
Specificities of Compensation for Damage Caused by a Criminal Offense

Sanja Lukavac Spasojević, Marija Stanković, i Marko Stanković
University Business Academy, Novi Sad, Serbia
Faculty of Law for Commerce and Judiciary in Novi Sad

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Author Note

Sanja Lukavac Spasojević  <https://orcid.org/0009-0004-0362-5054>

Marija Stanković  <https://orcid.org/0000-0001-7171-4439>

Marko Stanković  <https://orcid.org/0000-0002-4238-479X>

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Corresponding author: Sanja Lukavac Spasojević

E-mail: lukavac.sanja@gmail.com

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Specificities of Compensation for Damage Caused by a Criminal Offense

Abstract

Numerous criminal offenses result in either material or non-material damage. Others are characterized by so-called abstract consequences, meaning that it is not necessary for a concrete consequence to occur for the criminal offense to be considered committed. Regardless of whether the consequence is an essential element of the criminal offense, the injured party may suffer damage caused by the offense. Recognizing the significance of such damage, the legislator has provided the injured party with the choice of seeking compensation either through civil proceedings or within criminal proceedings via the institute of a property claim. Additionally, Article 377 of the Law on Obligations [LOO] stipulates a privileged statute of limitations period for claims arising from damage caused by a criminal offense¹, tying it to the limitation period for criminal prosecution when that period is longer than the general statute of limitations, which is three years from the date of knowledge of the damage or five years from the date the damage occurred. This approach enables the injured party to pursue compensation—either through a property claim within the criminal process or by initiating a civil lawsuit—within an extended time frame, considering that the legal interest harmed by a criminal act is generally of greater importance than that harmed by a tortious act. Nevertheless, it must be noted that if the criminal proceedings result in an acquittal, the general statute of limitations will apply.

Keywords: compensation for damage, statute of limitations, criminal offense, property claim

Introductory Considerations

A criminal offense consists of several elements, one of which is certainly the consequence of the offense. The consequence of a criminal offense differs across various criminal offenses. For instance, in the case of the criminal offense of murder under Article 133 of the Criminal Code of the Republic of Serbia [Criminal Code], the consequence is inherent in the act itself and consists of the deprivation of another person's life. In such a criminal offense, and due to the occurrence of the consequence, a right arises for the person (members of the immediate family of the deceased victim) to claim compensation for damage resulting from the mental anguish caused by the death of a close relative. In the case of the criminal offense of coercion under Article 135, paragraph 1 of the CC, the act of commission involves coercing another person by force or threat to do or not do something, or to endure something. The specific consequence of this criminal offense will vary in each particular case. In the broadest sense, the consequence of this criminal offense is the endangerment of the victim's personal freedoms, but it is also possible that the victim may suffer some damage as a result of this offense, either property damage (if the victim is coerced into relinquishing some of their property rights) or non-material damage (if consequences such as fear or physical pain due to injuries occur). In certain criminal offenses, damage

¹ (1) When the damage is caused by a criminal offense, and a longer statute of limitations is provided for criminal prosecution, the claim for compensation for damage against the responsible party becomes time-barred when the period for the statute of limitations for criminal prosecution expires.

(2) The suspension of the statute of limitations for criminal prosecution also results in the suspension of the statute of limitations for the claim for compensation for damage.

(3) The same applies to a halt in the statute of limitations.

represents an essential element of the offense, as is the case with the criminal offense of endangerment of public traffic under Article 289, paragraph 1 of the CC, where the condition for the existence of the criminal offense is the occurrence of light bodily injury in another or the causing of property damage exceeding two hundred thousand dinars. It is also important to note that, in criminal law, we distinguish between offenses that have consequences, as is the case with the aforementioned offenses, and offenses that do not have a consequence but consist only of a prohibited act (doing or not doing something). On the other hand, the victim of a criminal offense may suffer damage, even if such a consequence is not foreseen by the offense. This will be the case with the criminal offense of defamation under Article 170 of the CC. Although the legislator does not foresee a consequence as an essential element of the offense of defamation, the victim may, in fact, suffer damage in the form of injury to their honor and reputation.

In this paper, we will attempt to answer the question of whether it is necessary for the consequence (i.e., the damage having occurred) to be an integral part of the essence of the criminal offense in order for the injured party to have the right to seek compensation for damage within the privileged statute of limitations period under Article 377 of the Law on Obligations in civil proceedings, as well as whether it is necessary for the injured party to have the right to file a property claim in criminal proceedings.

Property Claim

The Criminal Procedure Code [CPC] provides for the right of an authorized person to file a property claim in criminal proceedings. A property claim is a request directed towards the defendant for compensation for damage, the return of property, or the annulment of a specific legal transaction. Article 253 of the CPC stipulates that any person who is authorized to file such a claim in civil proceedings may also file a property claim in criminal proceedings. This means that only those persons who are, in accordance with the provisions of the Civil Procedure Act [CPA], actively legitimized to file a lawsuit for compensation for damage in civil proceedings may file a property claim in criminal proceedings.

The property claim is an accessory procedure, and the criminal court decides on it alongside the decision in the criminal case, but only if it renders a conviction and simultaneously has evidence indicating the validity of the property claim. However, the criminal court cannot reject the property claim of the injured party; it can accept it fully or partially. If the criminal court does not have enough evidence to indicate the validity of the property claim, it may refer the injured party to assert their rights in civil proceedings. In case the criminal court finds that the property claim of the injured party is partially valid, it will accept such a claim partially and refer the injured party to civil court for the remainder of the property claim. The injured party has the right, but not the obligation, to file a property claim, and they can also assert their rights in civil proceedings, independently of the criminal proceedings.

If the injured party decides to file a property claim in criminal proceedings, they must do so no later than the completion of the main hearing before the first-instance court, along with the submission of evidence supporting such a claim. "The court decides on the referral to civil proceedings within the judgment's ruling, and this is the moment when the court can decide at the latest whether to discuss the property claim." (Petričević, 2024, p. 170)

Article 50 of the CPC provides the rights of the injured party, of which the following are relevant for this paper:

- The right of the injured party to submit a proposal and evidence for the realization of the property claim and to propose temporary measures for its security;
- The right of the injured party to file an appeal against the decision on the costs of the criminal proceedings and the awarded property claim.

"This provision implies that the injured party does not have the right to appeal when the court refers them to civil proceedings, i.e., when the property claim is not awarded, thereby calling into question the right to exercise one of the injured party's basic rights, namely the right to a property claim." (Petričević, p. 170)

Article 252, paragraph 2 of the CPC stipulates that the property claim may concern compensation for damage, the return of property, or the annulment of a specific legal transaction. Regarding these institutes, the CPC does not provide definitions, so it is necessary to consult civil law regulations. Given the subject of this paper, the authors will focus on the concept of damage.

In this regard, it is important to note the opinion of the Supreme Court, Su I-7 9/2024-1, dated March 25, 2024, which resolved the issue of inconsistencies in case law concerning property claims in cases of unpaid maintenance contributions, specifically in the case of the criminal offense of failure to provide maintenance under Article 195 of the Criminal Code:

"Unpaid maintenance contributions are not grounds for filing a property claim in criminal proceedings, as they do not constitute damage in the sense of the provisions of Article 252, paragraph 2 of the CPC. If an authorized person presents such a claim as a basis for a property claim, the court will, pursuant to Article 258, paragraph 4 of the CPC, refer them to assert their property claim in civil proceedings.

When a court, in conditional sentencing based on Article 65, paragraph 2 of the Criminal Code, orders that the sentence will be enforced if the defendant does not pay the overdue unpaid maintenance contributions within a certain period and does not continue to regularly pay maintenance, this is not a decision that accepts the property claim, but a decision imposing an additional obligation on the defendant, which they must fulfill to avoid the revocation of the conditional sentence." (Su I-7 9/2024-1)

Thus, even when the injured party has no grounds to assert a property claim, the court will refer them to civil proceedings for the realization of their rights, in accordance with the provisions of Article 258 of the CPC, as the criminal court does not have the authority to reject such a claim.

The Concept of Damage

Our LOO does not contain a definition of damage in its general sense, but it explicitly defines the forms of damage. Article 155 stipulates that damage consists of a reduction in someone's property (ordinary damage), the prevention of its increase (lost profit), and infliction of physical or psychological pain or fear on another (non-material damage).

According to Loza, "the concept of damage in our law has a broader meaning, as it encompasses not only the harm (violation, reduction) of property interests but also the harm to non-property goods. In addition, it is not limited to the violation of only subjective rights but also includes legally protected interests." (Loza, 2000, p.198)

Material (property) damage can be defined as a decrease in the value of the damaged person's property or the incurrence of costs as a result of a specific event or actions taken by the person responsible for the damage. It is characteristic of material damage that it can be expressed in monetary terms.

"In our law, non-material damage consists of the violation of personal goods or rights, i.e., the physical or psychological integrity of a person." (Salma, 2001, p.456) Article 200 of the LOO regulates the grounds on which the injured party may be awarded monetary compensation for non-material damage, which includes: suffered physical pain, mental pain due to a reduction in life activity, disfigurement, harm to reputation, honor, personal rights, death of a close person, and fear. (Babić, 2008, p.322) Babić defines non-material damage as the reduction of moral assets.

"In the case of damage caused, the civil law sanction is the reaction to the violation of the general prohibition of causing harm to another and is concretized by obligating the responsible person to compensate for it." (Simonović, 2018, p.314)

Criminal Liability and Liability Based on Guilt

"The Serbian Criminal Code from 2006 no longer uses the term 'criminal liability,' which was the reason why this term was also eliminated in the CPC in relevant provisions, such as in Article 156, Paragraph 2, 345, 355 ZKP (one of the alternatively formulated grounds for an acquittal), etc. This reflects the formal adoption of the objective-subjective concept of the general notion of a criminal offense in the Criminal Code." (Škulić, 2021, p.203)

In criminal law, "guilt is defined as a set of subjective elements that must exist on the part of the perpetrator of the crime for the act to be considered a criminal offense." (Đorđević, 2020, p.41) Article 22 of the Criminal Code stipulates that guilt exists if the perpetrator, at the time of committing the crime, was accountable and acted with intent, being aware, or being obligated and capable of being aware, that their act was prohibited, and that the crime was committed with guilt even if the perpetrator acted negligently, provided the law explicitly foresees it. Therefore, guilt in the criminal law sense consists of three elements: accountability, culpability, and awareness of the prohibited nature of the act.

Furthermore, according to Škulić, "if the court determines that any of the mandatory elements of the criminal offense established in the Criminal Code is missing or that unlawfulness or guilt is excluded, there will be no criminal offense. This means that even when there is no guilt, as a subjective element of the criminal offense, either due to the absence of the required form of guilt (for example, negligence exists, but the specific criminal offense can only be committed intentionally), or because the act was committed in a state of non-accountability for the unlawful act prescribed by law as a criminal offense, such an act is no longer considered a criminal offense at all." (Škulić, 2021, p.203-204)

On the other hand, guilt in civil law, according to Article 158 of the LOO, exists when the wrongdoer causes damage intentionally or through negligence. "For the establishment of liability based on guilt, both mandatory (damage and causal connection) and all variable conditions of liability (guilt and unlawful act) must be fulfilled." (Nikolić, 2019, p.91)

Thus, guilt in the criminal law sense and guilt in the civil law sense have their similarities but also their differences. The most important point to note is that if there is guilt in the criminal law sense, it necessarily exists in the civil law sense as well. However, for guilt to exist in the civil law sense, it is sufficient for the wrongdoer to have acted intentionally or negligently, leading to the occurrence of damage,

i.e., there must be a causal relationship between the actions of the wrongdoer and the resulting damage, regardless of whether the actions of the wrongdoer fulfill the essential elements of a criminal offense, including the perpetrator's guilt.

For example, the Higher Court in Novi Sad, in its decision GŽ 11829/2022 from January 19, 2023, states that civil liability is broader than criminal liability, and the defendant can be liable for causing damage in the civil law sense even if their behavior does not meet the characteristics of any criminal offense. The court can decide on the validity of the claim regardless of the outcome of the criminal procedure.

CPA, Article 13 stipulates that in civil proceedings, the court is bound by the final criminal court judgment regarding the existence of a criminal offense and the criminal responsibility of the perpetrator. This means that the civil court will not engage in determining the (non)existence of a criminal offense and the criminal liability of the defendant if there is a final, convicting criminal court judgment. Instead, the civil court will accept the established facts from the criminal judgment *ut est* (as they are).

In essence, if the criminal court has already made a final ruling regarding the guilt of the defendant, the civil court will rely on that ruling when it comes to matters of liability related to the same act. This prevents the duplication of efforts by reexamining the same issues in the civil case, streamlining the process and upholding the authority of the criminal court's findings.

According to Article 13 of the CPA the court in civil proceedings is bound by the final judgment of the criminal court regarding the existence of a criminal offense and the criminal responsibility of the defendant. Therefore, the civil court will not engage in determining the (non)existence of a criminal offense and the criminal responsibility of the defendant if there is a final conviction by the criminal court, but will accept these established facts "*ut est*."

Claim for Compensation for Damage Caused by a Criminal Offense in Civil Proceedings

The injured party may decide to pursue compensation for damage in civil proceedings independently of the criminal proceedings, or the criminal court may refer them to a civil lawsuit in its criminal judgment. If, in a criminal proceeding, it is definitively established that the defendant is guilty of a specific event, this also defines their liability in civil law terms, i.e., that they are responsible for the harmful event, and no different decision can be made in civil proceedings. This position was also accepted by the Higher Court in Novi Sad in the ruling GŽ 2835/2013 dated November 20, 2013. Therefore, the existence of criminal liability, to a limited extent, serves as a preliminary issue in civil proceedings. In other words, "whether a criminal offense was committed can only arise as a preliminary issue if the commission of the criminal offense is a condition for the creation or cessation of certain subjective rights. In a civil lawsuit for compensation for damage, the civil court is bound by the findings of the criminal court regarding the causation of damage, but only if the damage is a significant element (characteristic) of the criminal offense."

A question arises regarding the rights of the injured party in cases of criminal offenses with abstract consequences. One such offense is unauthorized publication and display of someone else's document, portrait, or image under Article 144 of the Criminal Code. The act constituting this criminal offense involves unauthorized publishing or displaying someone else's document, portrait, photograph, film, or phonogram, or their content from personal or family life. To commit this offense, it is not necessary for the injured party to suffer concrete damage. However, due to the commission of this criminal offense, there may be a

violation of honor and reputation, or a violation of personal rights, for which the injured party is entitled to compensation for damage. According to the provisions of Article 377 of the LOO, it is not important whether a specific consequence in the form of suffered damage is a significant element of the criminal offense, but only whether there is an established causal link between the commission of the criminal offense and the resulting damage.

In the case of a conviction in a criminal judgment, if the nature of the criminal offense includes the occurrence of specific damage, the subject of such a civil lawsuit can only be the determination of the amount of the resulting damage. On the other hand, the civil court is not bound by an acquittal in the criminal judgment. According to the position of the Higher Court in Čačak, when determining potential damage, regardless of when the highest court, in an extraordinary legal remedy, has rendered an acquittal, the civil court is not bound by it but will decide on the claim according to its own discretion. This court's position is justified, considering the broad scope of civil liability, as it is not necessary for the defendant to have committed a criminal offense; it is sufficient that they took a tortious action in civil law terms.

Regarding the determination of the amount of damage, the Supreme Court of Cassation has expressed the view that when the defendant is convicted by a final criminal judgment for a criminal offense that caused damage to the plaintiff, and the amount of the damage is included in the criminal judgment, the plaintiff is not obligated to prove the amount of the damage in the civil proceedings. Instead, the burden of proving a lesser amount of damage lies with the defendant. This position expresses the binding nature of the civil court to the final criminal judgment.

In conclusion, the civil court accepts the facts established in the operative part of the final criminal judgment as established, and if criminal liability for the offense that caused the damage to the injured party has been established, there is also civil liability for the damage.

Statute of Limitations for Claims for Compensation for Damage

The occurrence of the statute of limitations results in the termination of the injured party's right to demand fulfillment of the obligation, i.e., such an obligation becomes natural – non-enforceable. The statute of limitations ensures legal certainty, but also serves as a form of "sanction" for the creditor (the injured party) due to their inactivity in exercising their rights. If, however, the defendant fulfills their obligation by compensating the damage to the injured party, they cannot request the return of what was given, because the obligation itself has not ceased; it has only become unenforceable. This does not mean that the injured party cannot file a lawsuit for compensation after the statute of limitations has expired, but if the defendant (the respondent) raises the defense of the statute of limitations (which the court does not observe ex officio), this would inevitably lead to the dismissal of the claim.

According to Article 376 of the LOO the subjective period for claiming compensation for damage caused is three years, and the objective period is five years. However, Article 377, paragraph 1 of the LOO provides a special limitation period for claiming compensation for damage caused by a criminal offense. If the limitation period for criminal prosecution is longer, the claim for compensation for damage against the responsible party expires when the time specified for the statute of limitations for criminal prosecution elapses. In other words, the LOO refers to criminal law legislation for determining the statute of limitations for claims for damage resulting from a criminal offense. "Even when the damage is caused by a criminal offense, the statute of limitations for the right to compensation cannot begin before the

damage has occurred, and the limitation period begins to run according to the rule in Article 376 of the LOO. Special rules regarding the statute of limitations for claims for compensation for damage caused by a criminal offense also apply when criminal proceedings are discontinued due to the expiration of the statute of limitations for criminal prosecution." (Kastratović, 2013, p.58)

Article 103 of the Criminal Code stipulates that, unless otherwise provided in this Code, criminal prosecution cannot be initiated when the following periods have elapsed: Twenty years from the commission of a criminal offense for which the law provides for a prison sentence of more than fifteen years; Fifteen years from the commission of a criminal offense for which the law provides for a prison sentence of more than ten years; Ten years from the commission of a criminal offense for which the law provides for a prison sentence of more than five years; Five years from the commission of a criminal offense for which the law provides for a prison sentence of more than three years; Three years from the commission of a criminal offense for which the law provides for a prison sentence of more than one year; Two years from the commission of a criminal offense for which the law provides for a prison sentence of up to one year or a fine.

Also, according to Article 104, paragraph 6 of the KZ, absolute criminal prosecution limitation occurs when twice the time prescribed by law for the limitation of criminal prosecution has passed. This is because the limitation is interrupted by any procedural action taken to uncover the criminal offense or to detect and prosecute the perpetrator for the criminal offense, as well as when the perpetrator commits the same or a more serious criminal offense during the limitation period.

According to Articles 377, paragraphs 2 and 3 of the LOO, the interruption of the statute of limitations for criminal prosecution also leads to the interruption of the statute of limitations for claims for compensation for damage, and the same applies to the suspension of the limitation. The initiation and conduct of criminal proceedings or the submission of a property claim in criminal proceedings interrupts the statute of limitations for the claim for compensation for damage (Rev 13248/2023). Additionally, the limitation period for the claim for compensation for damage is interrupted by the submission of a property claim in criminal proceedings, so for the entire duration of the criminal proceedings, the statute of limitations is interrupted (Už-1119/2017).

According to the Constitutional Court's stance, if the injured party decides to seek compensation for damage in a civil lawsuit, they must also be mindful of the relative statute of limitations. This is because the provisions regarding the interruption of the limitation period apply to claims for compensation for damage arising from a criminal offense. In other words, if the injured party does not file a property claim in the criminal proceedings and instead files a lawsuit for compensation only after the expiration of the relative limitation period for criminal prosecution, the defendant would succeed in raising the statute of limitations defense, and the claim would be rejected, regardless of the existence of a final conviction. This is because, although the absolute statute of limitations has not yet occurred, the injured party has not taken any action to interrupt the limitation of the claim for compensation.

The legislator has stipulated that the privileged statute of limitations period under Article 377 of the LOO applies to claims for compensation from the responsible party. Regarding the phrase "responsible party," the author's opinion is that this should be interpreted in line with the provisions of the LOO, and not the Criminal Code. In other words, "responsible party" should not be understood as only the perpetrator of the criminal offense, but also any party liable for the damage according to the rules of obligational law,

regardless of whether the damage was caused by a criminal offense (for example, an insurance company in the case of a criminal offense related to public transportation).

However, it is important to note that judicial practice has not been uniform on this issue. The Supreme Court of Serbia, in its judgment Rev. 1456/03 from December 21, 2006, stated that: "Since no special statute of limitations period is prescribed for claims for compensation for damage from the state, such claims are subject to the regular statutes of limitations for claims for compensation for damage. This arises from the fact that the state is liable for another party, who may cause damage through a criminal offense. However, the longer statute of limitations under Article 377 of the LOO cannot be applied to a responsible party who did not commit the criminal offense, but only to the perpetrator of such an offense. Therefore, the time limits specified in Article 377 of the LOO apply to the party responsible for the damage based on fault, and in the case of liability for another, as in this lawsuit (the defendant is liable under Article 172 of the LOO), the statute of limitations will be calculated according to the general provisions of Article 376 of the LOO."

Thus, the Supreme Court of Serbia has clearly stated that the privileged limitation period associated with criminal offenses and the compensation for damage only applies to the perpetrator of the offense. This view has also been reiterated in some first-instance and appellate court rulings (e.g., decision GŽ 394/17 from May 10, 2017, and judgment P-1308/15 from May 11, 2016).

In its decision Rev. 1335/05 and SGZZ. 58/05 from November 30, 2005, the Supreme Court of Serbia clarified that when the damage is caused by a criminal offense, and a longer statute of limitations applies for criminal prosecution, the claim for compensation for damage against the responsible party becomes time-barred once the statute of limitations for criminal prosecution expires. Moreover, the term "responsible party" does not refer only to the perpetrator of the criminal offense but also includes anyone liable for the damage caused by the criminal offense, even if they were not the direct perpetrator. In this case, the Supreme Court unequivocally interpreted Article 377 of the LOO to include parties responsible for the damage under the provisions of obligational law.

Recent judicial practice provides an answer regarding which statute of limitations applies when the circumstances of the case exclude criminal prosecution. The Constitutional Court, in its decision UŽ-7928/2019 on April 21, 2022, explained the interpretation of Article 377 of the LOO, stating that the claim for compensation for damage against any responsible party—not just the perpetrator—becomes time-barred once the statute of limitations for criminal prosecution expires, but only if a final judgment establishes the existence of the criminal offense and the defendant is convicted. The same statute of limitations for criminal prosecution applies if the criminal proceedings are terminated, or if they could not be initiated due to the defendant's death, mental illness, or other circumstances that exclude criminal prosecution, such as amnesty or pardon. In all other cases, the general statute of limitations under Article 376 of the LOO applies.

The Supreme Court of Serbia, in its decision Rev. 281/2022 from March 22, 2023, reaffirmed this position, thereby resolving any ambiguity and confirming that "responsible party" under Article 377 of the LOO includes both the perpetrator and anyone liable for the damage under the rules of obligational law.

Given that the injured party cannot know in advance whether the defendant will be convicted in criminal proceedings, and in light of the judicial stance that in case of an acquittal the general statute of limitations under Article 376 of the LOO applies, the injured party may choose to file a civil claim for

compensation before the criminal proceedings are concluded. By doing so, they can prevent the statute of limitations from running. The civil court, if the circumstances of the case suggest, may suspend the civil proceedings until the criminal case reaches a final judgment.

Conclusion

If the injured party has suffered damage as a result of a criminal offense, they are free to decide whether to assert their claim for damages in the criminal proceedings by filing a property claim or to initiate an independent civil lawsuit for compensation. Since deciding on the property claim is an ancillary procedure in relation to the criminal case, the criminal court will not engage in determining the amount of the suffered damage if doing so would delay the proceedings, unless the damage is a key element of the criminal offense or a qualifying circumstance (as is the case with crimes such as counterfeiting money under Article 241, Paragraph 3, and embezzlement under Articles 364, Paragraphs 2 and 3 of the Criminal Code). In such situations, the criminal panel is obligated to collect only the information that would later be significantly harder or impossible to ascertain.

If the injured party chooses to pursue their right to damages in a civil lawsuit, they must pay attention to the statute of limitations to avoid the risk of the limitation period expiring due to failing to assert the property claim in the criminal proceedings.

If the criminal proceedings determine that there is no basis for charges, resulting in the dismissal of the case or an acquittal, this does not automatically mean that the injured party has no right to compensation. Since the civil court is not bound by the acquittal or dismissal decision in criminal proceedings, it will determine whether the defendant (the accused) bears civil liability for the damage, as this liability is broader than criminal liability.

Furthermore, the absence of consequences in the form of the result of the criminal offense does not prevent the injured party from seeking compensation if there is a causal connection between the actions of committing the criminal offense and the resulting damage.

Therefore, it is not necessary for the consequence of damage to be an integral part of the criminal offense for the injured party to have the right to claim damages in the civil proceedings with the privileged statute of limitations under Article 377 of the LOO, nor is such a consequence required for the injured party to file a property claim in the criminal proceedings.

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Decision of the Constitutional Court, UŽ-1119/2017 dated 13 February 2020.

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Specifičnosti naknade štete prouzrokovane krivičnim delom

Sanja Lukavac Spasojević, Marija Stanković i Marko Stanković

Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe

Sažetak

Brojna krivična dela kao posledicu imaju nastupanje materijalne ili nematerijalne štete. Neka, pak, karakteriše tzv. apstraktna posledica, što znači da nije neophodno da nastupi konkretna posledica kako bi krivično delo bilo izvršeno. Bez obzira na to da li je posledica bitan element krivičnog dela, oštećeni može trpeti štetu koja je prouzrokovana krivičnim delom. Prepoznajući značaj štete prouzrokovane krivičnim delom, zakonodavac je ostavio mogućnost oštećenom da sam odluči da li će naknadu štete tražiti u parničnom ili u krivičnom postupku (putem instituta imovinskopravnog zahteva), a takođe je u čl. 377 Zakona o obligacionim odnosima [ZOO] predvideo privilegovani rok za potraživanje naknade štete prouzrokovane krivičnim delom, koji se vezuje za rok zastarelosti predviđene za krivično gonjenje ukoliko je za krivično gonjenje predviđen duži rok zastarelosti od opšteg roka koji iznosi tri godine od saznanja za štetu, odnosno pet godina od nastanka štete. Na ovaj način je omogućeno oštećenom da svoje pravo na naknadu štete ostvaruje, bilo kroz institut imovinskopravnog zahteva, bilo putem parničnog postupka, u dužem roku, imajući u vidu da je značaj povređenog dobra uobičajeno veći nego kada se radi o šteti prouzrokovanoj deliktnim radnjama. Svakako, mora se voditi računa da će se, u slučaju oslobađajuće krivične presude, primenjivati opšti rok zastarelosti.

Ključne reči: naknada štete, zastarelost, krivično delo, imovinskopravni zahtev