

## Legal Alert

# Changes in liability for damages in criminal proceedings

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**From the point of view of the victim, one of the most significant changes in the penal code, introduced on the 20 February 2015, is an amendment to the institution of an obligation to remedy the damage or compensate the injured party. This obligation has ceased to be a punitive measure, and became a compensatory measure, to which the provisions of the civil code apply directly.**

It is not uncommon that the same harmful event is not only a civil offense, but is classified as a criminal offense. In such situations, the injured party should have the legal possibility to claim total damages in the context of criminal proceedings.

### How was it before?

Before the amendment of the penal code of 20 February 2015 (Journal of Laws 2015 pos. 396), the obligation to remedy the damage caused by the offense or compensate for the damage suffered, was a punitive measure. This meant that the rules on sentencing were applied. As a result, the courts had the right (and even a duty) to reduce the amount of compensation due to personal circumstances relating to the offender. Retributive sentence, together with punitive measures used, could not in fact exceed the degree of guilt of the offender.

Although jurisprudence developed a fairly uniform standpoint, ordering the application of the provisions of the civil law to adjudicate a remedy and compensation for damage suffered, but there were still a number of discrepancies regarding the awarded obligation to compensate for the damages. Concerns were raised in connection with the very possibility of courts imposing a joint obligation to remedy the situation where there were several offenders. Such a solution, according to some criminal courts, was at odds with the principle of individualisation of a criminal liability since joint liability meant that each of the offenders was responsible for total damages, despite the fact that offender's degree of contribution to the damage could actually be smaller than other offenders.

Doubts also concerned the amount of damages awarded. Courts generally assumed that the injured party in criminal proceedings may only demand compensation for damages directly resulting from the crime (i.e. damage). The courts did not award the injured party any interest, or lost profits that have arisen in connection with the crime. And so, for example, the injured party, from whom cash was stolen, could not claim, before a criminal court, a compensation which included interest on the stolen funds, which would have been accrued by the banks, if these funds were placed in a bank deposit.

In practice, this meant that the criminal court imposing liability for damages, has never ruled on the full amount of damages, at the same time referring the injured party to civil proceedings in the remaining scope. Furthermore, according to the previous wording of art. 46 § 1 of the penal code, the civil



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law regulations on time-bar for claims did not apply to the obligation to remedy or compensate for damages suffered. Therefore, it was commonly assumed that the injured party's compensation claim does not interrupt the time-bar period for claims.

### **How is it now?**

According to the new wording of art. 46 § 1 of the penal code, the criminal court, in the event of a conviction, may award, and at the request of the injured party or any other entitled party, awards, using the provisions of the civil law, the obligation to remedy damages, in whole or in part, or compensate for damage suffered. The provisions of adjudicating a pension do not apply.

At the same time, in accordance with art. 46 § 3 of the penal code, a judgment for damages or compensation, or penalty assessment provided for in art. 46 § 2 of the penal code, does not preclude asserting the unsatisfied part of the claim in civil proceedings.

### **What this change means in practice?**

First of all, it no longer raises any doubt that the obligation to remedy or compensate for damage suffered is a civil-legal measure in a criminal proceeding. The criminal court, on issues related to the award of damages, is obliged to directly apply the provisions of the civil code. This in turn means that the criminal courts have gained a legal basis to award damages to the full extent, that is covering the damage, but also the lost profits resulting from the crime. Moreover, there is no longer any doubt that the criminal court, awarding compensation for damages, should impose a joint remedy to all those convicted, collaborating in the commission of the offense, which caused damage to the property of the injured party. Such solution will greatly facilitate the execution of the compensation by the offender for the benefit of the injured party. On the other hand, the criminal court, awarding compensation, will also be forced to evaluate whether and to what extent the injured party contributed to the creation or the increase of the damage.

In addition, due to the removal of the provision of art. 46 § 1 of the penal code on the prohibition of civil law on time-barring, the injured party's claim to remedy or compensate for damages will interrupt the period of limitation of these claims. An open question remains, of course, if the claim's time-barred period will be interrupted when the injured party submits a claim at the stage of preparatory proceedings (i.e. before the prosecutor). It is difficult to assume that the prosecutor is the body authorised to hear such claims. Meanwhile, the claim's limitation period is interrupted only by actions before a court or other body established to hear cases or claims of a given type (art. 123 § 1 pt. 1 of the civil code).

### **Good solution**

Unambiguous indication by the Legislator that the liability to remedy or compensate for damages suffered constitutes a compensatory measure, which the provisions of the civil law directly apply, is definitely a good solution. It will allow to avoid many doubts about the doctrine and jurisprudence related to the previous classification of this measure to punitive measures and a lack of clear regulations governing this institution. First of all, it is to be hoped that the victim of the offense will have the opportunity to obtain compensation for the total loss caused by the offense during one set of proceedings, without the need to institute separate civil proceedings in order to claim damages.