

INJURIES/ *LESIONES*

LESSON 5

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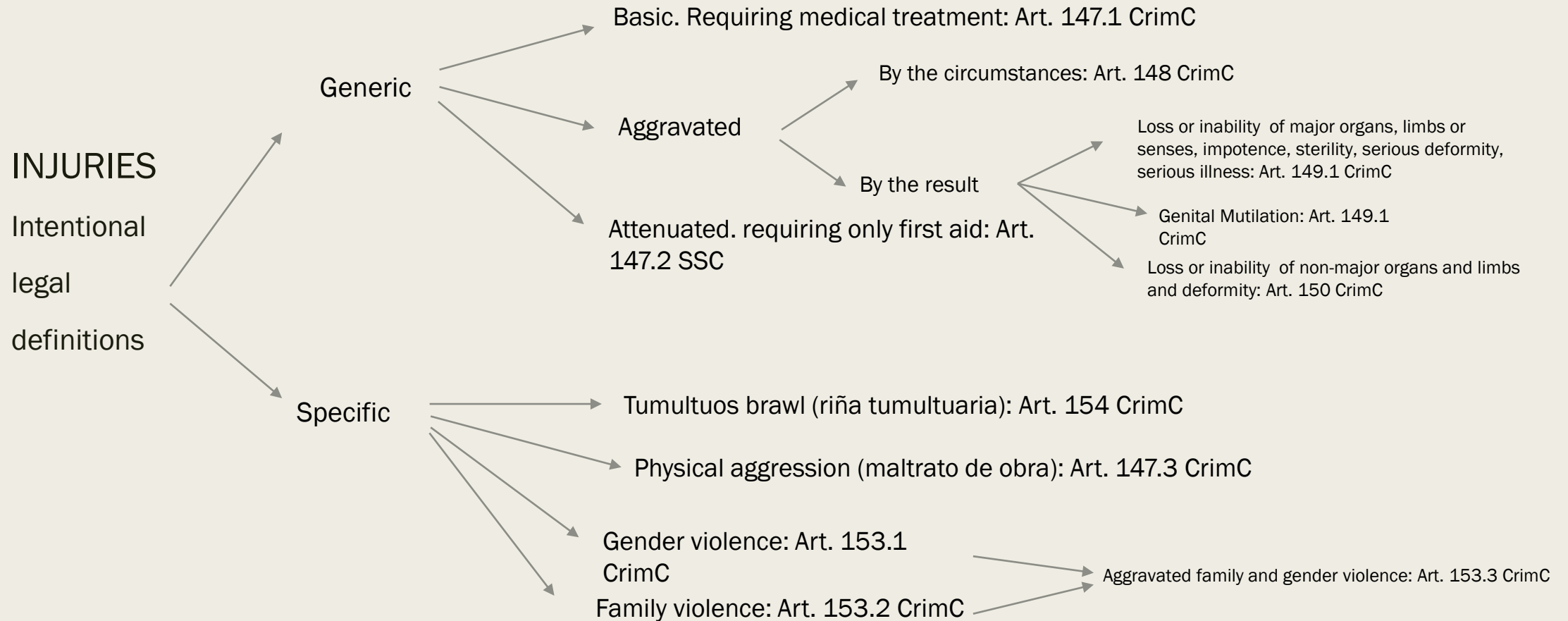
INJURIES

SUMMARY

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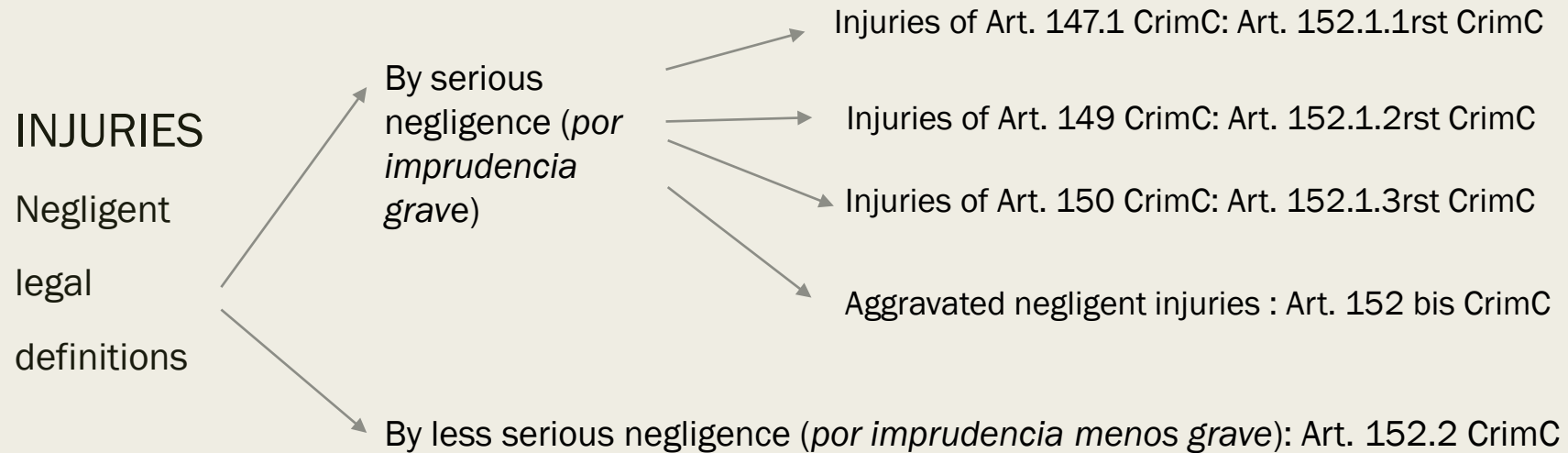
INJURIES

1. DIAGRAM OF THE LEGAL DEFINITIONS



INJURIES

1. DIAGRAM OF THE LEGAL DEFINITIONS



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2. LEGALLY PROTECTED INTEREST: From Physical Integrity to Health

2.1. Constitutional protection (art. 15 and 43 SConst):

Despite doubts regarding its extension (art. 15 SConst mentions only physical integrity and contains no reference to mental health), it is clear that physical integrity and health are constitutionally protected values linked to the legally protected interest in injuries.

2.2. Discussion on the legally protected interest:

2.2.1. The legally protected interest has evolved with the notion of injuries described in its legal definitions from a mere protection of physical integrity to a wider concept that encompasses not only mental health but also health as a more comprehensive notion.

2.2.2. Dualist approaches: some scholars support a double legally protected interest: physical integrity and mental and physical health based on the description contained in art. 147.1 CE.

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2. LEGALLY PROTECTED INTEREST: From Physical Integrity to Health

2.2.3. Monist approaches:

2.2.3.1. *Health:*

Health is defended (e.g. by Berdugo) as a unique protected interest since the law does not differentiate between affection to health or physical integrity, and sometimes health is protected over physical integrity (e.g., amputations, the surgical removal of organs).

Two problems: a) breadth of the notion (social aspects of the notion should be excluded); b) health as a disposable protected interest: consent is not necessarily linked to the definition of the legally protected asset; it could also be conceived as justification.

a) 2.2.3.2. *Personal safety (incolumidad personal):*

Defended by some scholars (e.g. Tamarit, Díez Ripollés) and some judgments, this is based on the idea that these offences not only protect health or physical integrity but also offer protection against mistreatment.

2.3. Conclusion: a notion of health that encompasses both mental and physical elements could be useful to define the boundaries of the legally protected interests.

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3. COMMON ELEMENTS

3.1. *Illness as an injury:*

According to the legal definition, causing a somatic or mental illness must be considered an injury on the same footing as any other type of injury (v.gr. transmitting HIV, Judgments of Supreme Court 690/2019, 11 March 2019 and 18 November 1991)

3.2. *Psychic injuries:*

- These are included even if they are not caused by physical aggression.
- The injuries do not have to be permanent; a relevant psychic impairment may be enough (Judgment of SCourt 79/2009, 10 February 2009).
- To comply with the basic legal definition, they require medical treatment; psychological treatment is deemed medical treatment if it is required by a doctor for the healing process.
- The injuries could only be caused by intentional action (at least by indirect intention) not by negligence (Judgments of SCourt 1606/2005, 27 December 2005, 103/2018, 1 March 2018, *inter alia*).

INJURIES

3. COMMON ELEMENTS

3.3. *Active and Passive Agents*

3.3.1. Active Agent:

- *The active agent could be anyone, except in certain legal definitions, which in my opinion are special offences (art. 153 CrimC).*
- *Injuries are defined as something inflicted on another person; there are no special legal definitions incriminating self-injuries: acts of an individual against their own health are not criminal.*

3.3.2. Passive Agent:

- *The offence, the conduct and the object befall the same person.*
- *The passive agent could be any person (as defined in relation to homicide), but fetuses are excluded.*

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3. COMMON ELEMENTS

3.4. *Causation*

Injuries are a result legal definition, so questions of natural and legal causation (*imputación objetiva*) must be established before attributing the result to a certain action. These are relevant in cases of complex causal pathways and the contribution of the passive agent to the harm.

3.5. *Commission by omission*

Since injuries are a result legal definition, and do not restrain the ways in which the result is caused, according to the Supreme Court it is possible to commit injuries in commission by omission (v.gr. Judgment of Supreme Court ruling 1648/1999, 22 November 1999: superior police officers who allow their subordinates to inflict injuries on detainees; parents who do not act when their partners mistreat or cause injuries to children, etc.).

INJURIES

3. COMMON ELEMENTS

3.6. Requirement of first aid and medical treatment in the basic legal definition

3.6.1. Distinction between legal definitions: it is essential to establish the concepts of medical treatment and first medical assistance in order to differentiate between:

a) the basic legal definition of injuries outlined in Art. 147.1 CrimC from

b) the attenuated legal definition of injuries outlined in Art. 147.2 CrimC

and to differentiate these from:

c) the special legal definition of physical aggression without injury (Art. 147.2 CrimC)

also because these legal definitions are the basis for other legal definitions that are correspondingly correlated (v.gr. Art. 148 based on 147.1 and Art. 153 based on 147.2).

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3. COMMON ELEMENTS

3.6. Requirement of first medical assistance and medical treatment in the basic legal definition

3.6.2. First medical assistance plus medical treatment (art. 147.1 CrimC)

- *These are normative concepts that have been continually construed by the case law of the Supreme Court, though with contradictions*
- *The present understanding is:*

First medical assistance: *this is defined as a visit to the doctor to evaluate the injury and establish whether medical treatment is required.*

Medical treatment or surgery: *this is defined as healing procedures decided or performed by a doctor or surgeon, even if they are not carried out by a doctor but by other health professionals, and objectively required for recovery. Simple monitoring or follow-up visits are not considered medical treatment.*

- *Consequences:*
 - a) *Medical treatment is defined by the objective need for medical treatment, irrespective of whether the treatment was or was not administered.*
 - b) *In case of doubt, an expert opinion is decisive. Problems arise with expert opinions of forensic doctors.*

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3. COMMON ELEMENTS

3.6. Requirement of first medical assistance and medical treatment in the basic legal definition

3.6.2. First medical assistance plus medical treatment (art. 147.1 CrimC)

Common uncertain situations:

- a) First medical assistance may be enough if medical treatment is prescribed*
- b) Use of anti-inflammatories amounts to medical treatment if they are required for recovery (Judgment of SC 34/2014, 16 February 2014)*
- c) Rehabilitation is medical treatment if it is prescribed by a doctor and required for recovery (Judgment of SC 825/2015, 18 December 2015)*
- d) Use of steri-strips (skin closures; suturas cutáneas adhesivas) is surgical treatment if necessary (Judgment of SC 518/2016, 15 June 2015)*
- e) Rest (reposo) could amount to medical treatment if prescribed by a doctor and required for recovery (Judgment of SC 592/2021, 2 July 2021)*
- f) Inter alia*

INJURIES

3. COMMON ELEMENTS

3.7. *Intention and negligence*

- Most of the legal definitions, except physical aggression (*maltrato de obra*), could be committed by intention or negligence (Art, 147.3 CrimC).
- Discussion arises over whether a specific intention to commit a particular legal definition of injuries is necessary or whether a generic intention is sufficient: **intention should encompass all circumstances of the legal definition** (e.g. the result). Therefore, a generic intention would never be enough even if indirect intention could suffice in some situations (Judgment of the SC 168/2008, 29 April 2008).
- *Animus necandi* (intention to kill) always implies the possibility of causing injuries to the person as a necessary consequence but should be differentiated from *animus laedendi* (intention to cause injuries) depending on the actual circumstances of the fact.

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4. INTENTIONAL INJURIES

4.1. Injuries requiring medical treatment or surgery (Art. 147.1 CrimC)

- Basic legal definition
- Its basic features have already been examined (see 3.6 above)
- It is an intentional legal definition (see 3.7 above)
- Before the 2015 Law Reform the regulation distinguished between more serious injuries (Art. 147.1 CrimC) and less serious injuries (Art. 147.2 CrimC). The current regulation should therefore be considered harsher than the previous one because aggravated legal definitions are always built on Art. 147.1 CrimC.
- Penalty: 3 months–3 years in prison or a fine of 6-12 months.

INJURIES

4. INTENTIONAL INJURIES

4.2. Injuries qualified by their circumstances (Art. 148 CrimC)

- Applicable only in cases of the basic legal definition (Art. 147.1 CrimC).
- This is a purely intentional legal definition that does not have a negligent equivalent.
- Application of this legal definition is not mandatory for the Judges or Courts of Law, while the case law of the Supreme Court has not considered it homogenous to injuries aggravated by the result (Art. 149 and 150 CrimC).
- Penalty: 2–5 years depending on the result or the risk created.

INJURIES

4. INTENTIONAL INJURIES

4.2. Injuries qualified by their circumstances (Art. 148 CrimC). Penalty: 2–5 years in prison

4.2.1. Use of weapons, instruments, objects, means, methods or ways that are specifically dangerous to life or health (Art. 148.1st CrimC):

- *The instruments or means should be used to cause the injuries (not just carried or exhibited) and should be dangerous by themselves or in the specific circumstances of the case.*
- *Dangerousness should be construed as the possibility of causing more serious injuries or death, and should be evaluated ex ante.*
- *They are not necessarily means of aggression, e.g. poison.*

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4. INTENTIONAL INJURIES

4.2. *Injuries qualified by their circumstances (Art. 148 CrimC)*

4.2.2. *Wanton cruelty or treachery (Art. 148.2nd CrimC)*

- *Treachery should be defined in accordance with Art. 22.1st CrimC and wanton cruelty should be defined in accordance with Art. 22.5th CrimC.*
- *Since treachery could entail the use of weapons, the two circumstances should be differentiated by their own boundaries of application.*
- *Wanton cruelty should entail suffering that goes beyond the injuries by themselves. However, case law considers the injuries sufficient for its application in relation, for example, to prolonged beating (Judgment of SC n° 752/2009, 3 July 2009) or acid attacks to the face (Judgment of SC 21 December 2004).*

INJURIES

4. INTENTIONAL INJURIES

4.2. *Injuries qualified by their circumstances (Art. 148 CrimC)*

4.2.3. When the victim is under fourteen years old or a disabled person requiring special protection (Art. 148.3rd CrimC):

- *The age of the victim was modified by Organic Act 8/2021, 4 June 2021, on the integral protection of children and adolescents (protección integral de la infancia y la adolescencia) from 12 to 14.*
- *The rationale for this aggravation seems to be the abuse of superiority. In these cases, however, the choice of age is somewhat arbitrary and could lack justification in some cases (imagine a big, strong 14-year-old child fighting a man in his 60s or 70s, or a small man or woman). The same could be said of some people with mental disabilities but who are strong and well built.*

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4. INTENTIONAL INJURIES

4.2. *Injuries qualified by their circumstances (Art. 148 CrimC)*

4.2.4. When the victim is or was the wife of the offender, or is a woman in a similarly emotional relationship the offender, whether cohabiting with them or not (Art. 148.4th CrimC).

- *The rationale for this aggravation is based in the idea that gender violence should be punished more seriously. The Constitutional Court has rejected the notion that aggravating only the conduct of the man could violate a fundamental right (Judgment ConstC 41/2010, 22 July 2010, rejecting violations of equality, proportionality, legality, culpability and presumption of innocence). The same could be said of Art. 153.1 CrimC.*
- *The reasoning of the Judgment of the Const. Court imply certain case law trends that require a situation of dominance of the man over the woman in order to apply this aggravation, but this has been rejected by the Supreme Court.*
- *This interpretation could lead to absurd interpretations, e.g. punishing a bank robber who has attacked his ex-wife, who is the bank teller in the robbery; or a man for injuring an ex-wife with whom he has not been in contact for 30 years.*
- *Exclusively sexual relationships (without an emotional relationship) should be excluded.*
- *This is not applicable to same-sex couples.*

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4. INTENTIONAL INJURIES

4.2. Injuries qualified by their circumstances (Art. 148 CrimC)

4.2.5. When the victim is an especially vulnerable person who lives with the offender (Art. 148.5th CrimC)

- *The rationale for this aggravation is unclear.*
- *The vulnerability of the passive agent is not defined by the law but should be encompassed in any case by the intention of the active agent. No special circumstance is required but it should be differentiated from the cases outlined in Art. 148.3rd CrimC.*
- *Problems arise when defining especially vulnerable persons: Are minors included? Which minors? Judgment of Supreme Court 907/2014, 30 December 2014 at least includes babies but other potential subjects are not defined.*

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4. INTENTIONAL INJURIES

4.3. *Injuries qualified by their result*

4.3.1. Loss or inability of a major organ, limb or sense; sexual impotence or sterility; a serious deformity or a serious physical or mental illness (Art. 149.1 CrimC). Penalty: 6–12 years in prison.

Distinctions should be made between:

a) Loss and inability

Loss = physical destruction of the organ, limb or sense

Inability = disappearance of the function of the organ, limb or sense. Both total loss and marginal loss, v.gr. 80 % loss of sight, are included.

b) Major vs. non-major: this normative distinction should have a medical basis but has been defined by the case law as **those which are independent and relevant for life**, though there is lot of casuistry:

Major organ or limb: leg, arm, ankle, hand, several fingers, eyeball, tongue, uterus, both ovaries=both testicles=both kidneys (with one the function remains)

Non-major organ or limb: finger, spleen (bazo), a single tooth or several teeth

c) Organ vs. limb: this distinction is not very relevant because the legal treatment is the same, but organs are internal and limbs are external and mainly extremities.

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4. INTENTIONAL INJURIES

4.3. *Injuries qualified by their result*

4.3.1. Loss or inability of a major organ, limb or sense; sexual impotence or sterility; a serious deformity or a serious physical or mental illness (Art. 149.1 CrimC).

- *Sense/sexual impotence/sterility: all involve a **permanent loss of function***

- *Serious illness is a normative term which needs definition by case law: a permanent illness which implies medical treatment and major consequences (v.gr. Human Immunodeficiency Virus, Hepatitis C, mental illness as consequences of trauma, etc.).*

- *Serious deformity:*

Deformity should be understood as any permanent anomaly in physical appearance (understood from a social accepted standard) caused by the action of the active agent.

Serious: that worsen the physical image of the passive agent from an objective, social point of view (scars on the face severely alter one's appearance, or disfiguring scars across the body. Criteria for judgement include the location of the scars and the personal appearance and personal situation of the passive agent before the deed (v.gr. job).

- *This is an intentional offence but problems arise related to the encompassing of the result by intention: indirect intention or negligence.*

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4. INTENTIONAL INJURIES

4.3. *Injuries qualified by their result*

4.3.2. Genital mutilation (Art. 149.2 CrimC). Penalty: 6--2 years in prison

- *This special legal definition was introduced to avoid female genital mutilation (excision of the clitoris) but should be applied to any form of genital mutilation, including the penis, because no reference is made to the sex of the passive agent.*
- *It could be discussed whether the removal of one testicle should be included in this category or is a case defined in Art. 150 CrimC because, since there is no loss of function, a single testicle should be considered a non-major organ.*
- *If the passive agent is a minor or a person requiring special protection, the penalty of disqualification from the exercise of parental rights, guardianship, care, safekeeping or fostership could be imposed for a term from four to ten years, should the Judge deem it appropriate in the interest of the minor or person requiring special protection.*

INJURIES

4. INTENTIONAL INJURIES

4.3. Injuries qualified by their result

4.3.3. Loss of a non-major organ or deformity (Art. 150 CrimC). Penalty: 3–6 years in prison

- *Definition of “non-major organ”: According to what we have already seen in Art. 149.1 CrimC.*
- *Casuistry: loss of teeth (Agreement of the Plenary of the Supreme Court of 19 April 2002) but not if it can be easily repaired, loss of spleen or a finger, etc.*
- *This is an intentional offence but problems arise related to the encompassing of the result by intention: indirect intention or negligence.*

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4. INTENTIONAL INJURIES

4.4. Injuries requiring only first medical assistance (Art. 147.2 CrimC). Penalty: a fine of 1–3 months (minor offence)

- The basic features have already been examined (see 3.6 above).
- It is an intentional legal definition (see 3.7 above).
- First medical assistance: a question arises over whether this assistance is necessary (v.gr. haematoma vs. head trauma grade 0).
- Before the 2015 Law Reform it was considered only a misdemeanour (*falta*).
- A formal complaint (*denuncia*) is required from the injured party or their legal representative (Art. 147.4 CrimC).

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4. INTENTIONAL INJURIES

4.5. *Physical aggression (Art. 147.3 CrimC). Penalty: a fine of 1–2 months (minor offence)*

- This only requires a physical attack on the passive agent but no consequence should ensue from it. It is therefore considered **a specific legal definition** because it does not require first medical assistance.
- It is an intentional legal definition (see 3.7 above).
- Before the 2015 Law Reform it was considered only a misdemeanour (*falta*).
- A formal complaint (*denuncia*) is required from the injured party or their legal representative (Art. 147.4 CrimC).

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4. INTENTIONAL INJURIES

4.6. Gender violence (Art. 153.1 CrimC). Penalty: 6 months–1 year in prison or community service of 31–80 days; in all cases, deprivation of the right to own and carry weapons from 1 year and 1 day to 3 years and, when appropriate for the interest of the minor or person with disabilities requiring special protection, disqualification from the exercise of parental rights, guardianship, care, safekeeping or fostership for up to 5 years.

- Conduct: psychic injuries or injuries outlined in Art. 147.2 CrimC and physical aggression without causing injuries.
- Active and passive agent: the passive agent must be the wife or ex-wife of the offender or a woman involved in a similarly emotional relationship to the offender, whether cohabitating or not, or an especially vulnerable person who is cohabitating with the offender.
 - Consequences:
 - a) *Not applicable to same-sex couples*
 - b) *Not applicable to exclusively sexual partners with no emotional relationship*
 - c) *Problems arise in defining especially vulnerable persons: Are minors included? Which minors? The Judgment of Supreme Court 907/2014, 30 December 2014, at least includes babies but other possible subjects are not defined.*
- It is an intentional legal definition (see 3.7 above).
- The rationale for this aggravation is based on the idea that gender violence should be punished more seriously. The Constitutional Court has rejected the notion that aggravating only the conduct of the man may violate a fundamental right (Judgment ConstC 41/2010, 22 July 2010, rejecting violations of equality, proportionality, legality, culpability and presumption of innocence).

INJURIES

4. INTENTIONAL INJURIES

4.7. Family violence (Art. 153.2 CrimC). Penalty: 3 months–1 year prison or community service of 31–80 days; in all cases, deprivation of the right to own and carry weapons from 1 year and 1 day to 3 years and, when appropriate for the interest of the minor or person with disabilities requiring special protection, disqualification from the exercise of parental rights, guardianship, care, safekeeping or fostership for 6 months–3 years.

- Conduct: psychic injuries or injuries outlined in Art. 147.2 CrimC and physical aggression without causing injuries
- Passive agents: persons encompassed in art. 173.2 CrimC except those stated in Art. 153.1 CrimC:
 - *husbands, male partners, partners in general (same-sex couples);*
 - *descendants, ascendants or biological, adopted or fostered siblings;*
 - *minors (except those included in 153.1 CrimC);*
 - *persons with disabilities requiring special protection who live with the offender or who are subject to the parental rights, guardianship, care, fostership or safekeeping of the spouse or cohabitating partner (not those included in the first number)*
 - *persons protected by any other relationship by which they are a member of the core family unit;*
 - *persons who, due to their special vulnerability, are subject to custody or safekeeping in public or private centres.*
- It is an intentional legal definition (see 3.7 above).

INJURIES

4. INTENTIONAL INJURIES

4.8. Aggravated legal definition common to Arts. 153.1 and 2 CrimC (Art. 153.3 CrimC). Penalty: upper half

- Offences committed:
 - a) *in front of minors*
 - b) *using weapons*
 - c) *in the common home or home of the victim*
 - d) *in breach of a preventive measure or penalty imposed on the offender*

INJURIES

4. INTENTIONAL INJURIES

4.8. Attenuated legal definition common to Arts. 153.1 and 2 CrimC (Art. 153.4 CrimC). Penalty: lower degree

- Depending on the concurring special circumstances of the deed or offender with a specific reasoning in the judgment.

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4. INTENTIONAL INJURIES

4.9. Tumultuous brawl (Art. 154 CrimC). Penalty: 3 months–1 year in prison or a fine of 6–24 months.

- Conduct requires:
 - a) *Participating in a brawl, i.e., a fight with multiple persons involved who attack each part in a disorderly or tumultuous manner.*
 - b) *The use of dangerous means or instruments capable of endangering life or physical integrity*
- This specific offence does not require injuries as a result but involves **a result of specific danger to life or physical integrity**.
- Depending on the participation in the particular deed, and taking into account the progression in the attack to the legally protected interest, it is therefore possible to be punished:
 - a) *for this specific danger result offence*
 - b) *for the result offence of injuries*
 - c) *for the result offence of homicide or murder.*

INJURIES

5. NEGLIGENT INJURIES

5.1. Introduction:

- Negligent injuries have undergone multiple changes in a short period of time due to circumstances that have very little to do with the protection of legally protected interests.

- Before the 2015 Law Reform:
 - a) *There were two categories of negligence: serious negligence and minor negligence*
 - b) *Serious negligence was a less serious offence (art. 33 CrimC) based on injuries outlined in Art.147.1, 149 and 150; minor negligence was only a misdemeanour (falta) based, at least, on offences that required first medical assistance.*

- After the 2015 Law Reform:
 - a) *There are two categories of negligence: serious negligence and less serious negligence*
 - b) *Serious negligence is now a less serious offence based on injuries outlined in Art.147.1, 149 and 150 CrimC; less serious negligence is a minor offence based on the offences outlined in Art. 149 and 150 CrimC.*
 - c) *Consequence: basic or less serious injuries committed by less serious negligence are no longer criminal (insurance lobbyists)*

- After the 2019 Law Reform;
 - a) *Interpretative guides for serious negligence and less serious negligence: the commission of offences outlined in Art. 379 CrimC should be deemed serious negligence. The commission of a serious administrative offence (exceeding the speed limit) could constitute less serious negligence.*
 - b) *Less serious negligence could also be committed if basic injuries outlined in Art. 147.1 CrimC are caused.*
(lawyers specialised in car accidents acting as lobbyists)

- After the 2022 Law Reform: cases of serious administrative offence causing a negligent injury should compulsorily be considered as less serious negligence (cycling clubs acting as lobbyists).

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5. NEGLIGENT INJURIES

5.2. Injuries committed by serious negligence (Art. 152.1 CrimC).

- breaches of **elementary precautions** leading to an injury result and cases involving conscious negligence and unconscious negligence (when the basic requirements of duty of care are not met, e.g., assessing the basic risks of an activity).
- depending on the seriousness of the result, the penalty is:
 - *for injuries outlined in Art. 147.1, 3–6 months in prison or a fine of 6–8 months*
 - *for injuries outlined in Art. 149, 1–3 years in prison*
 - *for injuries outlined in Art. 150, 6 months–2 years in prison*

INJURIES

5. NEGLIGENT INJURIES

5.2. Injuries committed by serious negligence (Art. 152.1 CrimC).

- Professional negligence: basic penalty + disqualification from the profession, trade or office for 6 months–4 years.
- Negligent injuries committed while driving a motor vehicle:
 - *When an offence outlined in Art. 379 CrimC is committed, the results should be considered at least as serious negligence if those circumstances are the cause of the result (legal causation)*
 - *Basic penalty + disqualification from the right to drive motor vehicles and mopeds for 1–4 years.*
- Negligent injuries committed with a firearm: basic penalty + disqualification from the right to use firearms for 1–4 years.

INJURIES

5. NEGLIGENT INJURIES

5.3. Injuries committed by less serious negligence (Art. 152.2 CrimC): a fine of 1–2 months (Art. 147.1 CrimC), a fine of 3–12 months (Art. 149 & 150 CrimC)

- Less serious negligence (*imprudencia menos grave*): difficulties arise in establishing its content vs. minor negligence (*imprudencia leve*): equivalence or *tertium genus*
- Penalty should be graded depending on the result of the injury and the seriousness of the negligence (149 and 150 CrimC)
- Negligent injuries committed while driving a motor vehicle (successive amendments): basic penalty + disqualification from the right to drive motor vehicles and mopeds for 3 months–1 year.
 - *2015 Criminal Law Reform: Decriminalisation of minor negligence. New category of less serious negligence, only punishable for results outlined in Art. 149 and 150 CrimC.*
 - *2019 Criminal Law Reform: Less serious negligence also in cases outlined in Art. 147.1 CrimC. When a serious administrative offence is committed, the results could be considered less serious negligence if the action consisting of the administrative offences brought about the result.*
 - *2022 Criminal Law Reform: The definition of less serious negligence has again been amended to establish that any case of the serious infringement of road safety rules should be considered less serious negligence if this infringement has been decisive for commission of the deed (Organic Act 11/2022, 13 September 2022, thus amending the Criminal Code with regard to negligence in the driving of motor vehicles or mopeds).*
- Negligent injuries committed with a firearm: basic penalty + disqualification from the right to use firearms for 3 months–1 year.
- For prosecution, this offence requires at least a formal complaint (*denuncia*) from the injured party or their legal representative.

INJURIES

5. NEGLIGENT INJURIES

5.4. Aggravated injuries committed by serious negligence (Art. 152 bis CrimC).

- Offences outlined in Art. 152.1 CrimC could be punished with the penalty in its higher degree, in the appropriate extension, if
 - a) the deed is evidently serious in view of:*
 - its entity
 - the importance of the danger created, or
 - the violated duty of care
 - b) the deed has caused injures to other persons as stated in Article 152.1. 2 or 3.*
- Offences outlined in Art. 152.1 CrimC could be punished with a penalty two degrees higher, in its appropriate extension, if a large number of persons is injured.
- The application of this article is not mandatory and requires a reasoned decision by the judge or court of law.

INJURIES

6. CONSENT IN INJURIES (Art. 155 and 156 CrimC)

- *Two consequences of consent: Attenuation and Justification*
- *Attenuation (Art. 155): if consent is given validly, freely and explicitly to injuries, the penalty could be lower by 1 or 2 degrees. Consent given by a minor or persons with disability in need of special protection is not valid.*
- *Justification (Art. 156): Valid, free, conscious and specifically explicit consent to organ transplant carried out pursuant to the terms of the Law, sterilisations and transsexual surgery carried out by a surgeon.*
 - Exemption: if the consent is flawed or obtained by price or reward, or if the person consenting is a minor or devoid of the capacity to give such consent, their consent or that of their legal representatives shall not be valid.
 - The legal definition changed to exclude authorisation by the Courts in cases of sterilisation in relation to persons with serious mental illness and who are unable to give their consent (Organic Law 2/2020, 16 December, on Law Reform of the CrimC to eradicate forced or non-consensual sterilization of legally incapacitated persons with disability).
- *General grounds for justification (e.g., state of necessity) and regulations regarding consent to medical procedures (Art. 8 and 9 Basic Act 41/2002) carried out according to lex artis are also excluded from punishment.*

INJURIES

6. CONSENT IN INJURIES (Art. 155 and 156 CrimC)

- *Special cases:*
 - Sadomasochistic practices (Judgment of SC 1049/2002, 5 June 2002)
 - Sports injuries
 - Injuries caused in dangerous practices (parachuting, BASE jumping, racing and other dangerous events)
 - gender violence
 - deformity caused in a consensual practice by a third party

INJURIES

7. STAGES OF THE CRIME

- *Attempted injury is punishable (Art. 16 CrimC)*
- Provocation, conspiracy and proposal shall be punished in relation to injuries outlined in Art. 147, 148, 149 and 150. The penalty is reduced by 1 or 2 degrees (Art. 151 CrimC). However, this has been criticised as disproportionate.
- Art. 156 ter CrimC: this is a case of provocation as outlined in art. 18.1 CrimC (a preparatory act) that has been elevated to the category of an autonomous offence pursuant to Organic Act 8/2021, 4 June 2021, on the integral protection of children and adolescents (*protección integral de la infancia y la adolescencia*); a new article, 143 bis CrimC, has been created, which entered into force on 25 June 2021.
Conduct: publicly distributing or disseminating (via the Internet, phone or any other digital means) content specifically aimed at promoting, encouraging, or inciting self-injury in minors or disabled persons in need of special protection.
Punishment: prison 6 m.- 3 y.
- *There is a possibility of concurrence between consummated offences and attempted/preparatory acts that should be solved as concurrence of norms.*

INJURIES

8. CONCURRENCE OF NORMS AND OFFENCES. DISTINCTION BETWEEN INJURIES AND OTHER CRIMINAL OFFENCES. ADDITIONAL LEGAL CONSEQUENCES.

8.1. Concurrence of norms

- between different injuries and consummated and attempted/preparatory acts
- between intentional injuries and attempted homicide.

8.2. Concurrence of offences

- SCourt states that in offences against life or any personal (physical) legally protected interest, material concurrence (*concurso real*) normally applies. Exceptions: praeterintentional homicide, negligent injuries and homicides.
- If injuries are committed in the consummation of other offences which are intrinsic to their commission, they should be considered embedded in it (concurrence of norms, *ne bis in idem*), even if payment for civil liability is considered.

Examples: minor (or psychic) injuries in rape, minor injuries in unlawful detentions or robbery.

- If the injuries exceed those normal to the commission of the crime, they should be punished separately.

INJURIES

8. CONCURRENCE OF NORMS AND OFFENCES. DISTINCTION BETWEEN INJURIES AND OTHER CRIMINAL OFFENCES. ADDITIONAL LEGAL CONSEQUENCES.

8.3. Additional legal consequences

Art. 156 quater: Supervised release

Art. 156 quinquies: In cases where the victim is a minor, a special disqualification from any profession, trade, or other activities, whether remunerated or not, that involves regular and direct contact with minors should be imposed for a period of 3–5 years longer than the term of the custodial sentence imposed in the judgment, or for a period of 2–5 years when no prison sentence has been imposed. Proportional consideration should be given to the seriousness of the offence, the number of offences committed, and the circumstances surrounding the convicted individual.

INJURIES

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