



**PILLAR II
PRACTICAL AND ADMINISTRATIVE CASES**

The Civil Compensation of Criminal Acts in Albania

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I. ABSTRACT

When harm is done, it creates legal obligations and liabilities. This is a very important principle of civil law that accompanies criminal acts. The criminal behaviour infringes the law, but at the same time, it directly violates and harms the victims, which have the right of civil restitution. The Code of Criminal Procedure in Albania, in the articles 58-68, has specifically determined the possibility of the civil part damaged by a criminal act, to actively attend the criminal process, by requesting the civil damage suffered. Exploiting the possibility granted by these provisions is a good alternative to prevent criminality, because in certain cases, paying the civil reparations can be more effective, towards the victim, than serving the criminal sentence of the court. The victims of criminal offence suffer financial losses, for several causes: hospital bills, losing time from work, mental or psychological disorders, damaged or stolen goods, funeral expenses, etc. The offender is obliged to pay the property, biological and moral damages he has caused to the victim. The court is the competent authority to decide the value of the tort compensation. The latest international studies in the field of studying the victim's behaviour show that civil restoration of the damage caused by criminal acts is more satisfactory for the victims compared to his criminal conviction. In some cases the civil restitution is the only way to make a person responsible for the criminal acts, especially in the case of juvenile offenders. Taking in consideration that the minor has no criminal responsibility and the lack of correction institutions for juveniles in Albania, the only way to punish is through the civil restoration of the damages. The purpose of this paper is to analyse the latest changes of the Criminal Procedure Code and the Albanian judicial practice regarding the civil damage during the criminal process, as a way to reduce court and procedural expenses. Taking in consideration that the majority of the civil petitions for criminal acts damage restoration are done in separate judicial processes, the paper aims to highlight the main reasons for this occurrence and to suggest more effective ways for the civil compensation of criminal acts.

KEY WORDS: *Civil compensation, criminal acts, crime prevention, Albania*

ABBREVIATIONS:

ACC	Albanian Civil Code
ACPC	Albanian Civil Procedure Code
ACrPC	Albanian Criminal Procedure Code



II. INTRODUCTION

In primitive cultures the victim of a crime punished the offender through personal retaliation or revenge. He inflicted physical injury or damage and took what he wanted from the offender as reparation for the commission of the crime.¹ The ancient concept of compensation or reparation to the victim has in more modern times become incorporated into the civil law of torts. Nevertheless, vestiges of the reparation concept are present in modern systems of criminal justice.² This aspect of criminal proceeding is fundamental for guaranteeing an effective criminal process, which otherwise would be incomplete and partial. Restorative justice is the prime, but not the only example of the recent trend towards a more “*emotionally intelligent*” approach to criminal justice.³ It is considered as an effective strategy to respond to the intentional crimes. Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victim and offender.⁴

The fundamental premise of the restorative justice paradigm is that crime is a violation of people and relationships⁵ rather than merely a violation of law. The criminal justice system should provide those most closely affected by the crime (the victim, the offender, and the community) an opportunity to come together to discuss the event and attempt to arrive at some type of understanding about what can be done to provide appropriate reparation.⁶

This procedure guarantees the right of the victim to be compensated, which it is not always achieved through the normal criminal procedure. On the other hand the participation of the offender in the whole process of civil compensation of the victim helps in achieving the balance which is destroyed by the criminal acts of the offender. The implementation of both principles concurrently, the civil responsibility along with the criminal responsibility, will help in the prevention of crimes. It is important to emphasise also a very crucial aspect of restorative justice, the need that the offenders have in several cases to repair the damage they have caused, which is met specifically by the restorative justice, that gives both parties the possibility to restore the existed state of affairs.

¹ Drapkin, I., Viano, E., “*Victimology: A new focus*”, Lexington Books, 1975, pg.215.

² Jacob, B. R., 1970, “*Reparation or Restitution by the Criminal Offender to His Victim: Applicability of an Ancient Concept in the Modern Correctional Process*”, Journal of Criminal Law and Criminology, Vol.61, 1970.

³ Sherman, W.L., “*Reason for Emotion: Reinventing Justice with Theories, Innovations, and Research — The American Society of Criminology 2002 Presidential Address*” Criminology, 2003, cited by: Doak, J. and Taylor, L. (2013) ‘Hearing the voices of victims and offenders : the role of emotions in criminal sentencing.’, Northern Ireland legal quarterly., 64 (1). pp. 25-46.

⁴ Handbook on *Restorative Justice Programmes*, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime, Vienna.

⁵ Zehr, H., Gohar, A., 2003, “*The little book of restorative justice*”, Good Books, Intercourse, Pennsylvania, USA

⁶ Latimer, L., Dowden, C., Muise, D., “*The effectiveness of Restorative Justice practices: A meta – analysis*”, The Prison Journal, Vol.85, Nr.2, June 2005.



During the 20th Century, indemnity from criminal acts was mainly related with property damages and health injuries. Initially they were separate civil processes, which required time and money, and were frequently difficult to conclude in favour of the victim. The first processes regarding civil reparations were seen as a way to compensate the victim for the actual loss he had suffered from the crime. Further studies showed that compensation as part of restorative justice is also seen as a form of vindication, a way to restore also the psychological damages of the victims and an attempt to make them feel better with the society.⁷

Though certain initiatives have been accomplished such as legislation in many states encouraging victim participation in the criminal justice process, victims counselling agencies, victim restitutions, restorative justice, local community involvement, and victim impact statements, many victims still feel left out, unsatisfied, or further victimized by the justice process.⁸

There are several ways in which the victim can be part of the criminal justice process and restorative justice is one of the most used in recent years. Several countries use the classic form of participation of the victim in the criminal proceeding. The victims' rights in criminal procedures vary widely from one country to another. In several countries the victims have broad rights, such as the right to be represented, to have free legal aid or to interrogate witnesses (Ukraine, Germany, and Italy).⁹ In Albania these rights before the entrance into force of the latest changes were not defined well. The main scope of the criminal proceeding in Albania is to decide whether a person is guilty or not of the criminal offence for which he is accused of. According to the ACPrC, the victim of the crime can be part of the process in two forms. One way is by being the claimant, when the defendant is accused of crimes for which the claim from the harmed part is indispensable for bringing the case before the court. The other way is by being a civil part in the criminal proceeding. In the second case is the prosecutor who brings the criminal case before the court for the punishment of the defendant, by the court. However the civil part, urges civil reparations for the harm suffered.

Restorative justice is considered a very effective way not just for expanding the influence of the criminal decisions, but also for recovering the harmed civil part, and for trying to bring the situation at the financial status it was before the criminal act happened. It is important to emphasize that the restorative justice is not based on universal general principles, due to the very different approach that different parts of the words have towards the victim and the steps to be taken for his/her moral and economic compensation. Another direct benefit of civil

⁷For more about the subject see: Zehr, H., Gohar, A., 2003, *"The little book of restorative justice"*, Good Books, Intercourse, Pennsylvania, USA; Daly, K., 2011, *"Conventional and Innovative Justice Responses To Sexual Violence"*, Australian Centre for Study of Sexual Assault, No.12

⁸ Handbook on *Restorative Justice Programmes*, *Criminal Justice Handbook Series*, United Nations Office on Drugs and Crime, Vienna.

⁹ Country Report, *"Improving Protection of Victims' Rights: Access to Legal Aid"*, Research Paper on The Present Legal Framework And Best Practices, Italy, December 2013.



compensation, relates with the reduction of recidivism. It is important not to focus solely on this aspect, but it can't be ignored the psychological impact that the civil compensation has on the person that has committed the crime. However, installing a functioning system for civil compensation of the damages caused by criminal acts, needs a well-functioning justice system and the appropriate backup administrative institutions.

III. THE CIVIL LAWSUIT IN THE CRIMINAL PROCEEDINGS IN ALBANIA

In the Albanian common law, or as it is called the Canon, it is possible to find elements of civil responsibility for criminal acts. These elements don't form an adjusted and specific juridical institute, but are part of other traditional institutes, like honour's, life's or property's infringement. In these cases, despite the punishment that the author of the acts had from the community represented by the council of elders, it was usually assigned a monetary fine.¹⁰ The current Albanian legislation has two main institutes related with the civil compensation of crimes: the civil lawsuit in the criminal process regulated by the Albanian Criminal Procedures Code and the civil non contractual tort, provided by the Albanian Civil Code. These institutions are not competitive but complementary with each-other.

On the first of August 2017, entered into force the latest changes to the Albanian Criminal Procedural Code.¹¹ The latter, which are part of the justice reform, represent the most substantial changes, since the entry into force of this Code. Article 58 has undergone formal and structural changes. The person harmed by the criminal act, now is called the "victim". This article defines the procedural rights of the victim during the criminal proceedings which among the most important provisions include: the right to request the taking of evidence; the right to be represented by a lawyer and if the legal requirements are met to benefit free legal aid; the right to deposit a complaint for the decision of the prosecution, etc. One of the most important novelties introduced in this article by the recent law changes, is the obligation of the prosecution to notify the victim of all the rights referred to in this Article, and to keep a written record of this notification.

The provisions of this disposition are complemented in more concrete terms by the following articles of the Criminal Procedure Code, by Article 61 according to which "*One who has suffered an injury by the criminal offence or his heirs may file a civil lawsuit in the criminal proceedings against the defendant or the person liable to pay damages (defendant), claiming the restitution of the property and reimbursement of the injury.*"

Taking in consideration that the latest changes have been in force only for few months, it is too soon to evaluate the practical impact of article 58. So far, the Albanian criminal proceedings' practice, has not given the appropriate importance to the civil lawsuit in the criminal proceedings. This is related with the lack of knowledge of the relevant law dispositions. The prosecutor did not use to inform the victims of the criminal acts regarding the procedural steps

¹⁰ Canon of Lekë Dukagjin, "*Kanuni i Lekë Dukagjinit*", collected by **Shtjefën Gjeçovi**, Tiranë, 1989.

¹¹ Law no.35/2017, dated 30.03.2017, "On some additions and changes to the law no. 7905, dated 21.03.1995, "The Code of Criminal Procedure of the Republic of Albania", changed.



and the initiation of the court procedures. In many cases, the court itself separates the criminal case from the civil lawsuit which is regretful, considering that the introduction of a civil lawsuit in the criminal process solves rapidly the demands of the person injured by the offense.¹² In addition, submitting a civil lawsuit in a criminal case has the main advantage of joining two procedures in one, with reduced financial costs. The prosecutor is responsible for the collection and presentation of evidence about the criminal responsibility of the accused. The civil claims are submitted by the lawyer of the civil party and all the procedural rules should be in accordance with the ACPC.

The non-contractual tort is an important legal institute of the civil law in Albania. The judicial practice regarding this principle has evolved during recent years. Damages caused during road accidents have played an important role in this respect. A few years before, only rare cases were brought to court regarding the compensation for harm suffered by road accidents. The situation is completely different now, mainly due to the increase of knowledge by the public regarding this possibility. Article 608 of the ACC determines: *“The person who illegally and for his fault, causes a damage to another person or to his property, is obliged to recompense the damage caused. The person who has caused the damage is not liable if he proves that he is not at fault. The damage is considered illegal when it results from the violation of the interests and rights of the other person, which are protected by the legal order or custom.”* According to the ACC, if more than one person has caused the harm, than they are jointly responsible towards the injured party.¹³ However, it is the in the competence of the judicial process, either the criminal or the civil one, to determine the extent of liability of all the participants in the criminal act. The civil lawsuit in criminal proceedings is addressed to the accused, or to the defendant, when the civil responsibility weighs on someone different from the person who has committed the crimes, as in the case of juvenile offenders.

The civil damage occurred as a consequence of a criminal act continues to exist and specific persons have the right to demand it, even in the cases where the criminal responsibility is avoided as a result of an amnesty, pardon, or other reasons.

IV. CIVIL LAWSUIT PROBLEMS DURING THE CRIMINAL PROCESS

The District Court of Tirana is the only first grade court that has uploaded all its civil and criminal decisions in its web page, being of great assistance for studying the judicial practice of the Albanian courts.¹⁴ Looking at the court criminal decisions during recent years, it is evident that the civil lawsuit cases during the criminal proceedings are very rare. Even in those few cases when the victim or his relatives have deposited a request for damages, the court had rarely accepted the request.

¹² Mustafaj, I., *“Dëmi civil i ardhur nga vepra penale”*, Morava, Tiranë 2011

¹³ Article 626 of the Albanian Civil Code: *“When the tort is caused by several persons together, they have solidarity responsibility towards the injured party.”*

¹⁴ www.gjykatatirana.gov.al



The analysis of these decisions highlights some of the main reasons for this situation.

- i. Albanian Criminal Courts are inclined to find a *shortcut* for the civil claim in the criminal process. Considering it a *burden* for the overall progress of the criminal process, they decide to separate the cases. Article 62 (3) of the ACrPC, determines that the court can decide to separate the civil lawsuit from the criminal case in case it complicates or delays the latter. When considering that during the criminal process the court examines the facts, the evidences, the witnesses, the expertise, submitted by the prosecution and the defendant, it is very clear that the separation of cases harms not just the victim, but the legal system and the overall rule of law. Moreover, according to article 297(a), of the ACPC: “*The court decides the suspension of trial when the case cannot be settled before another criminal, civil or administrative case is resolved.*” According to this article, the victim of the criminal act will have to wait the conclusion of the criminal process for proceeding with the civil process. This implies that if the court considers the request for civil compensation reasonable and based on law, it will pass from 2 to 4 years, and occasionally even more, before the civil compensation is granted. The passing of such a long time harms the law implementation and the effectiveness of justice.
- ii. When an occurrence is not considered a criminal act or where the defendant is dismissed the civil claim is not adjudicated by the criminal court. In this case the civil claim should be raised again before the civil court and all procedures will begin from the start, which means that it will be time consuming and a high financial burden for the victim.
- iii. One of the main differences between the civil and the criminal procedures has been the inability to request the moral damage in the criminal case, since article 61 of the ACPrC, referred only to the material damage. The moral damage could be requested only through a separate civil process. In many cases the compensation’s request from the crime’s victims is related with moral harm. This is often the reason for not presenting the request for compensation in the criminal proceedings. The victims may have not suffered material damages, but only moral ones, or proving its existence could be so difficult, that the civil claim will become void. On the other hand, the civil process is time and money consuming and criticized for delay and for unfair decisions. These were the reasons, why the latest changes to the ACrPC, have removed this restriction. Now it is possible to request through the civil law suit in the criminal case, both the material and moral damage, caused to the victim, or his/her heirs.
- iv. So far, one of the main shortcomings regarding the rights of the victims in the criminal process has been the lack of information, and the lack of the legal obligation of the police officers and prosecutors, to inform the crime victims regarding the compensation opportunities. It is necessary for the victims to know their procedural rights on time, in order to take the necessary steps for compiling a valid lawsuit. Having this in mind article 58 of the ACrPC, now obliges the prosecution to notify the victim for all his/her procedural right.



- v. The ACPrC provides the possibility of free legal aid for the accused who cannot afford a lawyer. This procedural right until now was not guaranteed to the victims of the crimes, despite the fact that they are the most harmed and in many cases, they didn't have the necessary means to attend the trial and to be part of the legal procedures. The lack of free legal aid is considered a major obstacle for the adequate implementation of the procedural rights of the victim in the criminal proceeding. Article 58 (ç) of the ACrPC, now gives the right to the victim of the crime to benefit free legal aid, in case has no financial means to afford one. Letter (gj) of the same article, provides the right of the victim to be exempted from the court expenses and fees.
- vi. Another deficiency of the procedural position of the victim, in accordance to the previous provisions of the ACPrC, was the lack of explicit rights for the victim in the criminal process. The only way he/she could become an active participant, was by depositing the civil lawsuit in the criminal process. Even in those cases where the victim had a legal representation, its representative had very few legal rights. According to the previous version of Article 58 of ACrPC, the injured party of the criminal act had the right to request the prosecution of the offender, the civil damage caused, to submit applications and request the receipt of evidences. The article didn't give any specifications, modalities or details how the prosecution would accomplish these obligations. The latest changes, have adjusted this situation, by giving the victim specific legal rights which can be effectively exercised, which comprise among others: to request the prosecution of the offender; to request at any time information about the state of the proceedings and to be acquaint with the acts and evidences of the case; to request evidence and to present other procedural requests; to be informed about the arrest and the release of the accused; to be notified of the non-initiation of the proceedings, the case's dismissal, or the beginning of the trial; to appeal in court the decision for the non-initiation of the proceedings and the dismissal of the case; to be summoned to the preliminary hearing and at the first hearing; to be heard by the court, even if not request as witness; to exercise other procedural rights provided by the ACrPC.
- vii. Another novelty of the latest provisions is the right of the victim to have medical care, psychological help, counselling and other services offered by the public authorities, to communicate in her/his own language through a translator or interpreter.

V. CONCLUSIONS AND RECOMMENDATIONS

The latest changes to the ACrPC reflect a reformed attitude towards the victim's position in the criminal proceedings. The data collected by the Albanian courts, which have been based on the old procedural rules, prove that the number of civil claims, during criminal proceedings has been limited. The inclusion by the ACrPC of the concepts of restorative justice, which could help to improve the efficiency of the criminal law and criminal proceedings, is expected that will induce the rise of the civil law suit during criminal cases. This would encourage the parties to better evaluate the consequences of the criminal acts and the respective civil compensation. The challenge ahead is with the proper interpretation and implementation of the new provisions. The

main objective should focus not only in avoiding two separate processes for the same occurrence, the criminal and the civil one, but also in reversing the harm that has been done to the victim. The doctrine argues the existence of several reasons, for preferring to submit the civil lawsuit for criminal acts before the criminal court, instead of the civil court.¹⁵

Some of the main reasons may be summarized as follows:

- i. The judge of criminal proceedings has a clearer and complete overview, on the real happenings, giving him the possibility to better evaluate the extent of damages caused;
- ii. The criminal proceedings are faster and less costly;
- iii. The victim is relieved from the obligation of presenting evidence before the court, because this is the duty of the prosecutor;
- iv. Reviewing both cases in the same process, avoids contradictory decisions regarding criminal and civil claims;
- v. Gives the victim, or his successors the possibility to be present during the criminal proceedings, which otherwise would be impossible.

Another important element in favour of the process of civil compensation from the criminal acts, during the criminal process or separately, is related with the real possibilities of compensation. The civil laws and bylaws in Albania, guarantee the overall fulfilment of civil obligations. However the civil compensation in criminal cases must have specific provisions that cannot be implemented in the ordinary civil cases. Some of the measures which might be taken in this regard include:

- i. The creation of a special state fund for the compensation of crime victims. International Agreements that aim to protect the rights of victims of crime, but also other countries legislation in this area, recommend the creation of this special state fund, which will aim to compensate and indemnify crimes' victims. This fund can be managed by a special institution, which will be responsible for the recovery lawsuits towards the defendant. In the area of human trafficking, Albania has created the institution of the National Coordinator, who has the responsibility of creating the scheme for compensation and rehabilitation of victims of trafficking.¹⁶
- ii. A good option would be to use the confiscated properties of the accused and convicted, in order to create this fund. According to existing legislation, in some criminal cases, especially related to human trafficking, the state is authorized to confiscate the property of the accused, at the beginning of the criminal case. The state can use all its competences to investigate the defendant's assets. During the civil process, it is possible to confiscate or to

¹⁵For more on the subject: Mustafaj, I., "*Dëmi civil i ardhur nga vepra penale*", Morava, Tiranë 2011; Islami, H., Panda, I., Hoxha, A., 2003 "*Procedura penale: komentar*", Tiranë, Morava.

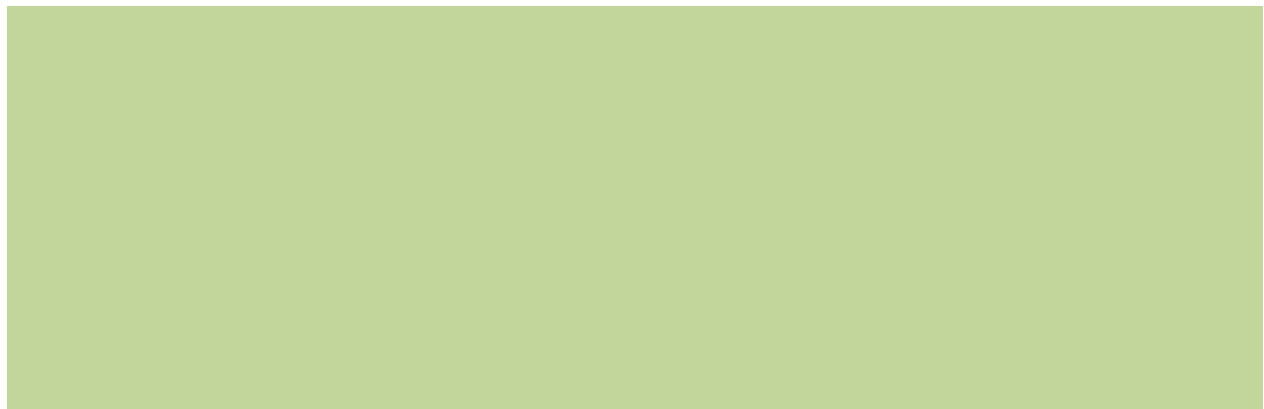
¹⁶The Coordinator Report of 2006 said: "The scheme for compensation and rehabilitation of victims of trafficking, based, among other things, the properties confiscated shall be established soon". The same commitment is present in the official document, "Strategy for Combating Trafficking in Persons and Action Plan 2014-2017", but the fund or the scheme is not created yet.



sequester the movable and immovable properties of the defendant; meanwhile during the criminal process it is possible to confiscate all the properties generated as proceeds of the criminal activity.

- iii. The civil compensation will be helped through the creation of possibilities for employing the persons who have committed the crimes, in order to give to them the real possibility of generating incomes, which will be used then to pay the civil compensation.
- iv. The civil compensation of the victim can also be encouraged by the court through the formulation of the criminal sentence. A good option is the implementation based on the model of Germany. As early as the investigation proceedings, there is a possibility for inducing the accused to redress the damage caused to the victim (Article 153/a/1 German Criminal Procedure Code). The public prosecution can dismiss the investigation proceedings, or the conviction, through an agreement with the accused, if he makes certain payments as reparation for the damage caused to the victim of the criminal offence. In case the accused does not meet the obligations that have been charged to him, on behalf of the crime's victim, the penalty suspension will be abrogated.¹⁷

The civil compensation of damages caused during the criminal acts is important for the wellbeing of the victims, for avoiding recidivism in criminal acts and for granting to the society a human dimension, which in these moments Albanian society seems to have lost. The best way, as it is argued in the article is to include the civil process for compensation during the criminal proceedings. Legal reforms in this regard are indispensable, because currently the civil lawsuit during criminal processes is legally possible, but in practice there are very few chances to conclude it successfully. It is crucial for fragile societies to grant the same importance to the compensation of the crime's victims as that granted to the conviction of the law violators.



¹⁷ Löffelmann, M., "The Victim in Criminal Proceedings: A Systematic Portrayal of Victim Protection under German Criminal Procedural Law." Resource Material Series No.70, International Training Course Visiting Experts' Papers.