physician examines the patient. The forensic physician does not draw up a certificate *per se* but provides a forensic report which describes the injury or injuries and their progression, whether there are any temporary or permanent sequelae, whether a full recovery has occurred and whether the physician believes that subsequent re-examination is required.

Germany

The police may request that a forensic physician examines a victim of assault and battery. The physician will then issue a medical certificate which must reflect the type of blows received and the site, severity and medical consequences of the injuries. This certificate is submitted directly to the police service and forwarded to the prosecutor. Depending upon the severity of injuries (and not the duration of incapacity), the prosecutor will decide on referral to the relevant court: the *Amtsgericht* (consisting of a single judge), the *Landgericht* (composed of three judges and a two-person jury) or the *Bundesgerichtshof* (Germany's highest court).

Switzerland

In Switzerland, victims of assault are subject to cantonal legislation, since assault and battery are not federal matters. The cantonal legislation does not specify any particular medical procedures. A medical certificate is normally issued only if the victim requests an examination by a doctor and agrees that a certificate should be drawn up. The victim may then (if he/she so wishes) send the certificate to the prosecuting authority. Depending on the procedures provided for by the Swiss Penal Code (particularly for elucidating serious offences) and if ordered by the prosecuting authority (the judge or prosecutor), the victim of violence may have to undergo a medical examination against his/her will and accept the establishment of a certificate.

The prosecuting authority uses the medical information contained in the certificate (or indeed several certificates) to determine the seriousness of the facts from a legal viewpoint. An expert medical report can also be ordered. The prosecuting authority takes account of the information on the medical certificate and decides on the court to which the case is submitted.

Spain

Victims of assault undergo an initial medical examination at a hospital or clinic. The physician then communicates his/her findings directly to the judge. In a second step, the victim is examined by a specialist forensic physician. The latter issues a certificate stating the patient's name and age, the time of occurrence of the incident, the type of blows and their mechanism, the forensic correlation, the medical diagnosis, the duration of initial treatment and hospitalization, the duration during which the person does not work and the treatment status (as one of three categories: no treatment, medical treatment or surgical treatment) and whether the patient has recovered or will suffer from irreparable consequences. This certificate is then forwarded directly to the judge, who decides which court is competent. Cases in which no medical treatment is required are referred to the *Juicio de Faltas*, headed by a magistrate. Cases in which medical or surgical treatment is necessary are referred to the *Penal Juzgado* or the *Audiencia Provincial Penal*.

Discussion

In France, a victim of assault has the right to obtain a descriptive medical certificate. This is performed once any necessary emergency care has been provided and can be issued by any medical practitioner. The certificate is established according to certain rules:²⁻⁵ it must include the patient's name, details and medical history (which may have an influence on the injuries), a victim's impact statement on the circumstances of the assault, the patient's known and potential complaints, the results of any tests performed and those of a clinical examination performed on the day of the consultation.⁶ The latter must include detailed descriptions of the injuries (type, size, shape, colour, site relative to anatomical landmarks, etc.) and significant negative signs. It is noteworthy that the physician must remain descriptive and not assert the existence of a causal link between the lesions observed and the assault and battery. Indeed, the physician's job is to find and describe any injuries rather than to attest to the causes. Lastly, the certificate must contain a conclusion, the words 'handwritten certificate established at the patient's request', the date and the physician's name and signature. The alleged facts need not be mentioned.

For a person who has not reached the age of majority or consent, the certificate is given to the legal representative. As part of a requisition, the certificate is made available to applicants. The purpose of this type of certificate is to determine the TIW.^{7,8} Durigon⁹ has defined the TIW as the 'duration of the period during which the victim of violence cannot fulfil all the basic functions of normal life (getting dressed, travelling, washing, etc.) because of his/her condition'. The adjective 'total' in 'total incapacity' is interpreted differently by different physicians. However, the law does not require that the impairment is absolute.¹⁰ TIW may refer to the functions rendered impossible by the site of the injury or loss of a particular function (use of a limb, for example).

The TIW thus refers to impairment of the individual's overall abilities and not a total impairment of his/her abilities. It therefore serves as an estimate of the functional and psychological impact of the attack.¹¹⁻¹⁵ Like any medical evaluation, the TIW differs for a given type of injury and may vary from one physician to another and one patient to another.^{16,17} These variations are found in other situations, such as determining the period of sick leave.¹⁸

The TIW is just one of several indicators that the judge takes into account when assessing the case.¹⁹⁻²¹ The doctor's assessment constitutes information provided to the judge/magistrate but is not necessarily binding on the latter's decision. In particular, the judge may rely on his/her own understanding of the qualitative assessment given in the physician's report or may request additional assessments and expert opinions.

Our review of judicial systems in a number of European countries highlighted differences in care for victims of assault. In all the countries reviewed, the physician has a role in providing care to victims and establishing the medical findings. However, the national systems vary in terms of how the physician's evidence is used by the prosecuting authority and in court.

The use of a numerical indicator (e.g. the duration of the TIW) seems to be a French peculiarity; indeed, this concept has raised many issues and created heated debate in the country.²²⁻²⁵ This feature of French law is a consequence of the principle whereby the punishment must be proportional to the consequences of the assault. The certificate is not binding on the judge but has an advisory function. However, in practice, the judge often adopts the physician's conclusions.²⁶

In the absence of clinical practice recommendations, the issue of interoperator variability in determining the TIW clearly arises. These variations are not acceptable because justice must be fair. Based on human factors, the same trauma may lead to a TIW of six days according to one medical practitioner and nine days according to another. However, for violence with intent, the French Penal Code distinguishes between TIWs of less than a week and more than a week; the competent court and the category of the crime differ as a function of the duration of the TIW. Furthermore, the duration of the TIW is a poor indicator of psychological consequences. Physicians have great difficulty in estimating the psychological impact of injuries on the basis of numerical data (a number of days). We believe that it is necessary to consider new tools for ascertaining the severity of injuries. In this context, a Europe-wide comparison is of value.

The Spanish model is interesting in that designation of the competent court depends on the victim's medical condition. One could therefore imagine potentially relevant new indicators which, although not quantitative, would not necessarily be less objective. However, there is a need for further work on the various assumptions that need to be evaluated, such as the use of classification methods: no treatment, symptomatic treatment only (analgesics, anxiolytics, etc.), curative treatment (sutures, surgical operations, etc.) or the length of hospitalization. To ensure the fair administration of justice, these factors should be considered.

Conclusion

In some of the European countries reviewed here, the medical evidence assessed in legally qualifying the facts is similar to that used in France for determining the duration of the TIW. This specifically French quantitative indicator is the source of much controversy. The concept of impairment of the activities of daily living (which is included in the TIW) could be addressed by a qualitative indicator based on the medical care provided to victims in the aftermath of an incident.

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