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THE VICTIM'S PROCEDURAL ROLE IN THE CROATIAN CRIMINAL PROCEDURE

Davor KRAPAC*

1. INTRODUCTORY REMARKS

Croatian criminal procedure, which is regulated by the Criminal Procedure Act (CPA) of 1997 [1] and which falls into the category of the so-called mixed Continental procedure, provides various possibilities for victims to participate in criminal proceedings, to assume the prosecution themselves when the public prosecutor fails to prosecute, and to seek indemnification in the criminal trial itself. Although it lacks certain modern features such as a system of compensation from public funds, the Croatian law could be interesting from a comparativist's perspective because it is designed to protect victims by providing various legal institutions aimed at the promotion of their interests as regards the securing of indemnification and bringing the guilty to punishment.

Chronologically, the CPA is the successor of the former Yugoslavia's rather liberal CPA of 1976 which itself was the third statute with comprehensive procedural regulation after the Second World War. It contained a whole array of provisions concerning the victim's role in the criminal process, which were taken over by the Croatian legislation and will be dealt with later on. The Yugoslav law of 1976 thus differentiated from the position of its predecessors, namely that of the Code of 1948, which, after the procedural pattern of the 1923 RSFSR Code of Criminal Procedure, had contained relatively few provisions concerning the matter and had

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This paper, based on an article by the same author (Review of Socialist Law, 1985, pp. 333-50) has been prepared for the AIDP and the World Conference against Racism.

1. The Act was published in "Narodne novine", the official gazette, 1997, no. 110/1997 and since then has been twice slightly amended (Narodne novine nos. 27/1998 and 112/1999). On the physiognomy of the new Croatian criminal legislation, including the CPA, see the leading article of the same author in "Croatian Annual of Criminal Law and Practice", Vol. 6 (1999), suppl. to no. 1, where full English translations of the Criminal Code and the CPA were published

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allocated the complete procedural control in the hands of the public prosecutor [2]. A victim was thus left without an efficient remedy against non-prosecution and given only rudimentary possibilities to seek indemnification in the course of the criminal trial.

The present CPA of 1997 contains all the provisions of the liberal ex-Yugoslav legislation and even improves some procedural rights of the victim.

But before exposing them, an important remark must be made regarding the types of procedural roles, which may be assumed by the victim in the Croatian criminal Process.

Under the present law, the victim of a criminal offence may participate in criminal proceedings as:

- *An injured person*, in cases where a criminal offence is subject to public prosecution;

- *A subsidiary prosecutor*, in cases where the public prosecutor fails to institute the prosecution or desists from it;

- *A private prosecutor*, in cases where the criminal offence is prosecuted by way of private charge.

In each of these roles the victim may assert an indemnity claim, arising out of the commission of a criminal offence. This claim is considered as a civil suit, joining a criminal case (Adhäsionsvefahren).

Therefore, for the sake of clarity, it will be convenient to deal with these roles separately (sections II, Ill, and IV), as well as to distinguish them from the cases where the motion to assert the indemnity claim was made (section V).

IL. INJURED PERSON

In article 170, par. 1, subpara. 5 of the 1997 CPA, the notion "injured person means a person whose personal or financial right has been infringed or jeopardised through the commission of a criminal offence. It covers the whole area of substantive private law, including family law (marriage, paternity law) as well as various forms of infringing or jeopardising these rights (e.g. punishing attempt). This means also that the notion of the injured person does not necessarily equate to the notion of the person allowed to assert the indemnity claim, since the CPA gives the right to do so to the person who has the standing to litigate the issue in a civil action (art. 128). Consequently, a person considered as injured shall not always be allowed to assert an indemnity claim in a criminal case and vice versa - a person who is not an injured person shall be allowed to assert it, depending on his legal status defined by the civil procedural law as well

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2. Lit. "drzavni odvjetnik" - *state attorney* Herein we use more conventional term public prosecutor.

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as by the law on civil obligations. For instance, an injured person who has already brought a civil action for damage occasioned through the commission of a criminal offence, may not assert an indemnity claim in a criminal case; on the other hand, a person upon whom an indemnity claims has been transferred (e.g. by way of succession) may assert it in a criminal case although he may not be considered as an injured person.

At any stage in the proceedings the court is bound to examine ex officio whether a certain (private individual or corporation) may act as the injured party, as well as to rule against this person where the court finds that he cannot be considered as the injured party. On the other hand, the CPA provides - as a general principle - for the duty for the court to give warning to an injured party who, due to his ignorance, may fail to take certain procedural acts or may fail to avail himself of his procedural rights (art. 13).

Sharing in principle the same procedural interest with the public prosecutor, the injured person may, in the so-called fully-fledged proceedings (i.e. proceedings in cases of criminal offences threatened by imprisonment of more than three years) take procedural acts aimed at “assisting the public prosecution” [3]. In the course of the investigation he may call attention to all the facts and apply for examination of all evidence relevant to the establishing of the commission of the criminal offence and its perpetrator (art. 54, sec. 1). The injured person has the right to inspect the file of the investigation and attend the examination of experts and the examination of witnesses (in the latter case only of those who are likely to be prevented from appearing at the main trial, art. 198, sec. 2 and 4). At the main trial, until its termination, the injured person may move for the examination of evidence, submit questions to the defendant, the witnesses and experts, comment and clarify their statements and make other declarations and motions, even repeating the motions which have earlier been denied (art. 54, sec. 2; art. 322, sec. 1). At the close of all the evidence, the presiding judge must ask the injured person whether he has any motions to supplement the proof-taking (art. 334, sec. 1). Finally, the injured person may appeal a judgement only on the issue of the court’s adjudication of costs.

3. In the older (Austro-German) procedural arrangements, which influenced the Croatian legal tradition, there existed rules according to which the “private participant” (*Privatbeteiligte*) was on the side of the public prosecutor- however, on the condition that he adhered to criminal proceedings on the grounds of his indemnity claim (a declaration on adherence to proceedings, motivated solely by the victim’s willingness that offender be punished had not been admissible, see e.g. art. 47 of the Austrian Code of Criminal Procedure of 1873, which influenced the Croatian Code of criminal procedure of 1875). The present Croatian law allows the injured person to participate in criminal proceedings regardless of whether he intends to seek indemnification in the case or not.

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In summary proceedings (i.e. proceedings for offences threatened by a fine or imprisonment under three years as a principal punishment) the injured person has somewhat greater procedural rights. This may be attributed to the fact that these proceedings are conducted for mot common offences in everyday life, and in practice, there is often a certain degree of inactivity on the public prosecutor's side. So, if the public prosecutor fails to appear at the main trial, the injured person has the authority to argue for the prosecution within the bounds of the summary charge-sheet (art. 441, sec. 1) as well as the right to institute an appeal against the judgement, irrespective of whether an appeal has been brought by the public prosecutor (art. 442, sec. 6).

In Croatian criminal procedure the injured person may exercise his procedural rights through the intermediary of an attorney, and the defendant who is found guilty has to reimburse the necessary expenses incurred by the injured person and his legal representative, as well as the fees and necessary expenses of their attorney (art. 119, sec 2, al. 8; art. 122, sec. 1).

In criminal cases where the criminal offence is subject to public prosecution, apart from "assisting the public prosecution" ad asserting his indemnity claim (which will be dealt with later), the injured person may also assume the prosecution, if the public prosecutor finds that no grounds exist for initiating proceedings or desists therefrom. This brings us to the next formal role of the victim in the Croatian criminal process, that of the subsidiary prosecutor.

III. SUBSIDIARY PROSECUTOR

As a result of the mandatory nature of the public prosecution or the so-called *Legalitätsprinzip* of the public prosecution, the Croatian public prosecutor [4] is legally bound to prosecute if there is "reasonable suspicion that a certain person committed an offence which is subject to public prosecution and when there are no legal obstacles to the prosecution of that person" (art. 2, sec. 3). If it is not so, he will decide to "dismiss a crime report" (art. 174, sec. 1) [5] and desist from prosecution [6]. Should he so decide, his role may be assumed by the injured party acting as subsidiary prosecutor (art. 2, sec. 4) [7]. The commentators of the earlier

4. Lit. "state attorney" (dr?avni odvjetnik).

5. Or, in Anglo-American terminology, enters a statement of *nolle prosequi.*

6. The available statistics show that dismissal of a crime report happens in 30% of annual cases approximately (*M. Singer/S. Zadnik/I. Kov?o*. Decisions of criminal procedure authorities in Croatian from 1995 to 1999; Hrvatski ljetopis za kazneno pravo i praksu vol 7 (2/200) pp 638, 639. However, some older research demonstrated that the injured person assumed prosecution in 2% of cases where the public prosecutor decided not to prosecute.

7. The subsidiary prosecution is not admissible in cases where the public prosecutor decides on the basis of the so-called opportunity principle which gives him a broader

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Yugoslav law and of the present day Croatian criminal procedure agree that a subsidiary prosecutor acts not only in pursuance of his personal interest, but also in effectuating the interest of the state that a guilty person be punished according to the provisions of the substantive criminal law [8].

From the above-mentioned fact that Croatian law does not equate the notion of the "injured person" with the notion of the person entitled to indemnity claim, one can draw the conclusion that a particular person - considered as the injured person - may act as a subsidiary prosecutor whether or not he has any indemnity claim to assert, whether or not he has been entitled to do this or whether or not he has made the motion to assert his claim. What matters is the fact that a particular person's personal or financial rights have been infringed or jeopardised: in general, even the type of criminal offence will not influence whether a victim of a particular offence will be considered as the injured person, thus assuming the role of a subsidiary prosecutor (e.g. a person who has suffered damage through the criminal offence of making perjury may act as a subsidiary prosecutor although the criminal law defines this offence as an infringement of the administration of justice, and not of one's personal rights) [9]. However, there are some types of criminal offences, which per se cannot imply the infringement or jeopardising of one's personal or financial rights (e.g. espionage and certain offences against the security of the state) and in such cases the sole authorised prosecutor is the public prosecutor.

Earlier, the right to assume the prosecution was considered as a strict and untransferable personal right but the present Croatian law has abandoned this position and prescribed that, if in the course of the criminal proceedings it transpires that the subsidiary prosecutor has died, his relatives may make the motion for prosecution or declare that they will continue to press charges (art. 50).

Where the public prosecutor finds that no grounds exist for initiating proceedings for a criminal offence subject to public prosecution, he has to notify (within eight days) the injured person thereof and to inform him that he may himself assume the prosecution. The same applies to the court that renders a ruling discontinuing the proceedings by reason of the prosecutor's *nolle prosequi*.

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discretion to prosecute, i.e. in: a) cases of minors and b) cases where an adult offender has committed an offence "of a lesser degree of guilt" and the commencement of criminal prosecution may be postponed under certain conditions, among which there is the voluntary fulfilment of different obligations on the part of defendant (art. 175, sec. 1).

8. For earlier Yugoslav commentators see *T. Vasiljevi?*, Sistem krivi?nog procesnog prava SFRJ (System of the criminal procedural law of the SFRY), Belgrade 1981, p. 141.

9. The criminal offence of racial and other discrimination (art. 174 of the Criminal Code) belongs to "criminal offences against values protected by international law" (chap. XIII of the Criminal Code) but nevertheless may be prosecuted by a subsidiary prosecutor.

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In fully-fledged proceedings, an injured person may assume the prosecution at various procedural stages.

a) If, in the course of *preliminary proceedings* the public prosecutor has dismissed a charge or, if in the course of preliminary investigation he has desisted from prosecution, the injured person is entitled to institute or continue prosecution within eight days following he receipt of notification of the public prosecutor's non-prosecution. He can do that by submitting a request to open an investigation, by moving to supplement the investigation initiated by the public prosecutor, or by preferring the charge-sheet of private charge. An injured person who has not been notified of the public prosecutor's decision of non-prosecution, may - within six months from the day the public prosecutor dismissed the crime report or from day the ruling to discontinue the proceedings was rendered - declare to the competent court that he will continue the proceedings (art. 55, sec.4).

If the panel of the court discontinues an investigation by a ruling, the injured person may appeal against this ruling. If his appeal is satisfied, the injured person, in lodging the appeal, is considered to have assumed the prosecution (art. 201, sec. 3).

b) If the public prosecutor desists from prosecution in the course of the *main trial*, the presiding judge has to discontinue the proceedings and notify the injured person thereof. If the public prosecutor withdraws the charge-sheet at the main trial, the injured person has to declare forthwith whether he intends to press charges. If having been duly summoned, the injured person fails to appear (in person or through his attorney) at the main trial, it is considered that he does not intend to pursue the case (art. 56, sec. 2; art. 57).

c) If, in the *appellate proceedings* the public prosecutor withdraws the charge-sheet at a trial before the court of second instance, the injured person has the same right (and duty) as in the case of the public prosecutor's withdrawal of the charge-sheet at a main trial.

In summary proceedings the injured person may assume the prosecution under the same prerequisites as in fully-fledged proceedings. However, in the case where the public prosecutor fails to prefer a summary charge-sheet or to inform the injured person of the dismissal of his crime report, the time period for the injured person to declare his continuance of the proceedings amounts to one month (art. 433, sec. 1).

To avoid possibly vindictive prosecutions, the CPA restrains the injured person's right to assume the prosecution in two ways: 1) by fixing the time period (generally, eight days) within which he ought to assume the prosecution (if he fails to do so, he is deemed to have desisted from prosecution, art. 57, sec. 1); and 2) by providing that the judge must agree with the injured person's assumption of the

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prosecution (should the investigating judge disagree with it, he has to request the judicial panel to decide thereon, art. 205, sec. 2).

As regards the procedural rights and duties of the injured person who is acting as subsidiary prosecutor, the CPA states that he has the same rights as the public prosecutor, except for those which are vested in the public prosecutor as an organ of the state. However, there are also some significant differences: the subsidiary prosecutor is not bound by the principle of mandatory prosecution - although he must not try to pervert the course of justice by making false reports or accusations, or by inciting others to providing false testimonies etc. Further, the subsidiary prosecutor unlike the public prosecutor is not allowed to appeal from a judgement in the public interest (i.e. to the advantage of the accused); he may be subjected to certain disciplinary powers of the presiding judge; he is not entitled to request the use of documents as is the public prosecutor, but must go to court himself to inspect the dossier, he is not entitled to request the reopening of proceedings which have discontinued due to the fact that he had desisted or had been legally deemed to have desisted from the prosecution; he is not entitled to ask other state's agencies to render assistance.

The subsidiary prosecutor may exercise his procedural rights through the intermediary of an attorney. If he has instituted proceedings for a criminal offence carrying a penalty of three years of imprisonment or more and if he, by reason of his financial position is unable to bear the costs of the counsel, counsel may be appointed to him at his request. The decision on this will be made by the investigating judge or by the presiding judge (art. 60, sec. 2). If the defendant is found guilty he will have to reimburse the fees and necessary expenses incurred by the subsidiary prosecutor and his legal representative as well as the fees and necessary expenses of their attorneys.

Finally, one has to point out the possibility for the public prosecutor to reassume control of a case where an injured person has acted as a subsidiary prosecutor. According to the opinion that the public prosecutor must not fail to show interest in a case where - contrary to what he had anticipated - the prosecution has shown that it is in the public interest to bring the offender to justice, the CPA entitles the public prosecutor to reassume the prosecution at any stage prior to the conclusion of the main trial (art. 58, sec. 2). In that case, the injured person may no longer take on the role of the subsidiary prosecutor - although he may appeal from the judgement on all the grounds on which a judgement may be attacked (art. 363, sec. 4).

IV. PRIVATE PROSECUTOR

As an exception to the inquisitorial feature of the prosecution *ex officio* in continental criminal procedure the legal institution of private prosecutor is in Croatian law restricted to minor criminal offences or to cases where public

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prosecution may prove harmful to the victim's private interests [10]. Art. 2, sec. 2 of the CPA defines the private prosecutor as a person authorised to take prosecution in case involving criminal offences subject to private prosecution. The law does not designate the person who is authorised to do so, but it only provides in the Criminal Code which offences are subject to private prosecution. Exceptionally, there are several criminal offences where the law has designated this person (e.g. theft, embezzlement or fraud committed in relation to a spouse or relative).

Unlike in some other continental countries, in Croatia the public prosecutor may not intervene in a case where the criminal offence is subject to private prosecution. However, the question may arise as to which prosecutor – public or private - will be authorised to initiate the proceedings and press charges in a given case. This question has to be resolved by way of discontinuance of one of the proceedings upon these two charges. Exceptionally, there will be proceedings upon both of these charges - in case of concurrence of the criminal offences where the perpetrator has committed several of them, some of which are subject to public and some to private prosecution. But even in such a case there will be no "mixture" of charges and every prosecutor will press his charges by himself.

Taking into account the fact that citizens often cannot tell the legal difference between the crime report to the public prosecutor and the private charge, the Croatian law states that when an injured person has reported a criminal offence and it transpires in the course of the proceedings that an offence prosecuted by way of private charge is involved, the crime report will be treated as if it represents private charge which has been preferred within the given time limits, provided such report was made within the period prescribed for preferring a private charge (art. 48 sec. 3). And vice versa: a preferred private charge will be treated by the court as a crime report and forwarded *ex officio* to the proper public prosecutor (art. 173, sec. 3).

The injured person, authorised to institute prosecution upon private charge, has to be capable of performing legal acts. If he is a minor, under the age of sixteen, or a person declared incapable of performing legal acts, the private charge must be preferred by his legal representative. A minor who has attained the age of sixteen may himself prefer a private charge (art. 49). The injured person or his legal representative may exercise their procedural rights through the intermediary of an attorney (art. 60, sec. 1) and in the case of the defendant's conviction, they are

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10. I.e. defamation, insult, light bodily injury, petty larceny, embezzlement or fraud. Beside, in the Croatian law offences exist where public prosecution undertaken by he public prosecutor may not take place unless the injured person, as the authorised person, moves that criminal proceedings be instituted. Such a motion, called a motion for prosecution, closely resembles the German *Strafantrag* or the French *complainte*.

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entitled to the reimbursement of costs (much as the subsidiary prosecutor, see sec. III *supra*). Should the private prosecutor die within the period for preferring charges or during the progress of the proceedings initiated by his charge, his spouse, children, parents, brothers and sisters may, within three months after his death, prefer a private charge or declare that they will continue to press charges (art. 50).

If several persons are injured by the same criminal offence, the prosecution may be instituted or continued upon the private charge of each of them (art. 51). Their rights to prefer the private charge are mutually independent. This means that several injured persons may concur at the initiation of the prosecution - but in only one criminal procedure: if the proceedings have been instituted by private charge(s) on the part of some of them, later on the others may only adhere to them. If the proceedings have been discontinued by a finally-binding ruling or judgement, the other parties may not request a reopening of the proceedings, except in the case where the proceedings have been discontinued for lack of jurisdictional competence or for the want of an authorised prosecutor.

Unlike in some other continental procedural systems, in Croatian criminal procedure the injured person may decide to prefer his charge only against certain perpetrators of the criminal offence and for certain offences only.

The private charge must be preferred within three months from the day the authorised person is informed of the criminal offence and the identity of its perpetrator. If the private charge has been preferred in a case involving the criminal offence of insult, the defendant may, until the conclusion of the main trial, prefer a countercharge against the prosecutor who has returned the insult although the period of three months a *die scientiae* of the criminal offence has expired. In such a case the court has to adjudicate the matter by a single judgement (art. 47, sec. 2).

In fully-fledged proceedings, upon completing he investigation, the investigating judge shall inform the private prosecutor thereof and shall instruct him that he has to prefer the private charge within eight days (and that, should he fail to do so, it will be considered that he has desisted from prosecution and the proceedings will be discontinued, art. 205, sec. 3). The private charge must be submitted in writing or be made orally to a court official who will put it into the appropriate form and record it. It must be intelligible and must contain all the information necessary for procedural action thereon (art. 267, sec. 2; art. 268, sec. 1).

In summary proceedings, after the private charge has been submitted, the proceedings immediately enter the main trial. There is no investigation here, but the judge may, upon receipt of the private charge, carry out particular acts of investigation, if he feels that they ought to be conducted prior to the main trial. The private charge must contain only the most necessary data (art. 434, sec. 1).

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Under he CPA, the private prosecutor has, in principle, the same procedural rights as the public prosecutor. Most of them equate to the rights of the injured person (see sec. III *supra*). But, acting as a private prosecutor, he has some other rights as well, such as the right of requesting the investigation, the right of preferring the charge, the right of appeal etc. Until the termination of the main trial, the private prosecutor may withdraw the private charge by addressing a declaration to that effect to the court. In such a case he forfeits the right to prefer charges anew (art. 52). If, having been duly summoned, the private prosecutor fails to appear at the main trial, he will be deemed to have withdrawn the private charge except in the summary proceedings, where, upon his application, the main trial may be held in his absence provided his domicile is outside the jurisdictional territory of the court to which the private charge has been submitted (art. 441, sec. 2).

The Croatian law has abandoned an earlier specific procedural arrangement, featured in the former Yugoslav law: the transfer of private charge (for some minor criminal offences such as those against honour and reputation) to the conciliation boards (so-called councils of the peace) in local communities or workers' organisations. The aim of this procedural feature had been to enable attempts to "reconcile the parties' before the commencement of a criminal trial. However, at the time of drafting the CPA in Croatia, animosity prevailed towards arrangements which were deemed to originate in the socialist favouring of extrajudicial conflict-solving methods and which for some time, had expanded to the detriment of judicial procedures.

V. CLAIMS OF INDEMNIFICATION

The most important provisions of the CPA which regulate the victim's compensation for the damages occasioned by the commission of a criminal offence concern three main questions: 1) the content of the injured person's indemnity claim; 2) the role of the parties in the civil suit which adheres to a criminal case, and 3) the proceedings upon the motion to assert the indemnity claim .

If the injured person chooses to assert his indemnity claim in the *Adhäsionsprozess*, he may state a demand for compensation of damage, for replevin or rescission of a legal transaction. Similarly to the German system, Croatian law has a general clause imposing liability for damage done by unlawful acts and defines the damage as diminution to or loss of somebody's property (*damnum emergens*) or hindrance to its increase (*lucrum cesans*) as well as causing physical or psychological pain or suffering to a person (the so called "unproprietary damage") [11]. All these types of damage may be occasioned

11. This notion may be compared with the unliquidated and exemplary damages in *common law*.

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through the commission of a criminal offence and the injured person may claim them in the *Adhäionsprozess*.

Although the CPA does not expressly designate the person against whom an indemnity claim may be asserted, it is obvious that this may be done against the defendant except in cases where the law provides for liability of others (e.g. parents for their children).

The motion to assert the indemnity claim may be made by the person having the standing to litigate the issue in a civil action (art. 128). This may be an individual or a corporation acting through a legal representative. A transfer of the indemnity claim to another person under the rules of substantive private law (e.g. by contract, inheritance etc.) does not include the transfer of other rights of the injured person - particularly the "rights of assisting the public prosecutor" and the right of assuming the prosecutor as the subsidiary prosecutor (see sec. II supra). They are considered, as stated before, to be strictly personal rights which. as a rule, may be exercised by an entitled person only.

Contrary to the inquisitorial procedures where the court has to resolve the question of damages ex officio. the initiative for the commencement of the *Adhäsionsprozess* in Croatia has been left with the injured person. The CPA states that an injured person willing to make a motion to assert and indemnity claim, should do so, by addressing it to the agency charged with receiving crime reports or to the court directing the proceedings, by the end of the main trial in the court of first instance (art. 1 29, sec. 1 and 2).

The Croatian law does not provide the upper limit of damages that may be claimed in a criminal case. The sole requirement provided for the consideration of indemnity claims in the *Adhäionsprozess* is "that their determination does not considerably delay proceedings". In that event, the court must only collect data whose discovery at a later date would be impossible or considerably impeded (art. 131, sec. 2) and direct the injured person to assert his full claim by way of civil action (art. 132 sec.2). In the course of the proceedings, the court must duly inform the injured person of his rights concerning the process of the determination and adjudication of the indemnity claim. For instance, the investigating judge and the presiding judge must point out to the injured person his right to call attention to all the facts and to apply for the examination of all the evidence relevant to the establishing of the commission of the criminal offence, its perpetrator, and to the adjudicating of the indemnity claim (art. 54 sec. 4). If the owner of the claim fails to make the motion for indemnification up until the time the charge-sheet has been preferred, he has to be informed of his right to make the motion until the termination of the main trial (art. 129 sec. 4). When examined as a witness, the injured person has to be asked whether he intends to seek the satisfaction of his indemnity claim in the pending criminal case. Finally, if the injured person is

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present at the commencement of the main trial and has not yet submitted his indemnity claim, the presiding judge has to advise him that he is entitled to submit such claim in criminal proceedings.

If the court has decided to consider the indemnity claim in a criminal case, it must examine the defendant with respect to the facts set out in the motion and explore relevant circumstances. Although the injured person has to offer some evidence supporting his claim, the court must nevertheless collect the evidence and inquire *ex officio* into the circumstances necessary for the adjudication of the claim (art. 131 sec. 1). This is an important exception to the party-driven fact-finding system at the main trial where the presentation of evidence corresponds to the cross-examination arrangements of an adversarial system [12].

The court may decide on the indemnity claim in its judgement of conviction. Here, the court may satisfy this claim completely of partially, while directing the injured person to seek the satisfaction of the balance of his claim by way of civil procedure. Or, the court may direct the injured person to seek the satisfaction of his full claim from the convicted person by way of civil action. If the data established in the criminal proceedings furnish no reliable basis for either full or partial adjudication, the court must direct the injured person to assert his claim in its entirety by way of civil proceedings (art. 1 32 sec. 2).

When rendering a judgement of acquittal, a judgement rejecting the charge or a ruling discontinuing criminal proceedings, the court has to direct the injured person to assert his claim by way of a civil action. If the court has declared itself to be incompetent to conduct criminal proceedings, it has to instruct the injured person that he may assert his claim in criminal proceedings to be instituted or continued by a court which is competent.

The fact that the court can never reject an indemnity claim submitted in a criminal case (but can only pronounce a non *liquet* decision) has led Croatian legislator to the rule that the injured person may not attack the court's decision by way of appeal against the judgement of the first instance (art. 363. sec. 3).

A finally-binding judgement whereby an indemnity claim has been adjudicated may, in criminal proceedings, be altered only by way of reopening of the proceedings or by way of a motion for protection of legality. Otherwise, it may be altered only in civil proceedings, upon the motion of the convicted person or his heirs, provided grounds exist for reopening proceedings under rules applicable to civil actions (art. 135).

12. See *Krapac*, the article cited supra n. 1, pp. 14,15.