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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 Portugal, as a rule, damages must be claimed under the criminal proceedings. As such, the offences that form the object of the criminal proceedings may also be grounds for civil liability, insofar as they harm interests that may be subject to redress for damage to property, pursuant to civil law.

The Code of Criminal Procedure (*Código Processo Penal* - CPP) establishes the principle of adherence, under which a civil claim for damages on the basis of the commission of a crime must be brought within the respective criminal proceedings, and may only be decided separately before a civil court in the instances provided for in law and set out in the CPP.

In circumstances where the victim is resident in another Member State of the European Union and is the victim of a crime in a State other than that of their residence, they may submit the claim for damages to the authority responsible for examining and deciding on such claims in their State of residence. The latter must forward the claim to the competent authority of the State where the crime took place.

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

The victim must state their intention to present a claim for damages as soon as they present their complaint, or before the investigation is concluded. They will then be notified of the bill of indictment and will have 20 days to submit their claim for damages.

Even if no claim for damages has been brought, the judge may, at their own initiative, and taking into account the victim's circumstances, order the defendant to pay the victim certain damages for harm suffered, unless the victim themselves objects.

For victims of violent crimes, the claim for damages may be submitted up to one year after the final decision.

If the victim was a minor at the time the crime was committed, they may present the claim up to one year after reaching the age of majority or becoming emancipated.

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 claim for damages may be made on the basis of the occurrence of:

- Damage to property: including losses caused by the crime (for example, the costs of hospital treatment, consultations, medicines, etc.), and benefits that the victim is no longer receiving (for example, the pay they stopped receiving while incapacitated).

- Psychological damage: although this cannot be ascribed a financial value, it can be compensated financially (for example, damage that interferes with well-being, dignity or good repute, involving physical pain, psychological disturbance and emotional distress).

Is there a specific form for such claims?

No. The application must simply contain a brief description of the facts on which the claim is based and indicate the losses suffered and the value thereof.

However, if the claim involves an amount greater than €5 000, a court fee is payable and the claim must be presented by a lawyer.

Damages paid by the State

1. In the case of violent crimes, an advance may be paid by the State. A [specific form](#) must be completed stating the amount of damages claimed and specific documents must be attached, such as the victim's income tax return and that of the claimant (if not the same as the victim) for the year preceding the commission of the crime, as well as documents substantiating the costs indicated on the form.
2. For domestic violence cases, they may be an advance from the State and a [specific form](#) must be completed. The same documents referred to in a) must be attached.

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

The victim must present all documents that provide evidence of the losses suffered (see paragraph 1.1). They must also produce witnesses that can corroborate and confirm that the victim suffered the losses they are claiming.

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

If the claim is less than €5 000, there is no fee payable, and the claim can be submitted by the victim themselves.

If the claim is greater than €5 000, the claim must be submitted by a lawyer representing the victim and is subject to the payment of a court fee, unless the victim is receiving legal aid.

For victims of violent crimes and domestic violence crimes, the claim for advance payment is sent to the Commission for the Protection of Victims of Crimes (*Comissão de Proteção às Vítimas de Crimes - CPVC*) and is exempt from the payment of any costs or charges by the victim.

If the crime was committed in the territory of another EU Member State, the claim may be submitted to the CPVC, provided the claimant has their habitual residence in Portugal.

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?

Yes, you can apply for legal aid in certain circumstances.

The victim is entitled to legal advice and guidance concerning their role during the proceedings.

If you wish to join the proceedings as a civil party, you must apply for legal aid at an early stage of the proceedings or when, as a witness, you wish to be accompanied by a lawyer and do not have the financial means to cover the respective costs.

You may also apply for legal aid for:

- Full or partial waiver of payment of the court fee;
- Appointment and payment of lawyers' fees; or
- Phased payment of the court fee or of lawyers' fees.

Note: The decision on applications for legal aid is made by the social security authorities, on the basis of a calculation formula that takes into account the applicant's assets, income and expenditure. The application for legal aid must be submitted using forms that are available free of charge from the social security services. The form may be submitted in person, by fax, post or via the Internet, in the latter case by completing the respective [digital form](#). The application must be accompanied by a set of documents that confirm the applicant's financial hardship. The decision will be taken within 30 days. The submission of this application does not entail any costs to the victim.

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

If there was no conviction for the commission of the crime.

If the victim cannot prove the losses they have suffered.

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

Yes. You may appeal against the decision if you have joined the proceedings as a civil party.

You may also resort to conventional means (the civil courts) if, for any reason, the claim has not been considered.

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?

Yes. If the defendant does not pay the damages voluntarily, the victim may take enforcement action, that is, apply to the court to enforce the decision to award damages by means of, for example, an attachment of salary, bank accounts, real estate or movable property, until the value of the damages awarded to the victim has been reached.

■ Last update: 07/04/2024

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