

## **CODIFICATION RESULTS IN THE HUNGARIAN PRISON LEGISLATION**

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### **1. Introduction**

For the purposes of this scientific paper it is necessary, at least in brief, to characterize the terms of injured party, claim for damages and adhesion proceedings. These terms are defined in Criminal Procedural Code. Injured party is the person who has been harmed on health, has been caused a property damage, moral or other damage, or there were violated or threatened legally protected rights or freedoms, by the crime.<sup>1</sup> The common feature of the damages is the fact that they were in causal relationship with a crime for which criminal prosecution is carried out, and at the same time it can be objectively expressed in money. The term “injured party” cannot be confused with the term “victim of the crime”. The legal definition of the term injured party is contained in the Criminal Procedure Code, where the injured party may be a natural person as well as a legal entity — person (or a state). The term of victim of a crime is defined in Act No. 274/2017 Coll. about Victims of crimes and on Amendments to certain Acts (the “Victims Act”) in the current version. The Criminal Procedural Code distinguishes two groups of injured party in the criminal proceedings:

(a) the injured party who is entitled to compensation, that is injured party who has, in addition to the general rights mentioned in § 46 par. 1 of Criminal Procedural Code, as well the right to be the subject of an adhesion proceedings and has the possibility to claim the damages, it means he has the right to get compensation for the damage directly in criminal proceedings. In this case, injured party:

- has claimed for damages against the accused person (the injured party who has suffered any of the categories of damage by a crime, as well as non-material damages);
- has claimed for damages before state authority in criminal proceedings (police organs, prosecutor);

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<sup>1</sup> § 46 sec. 1 of Criminal Procedural Code

- has claimed for damages on time, at the latest by the end of the investigation or shortened investigation;
- has claimed for damages properly, it is clear from the proposal why and for what amount the claim for damages is being claimed.

(b) injured party without right for compensation (damages), which has only the procedural rights listed in § 46 par. 1 of Criminal Procedural Code. In this case, injured party does not have the right to claim for damages against the accused person, because he did not fulfill the above requirements.

The basic assumption for the court to decide on the claim for damages is that the injured party has applied his right properly and on time against a particular accused person, because the court cannot decide on that claim *ex officio*. The Criminal Procedural Code grants to the injured party the right to request that the court impose an obligation upon the accused person in conviction judgment to compensate injured party for the damage. Therefore, the injured party can claim for damages directly in criminal proceedings. This part of the criminal proceedings is called “adhesion proceedings”. In adhesion proceedings, the criminal court has to, when deciding on the obligation of the accused to compensate injured party for the damage, apply all relevant substantive acts of civil law (or other law).<sup>2</sup>

Injured party is according to Criminal Procedural Code a party in criminal proceedings, regardless of whether or not he is entitled to compensation (that is to say whether he is the subject of an adhesion proceedings). The status of the injured party in criminal proceedings determines the rights which the injured party is granted by the Criminal Procedure Code. These rights include, in particular, the right of the injured party to compensation for the damage caused by the crime.<sup>3</sup>

If the court decides on the claim for damages, there are possible differentiated decisions depending on whether the court finds the accused person guilty or innocent. If the court finds accused person innocent (or stops the criminal prosecution), the injured party is always referred with his claim for damages to civil proceedings (possibly for proceedings before other competent authorities), which results from § 288 par. 3 of Criminal Procedural Code. If the court finds accused person guilty, court would decide on the claim of the injured party to one of the three possible ways:

- court refers injured party with his claim for damages to civil proceedings, or the proceedings before another competent authority, if the results of the evidence situation cannot be used as the basis for the claim for damages, or if it is necessary to carry out additional proving, which would prolong the criminal proceedings;
- court decides on claim for damages only in part and refers the injured party to civil proceedings or to proceedings before other competent authorities with rest of claim;
- court decides on all claims for damages with no referring.

<sup>2</sup> IVOR, J.–ZÁHORA, J.–POLÁK, P.: *Trestné právo procesné 1*. Bratislava, Wolters Kluwer, 2017, p. 244.

<sup>3</sup> FERENČIKOVÁ, S.: Uloženie ochranného liečenia trestne nezodpovednému páchatel'ovi a náhrada škody. *Štát a parvo*, 2018, roč. 5, p. 3.

As we mentioned above, one of the fundamental procedural rights of injured party guaranteed by Criminal Procedural Code is the right of the injured party to compensation (to claim for damages). Invalid Criminal Procedural Code — Act No. 141/1961 Coll., valid until 31 December 2005<sup>4</sup>, allowed the court in criminal proceedings to adjudicate only property damage, which from the effectiveness of the current Criminal Procedural Code No. 301/2005 Coll. has changed. Criminal Procedural Code specifies precisely the conditions in which the injured party can claim for material and non-material damages, which is also demonstrated by the above definition of the injured party.

The distinction between an institute of damages and non-material damages in Criminal Procedural Code complicates the injured party application of claims for non-material damages caused by a crime. The current legislation guarantees to the injured party right to compensation according to health, material, moral or other damage, but the fact how courts apply this right in criminal proceedings varies considerably.

Criminal Procedural Code clearly gives an option for courts to decide on claim for non-material damages and it is really important that court would respect this in criminal proceeding according to strengthening of rights of the injured party. With regard to the settled court practice of referring injured party with claim for damages (non-material damages) to a civil proceedings, the injured party has only option to claim non-material damages under the Civil Code by an action for protection of personality according to § 13 par. 2 of the Civil Code. Actually, there are considerable problems related to these issues, because non-material damage was caused by crime and it should be decided in civil proceedings, what is inappropriate and there are also issues of limitation and preclusion.

In this regard, we point to Judgment of the Regional Court in Žilina, file mark 1To/10/2011, which adjudicate, that it is clear that the criminal concept of “damages” is significantly broader and more comprehensive than the concept of “damages” in private law. Criminal law, especially in the mentioned § 46 par. 1 of Criminal Procedural code, is based on the notion of damage, respectively defines its content, not in the sense of a progressively overcome and overwhelmed notion of damage in Europe, as an interference only with the property rights of the injured party, but views the more modern, advanced European understanding as an unlawful interference with material and non-material rights, so the result is not only material damage (property or financial), but also non-material damage (immaterial), that is damage not occurring in the material sphere, but in the sphere of another, constituted by all other non-material rights, whose protection is guaranteed by law and their interference can be sanctioned. The Criminal Procedure Code therefore understands damage as property damage, moral and other damage, referring to the viola-

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<sup>4</sup> JÁGER, R.: Rekonštrukcia súdneho procesu v predcyrilometodskom a cyrilometodskom práve. In *Milníky práva v stredoeurópskom priestore 2015*: zborník z medzinárodnej vedeckej konferencie doktorandov a mladých vedeckých pracovníkov, Bratislava, 19–21. 3. 2015. Bratislava: Univerzita Komenského, Právnická fakulta, 2015.

tion or endangering of other legal rights or freedoms of the injured party, with the term of “moral damage” and “other damage” in relation to the harmful consequences caused by the unlawful conduct sanctioned by criminal law must be perceived as terms that are directly related to the term “non-material, immaterial damage” in civil law, that is a term which is as diverse as the content of the various rights of the law which are protected by law and their interference is sanctioned (usually in the form of an order to remove/remedy/stop). In view of these facts, particularly with regard to the immaterial nature of these protected rights, such non-material damage resulting from the interference of rights can only be moderated by money, but in no case can it be repaired, due to the nature of those rights unlawful interference to the health or the honor of a natural person cannot be remedied by money or a material reparation, the monetary compensation serves only to moderate the consequences of the crime.

It is therefore clear from above mentioned decision that, when court decides on the claim for damages in adhesion proceedings, it is necessary to respect the substantive provisions of the specific acts on which the claim is based. These regulations specifically govern the creation of a claim for damages, its content and scope, the method of compensation. Then, when deciding on interference with personal rights and remedies, decisions are made according to § 11 of the Civil Code (relating specifically to non-material damage compensation).

In our view, it would be more appropriate to replace the term of moral and other damage in § 46, par. 1 of the Criminal Procedural Code with the term of non-material damage, thus avoiding many inconsistencies in the claim for damages by injured party in criminal proceedings.

If the right to compensation for non-material damage as well as the method of its admission were conceived in the Criminal Procedural Code separately with an explicit modification of the specific remedy, injured party would have the obligation to separately determine the claim for damages and the claim for non-material damages and injured party could properly claim each of these claims in criminal proceedings. Since it is not a joint claim, the court would have to decide on both claims.<sup>5</sup>

If the abovementioned reservations and comments would not be respected by the courts, they could worsen the ability of the injured party to claim for damages under the law, thus weakening the position and status of the injured party in criminal proceedings, which is unsustainable in relation to the direction of the European rules on non-material damage. Of course, the obligation of the injured party is to clearly identify the claims separately and justify them in proposal for their recognition.<sup>6</sup> Failure to comply with this condition may lead the court to refer the injured party to civil proceedings, where the injured party may face a number of problems related to mentioned above statements.<sup>7</sup>

<sup>5</sup> See the decision of the Supreme Court of Czech Republic, file mark 8To 46/2013.

<sup>6</sup> Principles of European Tort Law.

<sup>7</sup> In the majority of cases, the injured party is awaiting the results of the criminal proceedings and thus the conviction judgment which, if the court refers him to civil proceedings, knows who to designate as the responsible person.

## 2. Compensation for damage to health

The issue of the application of non-material damage compensation concerns, in particular, damages caused to the injured party's health — harm to health, in the event that the injured party claims for health damages, which he has suffered in a direct connection with the offender's conduct and which can be objectified on the basis of civil law provisions.<sup>8</sup> According to § 444 of the Civil Code *“In case of health damage, injured party has right to one-off damages of the pain of and the decreasing (burden) of social application.”* It means, that this claims could be applied together with health damage.

According to § 2 of the Act No. 437/2004 Coll. about compensation for pain and compensation for the burden of social application, *“Pain is a harm caused by damage to health, its treatment or removing its consequences. The burden of social application is a status of health damage that has a demonstrably negative effects on the life of the injured party, to meet his life and social needs or to fulfill his social tasks.”*

Compensation for pain and burden of social application is quantified by point assessment based on a medical opinion. This can be objectivized on the basis of medical opinions, which results in its financial statement, which can without any doubt be in the case of its proper application granted by court in criminal proceedings. What still remains the question is granting of non-material damage, which consists of interfering the personal rights of the injured party, because there were created different opinions in the Slovak jurisprudence. The Civil Code in § 11 guarantees to every natural person the right to the protection of personality, in particular life and health, civil honor and human dignity, as well as privacy, his name and expressions of a personal nature. The Act does not provide the calculation of specific forms of interference that may affect personality rights, but identifies signs in the presence of which a particular conduct can be considered as an interference with the personality (objective ability to intervene adversely to the personality of the individual, violation or threat of personality rights). Non-material damage within the meaning of § 13 par. 2 of Civil Code is such a harm that translates into the psychic sphere of a natural person and into his or her status in society. This kind of harm is not immediately translated into the physical integrity or property sphere of a natural person. It is therefore necessary to distinguish it from property damage, including damage to health with property consequences (see § 16 of Civil Code) and other non-material damage as a direct consequence of interference with the physical integrity of a natural person for whom compensation is provided under other regulations (see § 444 of Civil Code). The meaning of compensation of non-material damage in money according to § 13 par. 2 of Civil Code is to balance the harm to the values of human dignity with a specific financial expression of compensation for such non-material damage and to consider all circumstances and ef-

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<sup>8</sup> § 444 of Civil Code; Act No. 437/2004 Coll. about compensation for pain and compensation for the burden of social application.

fectively decrease the negative consequences of interference and provide the most effective civil protection of the personality of the natural person. In contrast, the meaning of compensation for damage as a direct consequence of the physical integrity of a natural person (see § 444 of Civil Code) is to try to provide compensation for harm caused by damage to health, its treating or the elimination of its painful consequences to health, which have demonstrably negative consequences for the injured person's life, for the satisfaction of his or her life and social needs or for the fulfillment of his or her social tasks (burden of social application). It means that, the meaning of compensation for pain and the burden of social application is to provide compensation for the damage caused by interference with the physical integrity of the natural person. Neither from these, nor from the principles for the assessment of pain (§ 9 of Act No. 437/2004 Coll.), the principles for the assessment of the burden of social application (§ 10 of Act No. 437/2004 Coll.), it cannot be deducted that the compensation for pain and the burden of social application would be granted for the harm which is translated into the psychic sphere of the natural person and his status in the society.<sup>9</sup>

It is clear from the cited judgment of the Supreme Court that, in addition to the health damages (the pain of the injured and the burden of the social application), these claims of the injured party are different from non-material damage which can be applied individually and independently of another, which implies that those claims can be directly asked in criminal proceedings and the court should decide on them. The Supreme Court in its judgment broke the decision-making practice of general courts<sup>10</sup>, which was finally upheld by the Constitutional Court of the Slovak Republic in its decision.<sup>11</sup>

We believe that health damages and burden of social application are different claims than non-material damages, according to above-mentioned acts citations and judgment of Supreme Court of Slovak Republic. Claim for damages in criminal proceedings by injured party covers health damages, burden of social application and non-material damages. Injured party is obliged to claim for damages properly and on time, at the latest by the end of the investigation or the shortened investigation and duly justifying them. Claiming these damages in criminal proceedings causes in practice several problems.

According to the relevant sections of Criminal Procedural Code, a shortened investigation must generally be terminated within two months of the accusation. Investigation of particularly serious crimes must be completed within six months of the accusation, in other cases up to four months. These deadlines complicate the right of the injured party to claim for damages, because medical opinion is issued only after the health condition of the injured party can be considered as stable. In a case of a burden on social application, generally after one year after the injury.

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<sup>9</sup> Judgment of The Supreme court of Slovak Republic, file mark 7Cdo 65/2013.

<sup>10</sup> See Judgment of Regional court of Prešov, file mark 16 Co 107/2013.

<sup>11</sup> See Judgment of Constitutional Court of Slovak republic, file mark I ÚS 426/2014.

It is clear from the cited legal provisions that it is difficult to claim for damages in criminal proceedings, because of time of the investigation and the only way is to claim for damages in civil proceeding, what we find inappropriate because damage was caused by crime.

We believe, it would be more appropriate to replace the term “health damage” used in the Civil Code, by term used in the Criminal Code “harm to health” to make it clear. Compensation for pain and burden of social application should not be dependent on medical assessments and point assessments to which the injured person must wait. We can imagine, that judges would decide on these claims, but it should not be arbitrary. We need approved method to limit these claims in criminal proceedings, what would definitely strengthen the status of injured party.

### 3. The guilt and punishment agreement

The Guilt and Punishment Agreement is an alternative to a proper criminal process. In the case of the Guilt and Punishment Agreement, where the main hearing and the taking of evidence are not carried out, the court in the public session will either agree on the agreement in the form of judgment or return the case back to the preliminary proceedings.<sup>12</sup> Using the Institute of the Guilt and Punishment Agreement implies a considerable weakening status of injured party in the situation of material and non-material claims for damages. The Guilt and Punishment Agreement represents, on the one hand, an effective punishment procedure, but on the other hand this institute often fails to secure the rights of injured party, especially the claims for damages, according to current legislation.

On the basis of a faster and more efficient course of the Guilt and Punishment Agreement, the agreement is approved by court in the form of a condemnation judgment, which also contains a statement of compensation, but only if injured party and accused person expressly agree with the compensation. Injured party is invited to the agreement procedure, but very often injured party ignores the procedure and his claims for damages remains only in the hands of the prosecutor. If there is no agreement on the amount of the injured claim, the prosecutor proposes to refer the injured party to the civil proceeding, which means that his position of injured party is considerably more difficult.<sup>13</sup>

### 4. Reconciliation

One of the alternatives to the standard criminal proceedings is the reconciliation between accused person and injured party.<sup>14</sup> The aim of this institute is with the consent of the injured party and after strict conditions filling, the reconciliation of

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<sup>12</sup> § 331 of Criminal Procedural Code.

<sup>13</sup> We strongly believe that prosecutor is obliged to defend the interests of injured party and if there is no agreement between injured party and accused person on claim for damages, agreement of guilt and punishment may not be approved.

<sup>14</sup> § 220 of Criminal Procedural Code.

injured party and accused person. The result is the rapid satisfaction and compensation of the injured party (claim for damages). One of the basic conditions is the compensation of damage at the material and non-material level. It follows the text of the Criminal Procedural Code which directly obliges accused person to compensate committed damages by crime, or to take other measures to compensate injured party, or otherwise eliminate the damage caused by the crime (even a non-material damage). This implies the obligation of the accused person to satisfy the material of the injured party.<sup>15</sup> It is clear from the above that one of the rights of the injured party in the case of reconciliation is also the claim for damages caused by crime. In the case of personal damages, injured party would also have right to claim non-material damage, which was affected by crime. It is obvious from these claims that each of them is capable of providing satisfaction to the injured party in another sphere. Obviously, it is obligatory for the accused person and the injured party to agree on the compensation of material damage and non-material damage, which can be challenging and lasting but ultimately advantageous for both parties. However, it is essential that agreement on damages material or non-material is one of the obligatory conditions in reconciliation. Injured party can obtain material damages in money but also for non-property damage, which may not be guaranteed in monetary terms but may also constitute a certain justification or excuse or other claim that the injured party considers as a damage caused by a crime.<sup>16</sup>

## 5. Conditional suspension of criminal prosecution

Other procedural alternative in criminal proceedings is called Conditional suspension of criminal prosecution.<sup>17</sup> This institute is different in a case of damages from the aforementioned reconciliation. Even by using this institute, the right of damages for injured party is respected. Damages must be objectified, what is a strict condition by Criminal Procedural Code. Other condition of this institute is that accused person has to compensate the damages caused by crime or has entered into an agreement about damages with the injured party or has to make necessary measures for compensation.<sup>18</sup> It is clear that the legislator expressly regulates the entitlement of the injured party to non-material damages as well but there are different views in legal theory and practice on this issue.

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<sup>15</sup> The first is to compensate the damages caused to the injured party by crime or to make other appropriate remedies (which may mean the agreement) a contract that binds the accused person for the compensation of the damage, applied and objectified, and third, the removal of the damage caused by the crime.

<sup>16</sup> Opinion of the authors.

<sup>17</sup> § 216–217 of Criminal Procedural Code.

<sup>18</sup> ŠTRKOLEC, M.: Náhľad na vývoj právnej úpravy poškodeného trestným činom od druhej polovice 20. storočia až po súčasnosť. *Štát a parvo*, 2018, roč. 5, p. 3.



## **6. Closing Thoughts**

The aim of this scientific paper was to point out application problems due to claim for damages of the injured party in criminal proceeding. It is acceptable, that injured party has also right to claim non-material damages, health damages and other damages guaranteed by Criminal Procedural Code but practice is often different. In conclusion we have to say that the status of the injured party in criminal proceedings is often difficult especially in trial or by using procedural alternatives. We believe that legislation would change and improve in the future in the direction of strengthening status and rights of the injured party, because injured party is most affected by crime and should be strongly protected by state authorities.