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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 order to obtain compensation for damage caused by a criminal offence, an injured party may apply either to a criminal or to a civil court.

The most important procedural means by which victims of crime can obtain an order requiring the defendant to pay damages or compensation is to bring a civil action within criminal proceedings. The benefit of this approach is that it allows for the whole body of evidence set before the criminal court to be used, while separate civil proceedings before a civil court are governed by the 'principle of availability'.

The provisions that govern bringing a civil action within criminal proceedings are set out in Articles 19 to 28 of the Code of Criminal Procedure.

The purpose of a civil action brought in criminal proceedings is to hold the persons liable under civil law for any damage caused by the criminal offence that is being addressed by the criminal proceedings.

A civil action can be brought by an injured party – or their successors – who is a civil party to proceedings against a defendant and, where applicable, a party with civil liability.

Where the injured party is incapacitated or has limited capacity to act, the civil action can be brought on their behalf by a legal representative or, where applicable, a public prosecutor.

If they have not joined criminal proceedings as a civil party, injured parties or their successors, may bring an action before the civil court for compensation for the damage caused by a criminal offence.

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

At the start of the first hearing, the injured party is informed of the right to join the criminal proceedings as a civil party.

An application to join as a civil party (*cerere de constituire ca parte civilă*) may be made during the pre-trial stages of a criminal prosecution or brought before the preliminary chamber, as well as in the course of the trial, but must be submitted before the judicial investigation begins.

While the judicial investigation is still ongoing, the civil party may correct any clerical errors in the application to join as a civil party, increase or lower the claim, and claim compensation for material damages in the form of cash payment, if compensation in kind is no longer possible.

## 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)?

Joining as a civil party is done in writing or orally. The nature and amount of the claim must be stated along with the grounds and evidence on which the claim is based.

If this is done orally, the court is required to record it in a formal report or, where applicable, in a court order (*încheiere*).

## Is there a specific form for such claims?

There is no specific form, but a civil action may be brought in criminal proceedings if the following conditions are met: the civil party joins proceedings before the judicial investigation begins, and is done in writing or orally with the nature and amount of the claim stated, as well as the grounds and evidence on which the claim is based.

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

In criminal proceedings, evidence means any fact that serves to establish the existence or non-existence of a criminal offence, to identify the person who committed it and to determine the circumstances required to fairly resolve the case, and which contributes to ascertaining the truth in the criminal proceedings.

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

A civil action to determine the civil liability of a defendant and/or party with civil liability that is brought before the criminal court or civil court, is exempt from court fees (*taxă de timbru*).

## 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 parties and litigants in criminal proceedings are represented or assisted by a lawyer.

During the criminal prosecution, the lawyer of the injured party has the right to be informed of the date and time of the criminal investigation or of the hearing before the rights and freedoms judge (*judcător de drepturi și libertăți*) and to be present at any phase of criminal prosecution unless otherwise provided for by law, the right to consult case files, and to submit applications and statements. At the same time, the injured party's lawyer has the right to be afforded the time and facilities required to prepare and mount an effective defence.

Legal aid for the injured party is mandatory when they have no capacity to act or restricted capacity to act, as well as when the injured party is the victim of offences of ill-treatment of minors, domestic violence, offences concerning trafficking and exploitation of vulnerable persons, and offences against sexual freedom and integrity. When the court deems that, for certain reasons, the injured party would be unable to defend themselves, it arranges for a court-appointed lawyer to defend them.

The injured party has the right to be provided with an interpreter free of charge when they do not understand, speak well or cannot communicate in Romanian and the right to be provided with the translation into a language they understand of any non-trial resolution (*soluție de netrimiteră în judecată*) when they do not understand Romanian.

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

As stated above, a civil action may be brought in criminal proceedings if the following conditions are met: the civil party joins proceedings before the judicial investigation begins, and is done in writing or orally with the nature and amount of the claim stated, as well as the grounds and evidence on which the claim is based.

In accordance with the Code of Criminal Procedure, the court leaves a civil action unresolved in the following

cases: in the event of acquittal of the defendant; termination of criminal proceedings on the grounds that the act is not covered by criminal law, there was no preliminary complaint, authorisation or referral to the competent body or any other condition laid down by law required for a prosecution to be brought; amnesty; the death of the suspect or defendant or the deregistration of the suspected or accused legal person has been ordered; the authority of a final decision (*res judicata*) applies; a transfer of proceedings agreed with another State took place in accordance with the law; in the event of termination of the criminal proceedings following the withdrawal of the prior complaint; and, if the court accepts a plea bargain and no settlement or mediation agreement has been reached between the parties to the civil action. In this case, the injured party may bring an action to the civil court for compensation for damage caused by a criminal offence.

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

If a court leaves the civil action unresolved, the injured party may bring an action to the civil court for compensation for damage caused by a criminal offence.

If a criminal court has ruled on the civil action, an injured party dissatisfied with that decision that may appeal against the judgment within 10 days of that judgment being delivered, or, where applicable, within 10 days of a record of the judgment being served.

## 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?

Orders concerning civil damages and costs payable to the parties that form part of a judgment in criminal proceedings are enforced in line with civil law.

An obligation established by a court decision or other enforceable instrument is initially complied with on a voluntary basis.

If the debtor fails to fulfil the obligation voluntarily, then compliance is ensured by means of enforcement measures, which are initiated by applying to an enforcement body.

The enforcement of any enforceable instrument, unless otherwise provided for by law, is carried out by a bailiff (*executor judecătoresc*).

The enforcement procedure is the second stage of civil proceedings and is principally intended to ensure the actual exercise of a right recognised by a court judgment or other enforceable instrument. The enforcement procedure ensures a creditor who is the holder of a right recognised by a court judgment/enforceable instrument can compel a debtor to meet the obligations that they have refused to meet voluntarily.

The enforcement provisions are set out in Articles 622 to 914 of the Code of Civil Procedure.

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