

le tutour
A v o c a t s

Pushing the boundaries of the Dintilhac Classification

19th July 2022

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Extending the Dintilhac Classification



Fatal accidents
Extended number
of claimants
Yemenia Airlines case

Specific losses as
part of the
Dintilhac
classification

Religious loss
Contamination loss

Anxiety loss

Additional and
autonomous
heads of losses in
medical
negligence

Exceptional losses

When victims
develop a disease
as a result of their
accident

The Yemenia Airlines case :

recognition of the extended number of indirect victims

- The judge recognised the right to compensation of the following indirect victims (Aix-en-Provence court of appeal, 30th June 2016, n° 15/07185) :

- Partner
- Daughter / Son
- Sister / Brother
- Grandparents
- Grandchildren



specific bond of affection is
presumed

- Uncles / Aunts
- Nephews / Nieces
- Cousins
- Parents-in-law
- Children-in-law
- Sons-in-law
- Ex-spouse / ex-husband



specific bond of affection
must be **demonstrated**

Specific types of losses compensated as part of the Dintilhac Nomenclature

- **Specific loss of contamination:**

- Fear of the patient when he/she is informed of his/her contamination (disease).
- Compensates the fear of **reduction of life expectancy, prospect of heavy, painful and long-term treatments, risk of developing serious diseases due to immunosuppression.**
- Often included in the **physical and psychological sufferings head of loss** of the Dintilhac nomenclature.
- Cour de cassation, 16 March 2022, n° 20-12.020 : confirmed the compensation of an AIDS transmission victim.

Specific types of losses compensated as part of the Dintilhac Nomenclature

- **Religious loss :**

- Compensates a victim's **inability to practice his or her religion in whole or in part**
- Compensate, for example, for the inability to pray in a particular position or the inability to take part to pilgrimages
- The victim must prove that he or she was effectively practising the religion of which he or she is partially or totally deprived
- May be compensated as part of the **partial or full temporary impairment functional deficit head of loss** (Douai court of appeal, 2 March 2017, n°16/00417)

Heads of losses created by case-law

('autonomous head of losses')

Anxiety loss (worried well)

- Originally recognized **in 2010** by the social chamber of the Court of Cassation (in charge of labour law disputes) (Cass. Soc., 11th May 2010, n°09-42.241) (absestos)
- Discussion as to whether anxiety loss is a bodily injury: anxiety loss part of moral pain and sufferings (Cass, 1e civ, 14th Nov. 2019, n°18-10.794) but some court of appeal of Versailles disagrees (Versailles cour of appeal 18th May 2020)
- Compensates the **'permanent worry generated by the risk of a declaration of a disease at any time.'**

Heads of losses created by case-law

('autonomous head of losses')

Anxiety loss (worried well)

Types of cases where anxiety loss was comensated

- Distilbene cases (Diethylstilbestrol against UCB Pharma)
- Mediator cases (against Servier)
- PIP cases (against TÜV Rheinland)
- Cardiac probe cases (against Telectronics)
- Levothyrox cases (against Merck)
- Hepatitis B cases (against the State)
- Hepatitis C cases (against the Etablissement français du sang)

Origin of the damage	Amounts awarded for compensation of anxiety loss	Case
Mediator	Provision of 1.500 euros	Nanterre tribunal, Order, 28 January 2016, n°15/01586
PIP Implants	Provision of 3.000 euros	Aix-en-Provence court of Appeal, 11 February 2021, n° RG 17/02231
Cardiac probe (Teletronics)	5.000 euros	Paris Court of Appeal, 12 September 2008, n° 07/04030
Asbestos dust	7.500 euros 12.000 euros + 2.000 euros (disturbance of living conditions)	Bordeaux Court of Appeal, 7 avril 2009, 08/04292 Conseil d'État, 7th - 2nd Joint Chambers, 03/03/2017, 401395
Cardiac probe (Teletronics)	10.000 euros	Paris Court of Appeal, 12 September 2008, n°07/03986
Coal miner	10.000 euros	Douai Court of Appeal, 29 January 2021, n°20/00255
Disthylstilbestrol	15.000 euros	Cour de cassation, 1st civil chamber, 5 June 2019, No 18-16.236
Hepatitis C virus infection	40.000 euros (includes disturbance of living conditions) 150.000 euros (includes disturbance of living conditions)	Conseil d'État, 5th and 4th joint sub-sections, 25/06/2008, 286910 Conseil d'État, 5th and 4th joint sub-sections, 19/12/2007, 289922

Additional and autonomous heads of losses in medical negligence

- **Non-material damage resulting from the late announcement of a patient's death to his or her relatives** (Conseil d'État, 5ème chambre, 12/03/2019, 417038) :
 - A 83 years-old died a few hours after being admitted to hospital (at 7.45am)
 - Wife and sons not informed of his death until 2.45pm, when they came to visit him
 - Body had been transferred to the morgue without his relatives being able to see him
 - compensated for their moral sufferings as a result of the late announcement of the victim's decease (3.000 euros)
 - Lacked of empathy of the hospital's staff
 - This compensation is distinct from the indirect victims' loss of affection

Additional and autonomous head of losses in medical negligence

- **Damage of unpreparation of a patient to the existence of risks of a medical act due to a lack of information** (Cour de cassation, civile, Chambre civile 1, 3 juin 2010, 09-13.591) :
 - A man underwent a prostate adenomectomy and subsequently became impotent
 - He filed a lawsuit against his urologist
- Courts' findings:
 - Patient's right to be priorly informed of the risks of any treatment or surgery,
 - A practitioner's failure to comply with his or her duty to inform gives rise to compensation
 - The patient **was not able able to prepare for the eventuality of the side-effects of the intervention**
 - It is irrelevant that there was no other alternative to the surgery

Extension of Dintihlac 'exceptionnal losses as per case-law



List of head of losses
of the Dintihac
nomenclature should
not be 'overly rigid'



The Nomenclature
should adapt to the
victim's circumstances:
atypical losses should
be compensated



The 'exceptional permanent
injury' head of loss makes it
possible, if necessary, to
compensate, on an exceptional
basis, **particular permanent
extrapatrimonial injury that
cannot be compensated by any
other means.**

Exceptional losses decided by Case-Law

- **Loss of identity or depersonalisation :**

- Brain injury cases
- Compensates for the loss of a victim of a brain injury who is **no longer his or herself, no longer being recognised** as the person one was, no longer having access to the gaze of others
- Lyon court of appeal 24th January 2017, n°13/07753 : compensation of a victim who fell several metres through a floor and suffered a very serious head injury (20.000 euros)

- **Loss suffered as a result of intra-family tort :**

- Compensates the **guilt of a victim**, who is **both the victim and the perpetrator of the family disorder**
- **Loss of confidence** of the victim with regard to others in particular, and with regard to society in general, which was unable to protect her
- Douai court of appeal, 25 March 2010, n° 09/03180 : compensation of an incest victim (5.000 euros)

If a victim develops a disease as a result of an accident

- The Court of Cassation recently confirmed that the compensation of a victim of a road traffic accident may not be reduced on the grounds of a **pathological predisposition** when the resulting condition (Parkinson's disease) was only caused or revealed by the accident (Cass. 2e civ., 20 mai 2020, n° 18-24.095).

Thank you !

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