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# Claiming damages from the offender

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## How can I claim damages or other means of redress/satisfaction from an offender in a trial (criminal proceedings), and who should I address this claim to?

In the course of criminal proceedings, the victim may claim civil damages for an injury or loss resulting from an offence primarily during court proceedings after a charge has been made; such claim may be for compensation, the restitution of an item or the payment of money. The victim may bring this claim before the court of first instance at the latest at the procedural step where the victim may first appear; the court notifies the victim of such procedural steps. If the victim neglects to do so, no justification for not doing so will be accepted later on.

A civil claim has formal elements specified and required by law. It must indicate the accused person against whom the victim is lodging the civil claim, an express request for the court to pass judgment, in particular the amount or quantity claimed, the right on which the civil claim is based, the facts supporting the right asserted and the request for judgment, as well as the method and place of execution in the event that the court rules on the substance of the civil claim.

In addition, the victim may state his intention to lodge a civil claim even before a charge is brought, that is, prior to the court phase of criminal proceedings. In case a charge is brought, the public prosecutor's office transmits the victim's statement to the court.

The court rules on the substance of the stated civil claim in the criminal proceedings, or if this is not possible for reasons specified by law, refers the civil claims to be satisfied in another lawful manner, as a consequence of which the claim cannot be enforced in criminal proceedings.

## At which point in the criminal proceedings should I present a claim?

A civil claim may be lodged after a charge is brought, but the intention to lodge a claim may also be stated prior to charges being brought, during the investigation.

## What can I ask for in the claim and how should I present it (indicate a total amount and/or specify the individual losses, lost profits and interests)?

The Code of Criminal Procedure specifies the substantial elements of a civil claim and does not prescribe any special formal requirements.

With regard to its substance, a civil claim may be for compensation, the restitution of an item or the payment of money. The accused person against whom the claim is being brought must be indicated in the civil claim and an express request for the court to pass judgment must be included in the submission. The submission must include the amount or quantity claimed. In such a submission, a request may also be made for compensation under civil law for damage suffered by the person injured as a direct result of a crime. Besides decreases in the value of assets, this may include loss of revenue and interest on the claim for damages. Moreover, the civil claim must

indicate the right being asserted by the injured person and the grounds of the claim.

If the civil claim does not include the above-mentioned three most important elements necessary for adjudication (an indication of the accused person, an express request and the right asserted) the court refers the claim to be satisfied in another lawful manner immediately upon detecting these shortcomings.

At the same time, the absence of other elements of a civil claim (facts supporting the claim and the right asserted, an indication of the method and place of payment) also lead to the same consequences, with the difference that the court will make the referral only in its final decision instead of immediately upon detecting the shortcomings.

## Is there a specific form for such claims?

Legislation does not provide for a form for such claims.

## What evidence do I need to present to support my claim?

The law does not specify what evidence is needed to support a claim. When a court handles and enforces a civil claim, the files of the case are taken into account ex officio, regardless of whether the evidence was provided by the injured person or was obtained from another source. The probative force of evidence is not determined by law, any evidence defined by law may be used freely in criminal proceedings.

Thus the law does not prescribe what evidence must be presented to support a civil claim beyond making the presentation of facts supporting the civil claim compulsory.

## Are there courts fees or other costs linked to my claim?

If an injured person files a civil claim in the course of criminal proceedings, only a fee for the claim and the appeal need to be paid on this basis. However, in such cases the victim has a right of pre-notation of duty, exempting him of pre-payment of the fee.

As a general rule, the fee is calculated on the basis of the value of the object of a civil claim at the time when the proceedings are initiated. The fee is 6 % of the basis of calculation, but at least HUF 15 000 and no more than HUF 1 500 000.

## Can I get legal aid before and/or during the proceedings? Can I get it if I'm not living in the country where the proceedings take place?

The victim is entitled to be informed of his rights and obligations by the court, the public prosecutor's office and the investigating authority. If, in addition, the advice of a specialist legal aid solicitor is needed or a submission (petition, application, report, motion for prosecution, etc.) needs to be drawn up in order to initiate proceedings to remedy damage caused by an offence or an impairment of rights or interests arising from an offence, the State will provide a legal aid solicitor or legal services on request. The costs of such services are borne by the State instead of the victim, if the victim's monthly net disposable income does not exceed the minimum retirement pension and he has no assets or the use of such assets would be disproportionate to the benefits that could be attained through the legal services. The rights of the victim do not depend on nationality or residence.

## When would the criminal courts dismiss or refuse to adjudicate on my claim against the offender?

The court refuses to adjudicate on the enforcement of a civil claim in the course of criminal proceedings by referring the claim to be satisfied in another lawful manner in the cases determined by law, as listed below. In such cases the victim's claim cannot be enforced in criminal proceedings, only in civil proceedings. The court makes a referral for the satisfaction of a civil claim in another lawful manner in cases where the liability of the accused person under criminal law or for a minor offence was not established because the proceedings were terminated or the accused was acquitted. The same will happen if the enforcement of a civil claim is excluded by

law or the claim was lodged late. If a specific property offence was committed against real property and the victim also requested the property to be vacated as a provisional measure, a simultaneously filed civil claim cannot be adjudicated in the criminal proceedings. Neither can a civil claim be enforced in criminal proceedings if there is an obstacle under civil procedural law. If the victim files a notice on grounds for the disqualification of the judge or the court defined under the Act on Civil Procedure but not listed under the Act on Criminal Procedure, this may constitute such an obstacle. The same applies if, in another action based on the same facts and grounds, the legal consequences of having lodged the action have taken effect or a final judgment has been passed, or if the victim or the accused person lacks legal capacity in civil proceedings. Civil claims unenforceable in a court of law cannot be enforced in criminal proceedings either. If the person filing a civil claim is not a victim under criminal procedural law, he cannot assert his claim in criminal proceedings. Neither can an agreement reached between the victim and the accused person in civil proceedings be adjudicated in criminal proceedings. Furthermore, a civil claim cannot be adjudicated on its substance if that would considerably delay the criminal proceedings or if any other circumstance excludes it. A civil claim which does not fulfil the requirements cannot be adjudicated in criminal proceedings either, therefore such civil claims will be referred for other lawful means of satisfaction by the court.

## Can I appeal against such a decision or seek other means of redress/satisfaction?

The referral of the civil claim for other lawful means of satisfaction is not subject to appeal.

Satisfaction of a civil claim in criminal proceedings may be facilitated through a number of other means of compensation. Their common characteristic is that in such cases it is not the enforcement of the victim's claim under civil law which is to take place, rather the public prosecutor's office may order, in certain cases, the satisfaction of the civil claim by the accused person with the consent of that person and such performance may lead to a lighter penalty or the termination of criminal proceedings. All such measures fall under the discretionary powers of the public prosecutor's office; however, the victim has the right to file for such decisions to be taken. These include the suspension of proceedings in order to conduct mediation, conditional suspension by the prosecutor or an agreement or settlement between the accused person and the public prosecutor's office. This does not result in the victim being able to enforce his claim through direct State compulsion, but the accused person may be considerably more motivated to satisfy the victim's claim voluntarily.

## If I am awarded damages by the court, how do I ensure the judgment is enforced against the offender and what help can I get to ensure this?

In order to ensure a civil claim, the victim may file a motion to order the precautionary seizure of the accused person's property or assets due to the victim even before the civil claim is adjudicated in criminal proceedings. This is possible even before a charge is brought, if the victim has stated his intention to assert a civil claim and the statement contains the formal elements of a civil claim. In such cases precautionary seizure may be ordered by the court and in cases where delays are unacceptable, in a provisional manner, by the public prosecutor's office or the investigating authority.

At the request of the victim who applied for enforcement, the court issues an enforcement order after the civil claim has been upheld in a final decision. If the enforcement order cannot yet be issued in order to satisfy the claim, but the victim applying for enforcement projects a risk that the claim may not be enforced later, the court may secure funds claimed or seize specific objects at the request of the victim in the form of a precautionary measure.

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