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EDITORIAL ARTICLE

The evolution of extrajudicial expert advice in motor vehicle accidents: Situation in 2024

La evolución de las periciales extrajudiciales en accidentes de vehículos a motor: Situación en 2024

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This issue of REML publishes an article on the valuation of personal injury in extrajudicial expert opinions in Valladolid¹ which complements a previous article, also published in REML on the same subject in Catalonia.² The reform of the Organic Law of the Judiciary (LOPJ) in 2015 introduced the possibility of 'the issue of reports and opinions at the behest of private individuals, under the circumstances determined via regulations', by the Institutes of Legal Medicine and Forensic Sciences (IMLCF)³ simultaneously with the amendment of the Criminal Code, which resulted in the disappearance of misdemeanour trials.

These changes led to a significant reduction in the number of forensic procedures conducted in traffic accident cases. For example, the IMLCF of Murcia went from 12,820 reports for traffic injuries in 2013 to a total of 2,001 in 2022, of which 1,345 corresponded to extrajudicial expert opinions and 656 came from criminal proceedings. These figures represent a reduction of 84.3% in the number of expert opinions given previously.⁴

Extrajudicial expert evidence in traffic matters has been consolidated in the IMLCFs as routine practice. This type of service still accounts for over 3,000 cases per year in the IMLCFs of the Ministry of the Presidency, Justice and Relations with the Parliament (MinPJRC), although there has been a slight decrease in recent years (Fig. 1). The

amount paid into the treasury from the public price of these expert opinions has made it possible to sustain the economic viability of some of the MinPJRC's projects, such as the incorporation of trainee residents in the speciality of Legal and Forensic Medicine.

However, the obligation for a reasoned offer has been criticised for leaving the key to access to the mechanism provided in Article 7, point 5 of the Insurance Law in the hands of the insurance companies.⁵ In this regard, the draft bill amending the revised text of the Law on Civil Liability and Insurance in the Circulation of Motor Vehicles, currently being processed, contains an amendment to point 5 of article 7 in contemplating the possibility of victims also being able to turn to the IMLCF in cases of responses motivated by the absence of injuries as a result of the accident.⁶

The draft also establishes deadlines for actions by the IMLCFs, whereby the examination must be undertaken within three months from submitting the application and the report must be issued within one month of the examination.

The group of civil liability lawyers proposed that the report issued by the IMLCF be limited to the controversy that arises between the claim and the reasoned offer. The Forensic Medical Council argued that, by its very nature,

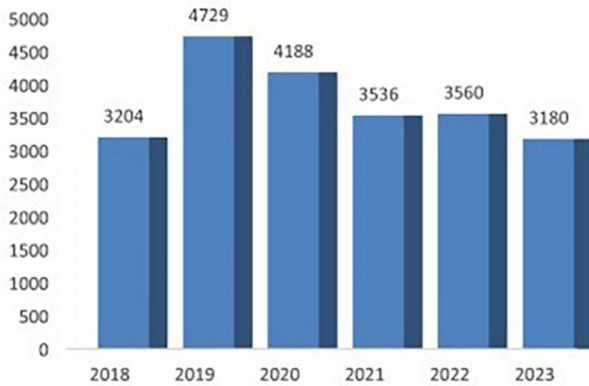


Fig. 1 Extrajudicial expertise in the sphere of the Ministry of the Presidency, Justice, and Relations with the Parliament.

the expert report requires independence to issue its conclusions, under strictly scientific criteria, in accordance with the procedural rules determined in its protocols, guides, or recommendations for action.⁷

Another criticism made of this procedure concerns the administrative overload placed on the IMLCFs in processing it, by turning them into autonomous bodies that must deal directly with individuals or their representatives.⁸ Specific procedures have been outlined on the MinPJRC website so that these requests to the IMLCFs under its jurisdiction can be processed electronically.⁹

Finally, it is important to mention the recent changes to the Penal Code that have resulted in the prosecution of imprudent conduct leading to 'relevant' injuries, understood as conduct which causes injuries that require medical or surgical treatment.¹⁰

This modification threatens to bring to court once again traffic incidents which, with the abolition of misdemeanour trials, had been referred to extrajudicial settlement mechanisms. It is too early to know what impact this regulation will have, but in the months that it has been in force it appears that neither the Administration of Justice, nor the victims themselves nor the insurance sector, are interested in bringing traffic accidents with minor injuries back to court. It is therefore suggested that this problem can be adequately addressed in the field of private settlement and extrajudicial mediation.

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