



CRNA GORA

Guidelines for the Exercise of the Right to Compensation for Victims in Criminal Proceedings





Guidelines for the exercise of victims' right to compensation in criminal proceedings

(for criminal offences of trafficking in human beings, war crimes, domestic violence and other criminal offences)

The guidelines were developed upon the initiative of the Supreme Court of Montenegro, in cooperation with the the Supreme State Prosecutor's Office of Montenegro

Podgorica, December 2025

Guidelines for the exercise of the right to compensation to victims in
criminal proceedings (for the criminal offences of trafficking in
human beings, war crimes, domestic violence
and other criminal offences)



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Foreword

The development of the Guidelines was carried out with the participation of the Working Group set up by the President of the Supreme Court of Montenegro, Valentina Pavličić, bringing together representatives of the courts, the State Prosecutor's Office and the legal profession in Montenegro, ensuring a comprehensive and professional approach. The Chair of the Working Group was Supreme Court Judge Milenka-Seka Žižić, and the members were: Judge of the Basic Court in Podgorica Vanja Vujović, State Prosecutor in the Higher State Prosecutor's Office in Podgorica Snežana Šišević, Chief of Staff in the Supreme State Prosecutor's Office Ikonija Radojčić, attorney at law Tijana Živković and advisor in the Supreme Court Bojana Bandović.

The Council of Europe's consultant, Professor Dr Miloš Vukčević, as well as regional experts from the Republic of Serbia: former Judge of the Supreme Court of Cassation Ljubica Milutinović, Public Prosecutor of the Supreme Public Prosecutor's Office Tamara Mirović, Chief Public Prosecutor of the Appellate Public Prosecutor's Office in Novi Sad Tatjana Lagumdžija, Judge of the Supreme Court Svetlana Tomić Jokić, and Judge of the Supreme Court of the Republic of Croatia Damir Kos, also participated in the drafting of the Guidelines. Their expert contributions, experiences and examples from comparative practice were valuable inputs in the preparation of the document.

We also owe special gratitude to the project coordinator of the Council of Europe's Programme Office, Ivona Dragutinović, and the regional specialist of the Section for Trafficking in Human Beings and Migrant Smuggling at the United Nations Office on Drugs and Crime (UNODC), Marko Milićević.

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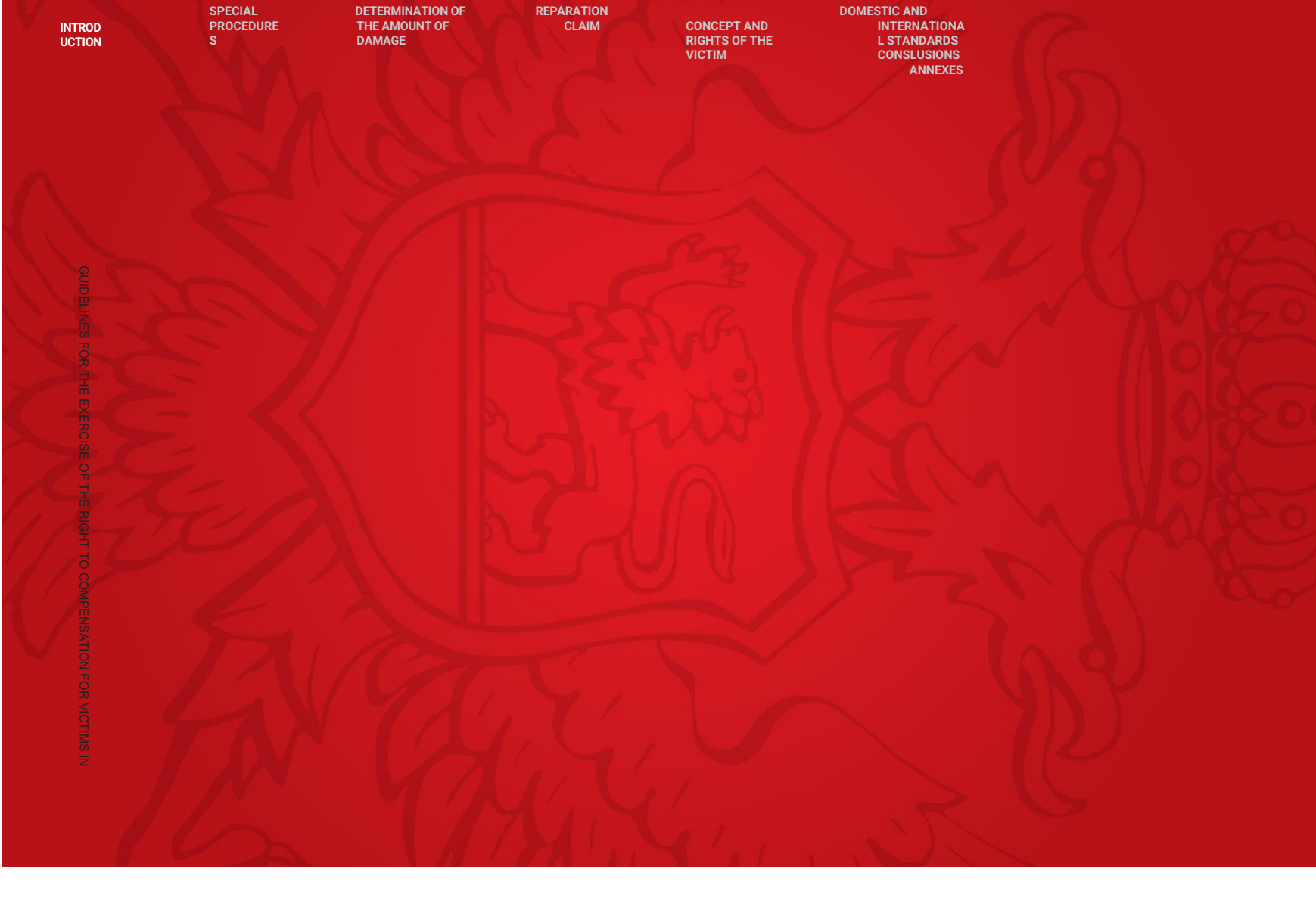
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ANNEXES

GUIDELINES FOR THE EXERCISE OF THE RIGHT TO COMPENSATION FOR VICTIMS IN





A word of introduction

President of the Supreme Court of Montenegro

Dear colleagues,

It is my great pleasure to present to you the "Guidelines for the Exercise of the Right to Compensation to Victims in Criminal Proceedings", which were created as a result of the efforts of the judiciary to improve the jurisprudence in criminal proceedings for compensation of damages to victims. The development of these Guidelines constitutes an important step towards the harmonization of case law and strengthening the protection of victims' rights, in accordance with domestic legislation and international standards.

Special attention is paid to the rights of victims of serious crimes, including trafficking in human beings, domestic or family violence, crimes against sexual freedom, war crimes, etc. Ensuring timely collection of evidence, adequate expertise and consistent application of international standards is the basis for proper and fair decision-making on their reparation claim.

One of the basic principles of modern criminal procedure is that the victim has the right to information, support and effective protection, including the right to compensation. Despite the legal possibilities, in practice this right often remained unexercised in the context of criminal proceedings, which referred victims to additional and lengthy civil proceedings. The guidelines aim primarily to strengthen the protection of victims' rights, to avoid secondary victimization and to ensure timely and effective reparation.

The added value of the Guidelines is reflected in the fact that they are not only a technical document, but also an important instrument by which to direct, encourage and improve the practice of courts, the state prosecutor's office and the legal profession. They offer concrete steps, clear interpretations and instructions that can facilitate the work of state prosecutors in the process of collecting evidence, attorneys in representing the interests of the victim, and judges in the decision-making phase. In this way, the guidelines contribute to a more consistent case law and to ensuring the principle of legal certainty.

Aware of the need to ensure a common strategic approach of all entities involved, with the action of the court, the State Prosecutor's Office and attorneys within their jurisdiction, the Supreme Court of Montenegro took the initiative to develop the Guidelines and invited the Supreme State Prosecutor's Office and the Bar Association to cooperate in partnership. Appreciating that a common approach is key to the development of this document, we started from the conviction that only concerted action by judges, state prosecutors and lawyers can provide sustainable and high-quality guidelines, as well as practices that essentially affirm victims' rights. In this way, this document goes beyond the mere compliance with strategic obligations and becomes a concrete contribution to strengthening more effective legal protection of human rights and equal access to justice.

We owe special gratitude to our international partners, whose support and expertise have significantly contributed to the quality of the Guidelines and the process of their creation. Their contribution, as well as the exchange of experiences from regional and European practice, have enabled the Guidelines to be a document that is in line with the highest standards of human rights protection.

We are convinced that the Guidelines will represent a valuable tool in everyday work and contribute to better protection of victims' rights in criminal proceedings, and thus to strengthening the principles of the rule of law in Montenegro.

Sincerely yours,

**President of the Supreme Court of Montenegro,
Valentina Pavličić**



A word of introduction

The Supreme State Prosecutor of Montenegro

Dear colleagues,

The Guidelines for the Exercise of the Right to Compensation to Victims in Criminal Proceedings are an important normative and practical document that clearly confirms the modern understanding of the role of criminal proceedings - not only as a mechanism for determining criminal liability, but also as a means of ensuring effective protection of victims' rights and their fair reparation. The adoption of these Guidelines represents a significant step towards strengthening legal certainty, harmonization of practice and more consistent application of domestic and international standards of victim protection.

Public prosecutor's office plays an important role in the implementation of the objectives of these Guidelines. Public prosecutor, who in practice is usually the first to come into contact with the victim, plays a particularly important role in timely informing about the rights to which the victim is entitled, as well as in undertaking procedural actions that enable the collection of evidence relevant not only to the criminal liability of the perpetrator, but also to decide on the reparation claim. The exercise of the victim's right to compensation implies cooperation and coordinated action of the criminal procedure authorities at all stages of the procedure.

Past practice has shown that victims' reparation claims are often not considered as part of criminal proceedings, but victims are referred to civil proceedings, although there are not always objective reasons for this. Such actions can place additional burden on the victim, prolongation of procedures and secondary victimization, which is not in line with modern European standards, nor with the obligations assumed by Montenegro by ratifying international conventions. The Guidelines aim to contribute to the change of this practice and affirm criminal proceedings as the primary forum for exercising the right to compensation for damage, when the legal and procedural prerequisites for doing so are met.

The guidelines are of particular importance in cases relating to serious crimes, in particular domestic violence, crimes against sexual freedom, trafficking in human beings and war crimes, in which the issue of exercising victims' right to compensation is particularly strongly reflected in the overall fairness and efficiency of criminal proceedings.

The Office of the Supreme State Prosecutor of Montenegro recognizes these Guidelines as an important instrument for improving the handling of criminal cases and a more consistent implementation of the law. Their application should contribute to strengthening public trust in the work of judicial institutions, improving the quality of criminal proceedings and affirming the principles of fairness, accountability and the rule of law.

I would like to express my special gratitude to the Supreme Court of Montenegro and the members of the Working Group for their professional engagement in the drafting of these Guidelines. I would also like to thank our international partners for their professional support and exchange of experiences, to whom they have significantly contributed to the quality and contents of this document.

I am convinced that the Guidelines will find their full application in the daily work of all relevant institutional entities and that they will significantly contribute to better and more effective protection of victims' rights in criminal proceedings in Montenegro.

**Supreme State
Prosecutor
Milorad Marković**

Victims of criminal offences in Montenegro, especially of serious crimes^[1] who have suffered violence, severe physical or psychological consequences, sexual violence or other forms of serious threat to integrity, most often do not sufficiently exercise their right to compensation in criminal proceedings. Although the Criminal Procedure Code of Montenegro provides for the possibility that the court, upon the proposal of an authorized person, decide on a reparation claim, in practice it is still the dominant approach to refer victims to civil proceedings, often without an elaborate explanation and without a full assessment of the consequences of such conduct.

In these Guidelines, the term "victim" refers to any natural person who has suffered physical, mental or emotional harm, or material damage, directly caused by the perpetration of a crime. This category also includes family members of a person whose death is a direct consequence of a criminal offence, and who suffer damage due to the loss of life of a close person. In the procedural legal sense, the term "victim" also includes the "injured party" to whose detriment the criminal offence was committed and who, in accordance with the provisions of the Criminal Procedure Code, participates in the proceedings as an injured party, but in the following text, for the sake of clarity, the term "victim" is used.

In the practice so far, the victim in criminal proceedings is most often seen primarily as a source of information about the facts, while their other rights, including the right to information, support, protection and fair compensation – are treated secondarily. The right of the victim to compensation is one of the key assumptions of the contemporary European concept of fair and effective reparation to victims of crime and plays an important role in the process of their recovery and restoration of a sense of dignity.

The State has a duty to ensure respect for the physical and psychological integrity of every person and to provide the victim with effective access to justice, in a process that is lawful, equitable and completed within a reasonable time. The way to exercise these rights may be criminal proceedings, civil proceedings or a combination of both, but international standards and recommendations of the Council of Europe and the European Union imply that criminal proceedings, whenever possible, should also allow for the decision on damages.

1 Although the Guidelines refer to all criminal offences, their focus is primarily on serious criminal offences, which, for the purposes of these Guidelines, in addition to war crimes, trafficking in human beings and domestic violence, which are specifically listed in the very title of the Guidelines, also include all other acts that contain an element of violence in their essence and seriously interfere with the fundamental human rights and freedoms. This group includes, in particular, crimes against life and limb, kidnapping, acts involving ill-treatment, torture or persecution, crimes against sexual freedom, forced marriage, as well as crimes against humanity and other goods protected by international law.

In practice in Montenegro, victims often do not file a reparation claim due to insufficient information, lack of legal aid, fear of contact with the perpetrator or distrust in institutions. On the other hand, judges and prosecutors often avoid deciding on this request in the context of criminal proceedings, citing the potential extension of the duration of the proceedings or the alleged complexity of assessing damage, especially non-pecuniary damage. However, such treatment is not in keeping with modern European standards of treatment of victims, nor with the obligations assumed by Montenegro by ratifying international conventions.

Also, the case law is still "reserved" in terms of deciding on a reparation claim within criminal proceedings, the aim of which is to impose a criminal sanction on the perpetrator of a criminal offence under the conditions prescribed by the Criminal Code and on the basis of a lawfully conducted procedure. With this in mind, the Guidelines provide courts with an answer to open questions in practice regarding the adoption of a decision on a reparation claim, primarily from the aspect of the protection of victims' rights. This need is particularly evident in cases where the witness-injured party is provided with protection, which consists in a special manner of participation and hearing of witnesses in criminal proceedings, as well as outside criminal proceedings, in accordance with the law governing witness protection.

The role of the public prosecutor in gathering evidence on the amount and type of damage in a timely manner, as well as in providing the victim with clear and complete information about their rights, is extremely important. Equally important is the role of the court, through careful conduct of evidence, to provide the victim with fair access to the right to compensation for damage, while avoiding secondary victimization and other undesirable consequences.

These Guidelines aim to highlight the obligation of the state prosecutor and the court to resolve victims' reparation claims, whenever the evidentiary situation allows, within the framework of criminal proceedings, while referral to litigation must remain the exception rather than the rule. The guidelines also provide an overview of the method of determining the amount of damages, the criteria for assessing non-pecuniary and material damage, as well as the obligation of the procedural authorities to inform the victim of his/her rights at all stages of the procedure.

The state is obliged to provide the victim with effective and timely compensation, in accordance with international standards of victim protection, as well as with the Constitution of Montenegro and domestic legislation.

Note

The terms used in this publication for natural persons in the masculine gender imply the same terms in the feminine gender.

1. Domestic and international standards

The regulatory framework for the protection of victims of crime in Montenegro is based on constitutional guarantees, applicable procedural and substantive regulations, as well as on a wide range of international instruments that oblige the state to provide effective protection and effective access to reparation.

The Constitution of Montenegro sets out the basic principles for the protection of physical and mental integrity, human dignity, legal certainty and the right to a fair trial. Article 9 of the Constitution prescribes the primacy of international treaties over laws, which means that ratified conventions in the field of protection of victims have immediate application and primacy in the event of collision with domestic regulations.

The legal framework consists of:

- the Criminal Procedure Code,^[2] which regulates the position of the victim as an injured party and prescribes the possibility for a reparation claim to be considered in criminal proceedings;
- The Criminal Code;^[3]
- The Law on Contracts and Torts,^[4] which defines the types and scope of damage and the basis for compensation;
- The Civil Procedure Code,^[5] which applies as a subsidiary procedure only when the request cannot be decided in its entirety in the criminal proceedings;

2

"The Official Gazette of Montenegro", no. 057/09 of 18/08/2009, 049/10 of 13/08/2010, 047/14 of 07/11/2014, 002/15 of 16/01/2015, 035/15 of 07/07/2015, 058/15 of 09/10/2015, 028/18 of 27/04/2018, 116/20 of 04/12/2020, 145/21 of 31/12/2021 and 054/24 of 11/06/2024.

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"The Official Gazette of the Republic of Montenegro", no. 070/03 of 25/12/2003, 013/04 of 26/02/2004 and 047/06 of 25/07/2006; "The Official Gazette of Montenegro", no. 040/08 of 27/06/2008, 025/10 of 05/05/2010, 073/10 of 10/12/2010, 032/11 of 01/07/2011, 064/11 of 29/12/2011, 040/13 of 13/08/2013, 056/13 of 06/12/2013, 014/15 of 26/03/2015, 042/15 of 29/07/2015, 058/15 of 09/10/2015, 044/17 of 06/07/2017, 049/18 of 17/07/2018, 003/20 of 23/01/2020, 026/21 of 08/03/2021, 144/21 of 31/12/2021, 145/21 of 31/12/2021, 110/23 of 12/12/2023 and 123/24 of 23/12/2024.

4

"The Official Gazette of Montenegro", no. 047/08 of 07/08/2008, 004/11 from 18/01/2011, 022/17 of 03/04/2017 and 123/24 of 23/12/2024.

5

"The Official Gazette of the Republic of Montenegro", no. 022/04 of 02/04/2004, 028/05 of 05/05/2005 and 076/06 of 12/12/2006; "The Official Gazette of Montenegro", no. 073/10 of 10/12/2010, 047/15 of 18/08/2015, 048/15 of 21/08/2015, 051/17 of 03/08/2017, 075/17 of 09/11/2017, 062/18 of 21/09/2018, 034/19 of 16/01/2019, 042/19 of 26/07/2019, 076/20 of 28/07/2020 and 108/21 of 12/10/2021.

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- ˆ The Law on Enforcement and Security^[6] and
- ˆ The Law on Free Legal Aid.^[7]

These domestic regulations must be interpreted and applied in accordance with international standards for the protection of victims, in particular with regard to their safety, dignity, procedural guarantees and the right to compensation.

Montenegro has ratified a number of international instruments that have a direct impact on the situation of victims, among which the following stand out:

- The International Covenant on Civil and Political Rights;^[8]
- The European Convention on Human Rights, with binding case law of the European Court of Human Rights;
- The Council of Europe's Convention on Action against Trafficking in Human Beings, which guarantees access to legal aid and compensation;
- The Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), which introduces the obligation to protect victims, access to support, as well as the obligation of the state to provide compensation when this is not possible from the perpetrator;
- The UN Convention against Torture, the Convention on the Rights of the Child and other universal instruments guaranteeing special protection for vulnerable categories.

Although the European Court of Human Rights has not explicitly stated that a State must accept a civil claim in criminal proceedings in order to avoid secondary victimisation,^[9] the Court's case law establishes standards that oblige a State to:

6 "The Official Gazette of Montenegro", no. 036/11 of 27/07/2011, 028/14 of 04/07/2014, 020/15 of 24/04/2015, 022/17 of 03/04/2017, 076/17 of 17/11/2017 and 025/19 of 30/04/2019.

7 "The Official Gazette of Montenegro", No. 020/11 of 15/04/2011, 020/15 of 24/04/2015 and 123/24 of 23/12/2024.

8 In this document, the Supreme Court of Montenegro reiterates the previous observations of the UN Human Rights Committee regarding the implementation of the International Covenant on Civil and Political Rights. In this regard, the UN Human Rights Committee welcomed the steps taken by Montenegro to address the impunity for serious human rights violations committed during the armed conflicts of the 1990s. The Committee highlighted concerns about the lack of a comprehensive reparations policy for victims of war crimes that includes other measures in addition to compensation. It also expressed concern about reports that access to compensation for victims of war crimes is hampered by barriers, including statute of limitation and restrictions due to citizenship.

9 Although in the case **of Nicolae Virgiliu Tănase v. Romania, no. 41720/13, the judgment of 25 June 2019** did not establish a violation of the Convention, the Court emphasized that the victim's decision to bring a civil claim in criminal proceedings is not unreasonable. Such a procedure allows for a joint examination of criminal and civil liability, facilitates the collection of evidence and can be procedurally more advantageous for the victim. The Court concluded that the applicant could not be charged with failing to initiate a special

1. Provide an effective way for the victim to obtain compensation;
2. Treat victims in a sensitive manner and make every effort to avoid re-traumatisation (secondary victimisation) throughout the proceedings (procedural obligations under Article 3).

Enabling the victim to pursue their claim for compensation in criminal proceedings that have already been initiated, rather than sending them to a new and uncertain lawsuit, is an example of good practice that meets both of the ECtHR standards and thus helps to avoid secondary victimisation.^[10]

civil proceedings, because he could reasonably expect his claims to be dealt with by a criminal court. In **Vanyo Todorov v. Bulgaria, no. 31434/15, judgment of 21 July 2020**. The applicant – the brother of the murdered person – was prevented from claiming compensation for non-pecuniary damage due to the death of a close person, because the Bulgarian practice of the time recognized this right only to parents, children and spouses. The ECtHR found a violation of Article 2 of the Convention, stressing that the complete impossibility of obtaining compensation constitutes an ineffective system of reparation. The Court also referred to comparative law and Directive 2012/29/EU, which recognises siblings as victims. In the cases of **Movsesyan v. Armenia, no. 27524/09, 2017** and **Sarishvili-Bolkvadze v. Georgia No. 58240/08, 2018**, which related to death caused by medical omissions, the Court found a violation of Article 2 of the Convention due to the complete impossibility of claiming compensation for non-pecuniary damage from responsible persons or health institutions.

- 10 The European Court of Human Rights (ECtHR) does not have a single, specific judgment that explicitly states that the victim must be allowed to have a civil claim accepted in criminal proceedings solely to avoid secondary victimization, in the sense of a direct obligation under the ECHR. However, the Court's practice develops standards that indirectly support the need to provide the victim with an effective remedy for compensation, and the inefficiency or excessive complexity of national procedures may lead to violations of the Convention, including the aspect of secondary victimisation. The ECtHR often regards the right to compensation arising from a criminal offence as a "civil right" within the meaning of Article 6, paragraph 1 of the ECHR. Although states have discretion to regulate whether a civil claim is to be decided in criminal or special civil proceedings, the procedure must be efficient. If the victim is deprived of the opportunity to exercise his or her "civil right" to compensation, or if the procedure is unreasonably long, inefficient or too complicated (which may lead to secondary victimisation), there may be a violation of Article 6 (1). Judgments dealing with unreasonable length of proceedings (the so-called 'fragmentary approach' or lengthiness of the overall procedure) are relevant, as too long proceedings constitute a form of secondary victimisation (e.g. cases such as *Elberta v. Latvia* or the numerous cases pertinent to Article 6 concerning the length of proceedings). In cases of serious violations (e.g. violence, trafficking in human beings), Article 3 of the ECHR imposes a positive obligation on States to conduct effective investigations. The investigation must lead to the establishment of the facts and, where appropriate, to the punishment of those responsible. Sometimes the effectiveness of the compensation procedure (which is often initiated as a civil claim in criminal proceedings) is seen in the context of fulfilling this positive obligation under Article 3, in particular with regard to ensuring justice and preventing further suffering of the victim (secondary victimisation). The possibility of pursuing a reparation claim in criminal proceedings, in some cases, can be key to preventing secondary victimisation,

In addition to conventions, the normative framework of the European Union is also important for the practice of domestic authorities, in particular Directive 2012/29/EU on victims' rights, which establishes minimum standards regarding victim information, access to assistance, protection during proceedings and the right to compensation.^[11] This Directive provides that States must ensure that the victim is able to exercise his or her right to compensation within a reasonable time and in the context of criminal proceedings, unless this is objectively feasible.

In accordance with Articles 6^[12], 19^[13] and 32^[14] of the Constitution of Montenegro, as well as with the established practice of the European Court of Human Rights, national courts and prosecutor's offices are obliged to act in accordance with international standards of victim protection, especially in the area of preventing secondary victimization, ensuring access to information and enabling effective and timely implementation of a reparation claim.

as the victim does not have to be subjected to a new, special procedure. Thus, in the case of **Perez v. France (2004)**, the ECtHR clearly confirms that a civil claim (civil claim for damages) brought in the context of criminal proceedings is considered to be

"civil law" within the meaning of Article 6 (1) of the European Convention. Criminal proceedings, in the part in which they decide on compensation for damage, must meet all the standards of a fair trial (Article 6), which includes efficiency and respect for the rights of the parties. In the judgment in *A. v. Turkey* (2014) and similar cases (in particular sexual violence), although the ECtHR focuses on the effectiveness of the investigation and trial (the procedural aspect of Article 3), it nevertheless emphasizes that the proceedings must be conducted in a way that protects the victim from retraumatization. The court criticizes states when national authorities fail to adopt safeguards to prevent re-traumatization. In other words, if the state forces the victim to, after a long and stressful criminal proceeding, initiate an entirely new, long and uncertain lawsuit just to receive compensation, this can be interpreted as contributing to secondary victimization. Therefore, allowing a civil claim to be resolved in criminal proceedings is in line with the judgment in **M.C. v. Bulgaria 39272/98**, in which the ECtHR found a violation of the procedural aspect of Article 3 of the ECHR, because Bulgaria had failed to fulfil its applicable obligation to take all reasonable measures to protect the victim from re-traumatization. An effective investigation must be sensitive (sensitive). The court emphasized that when the victim is in a state of vulnerability, the state must adjust the procedure. A criminal investigation must be thorough and prompt but also conducted in a way that minimizes the victim's re-exposure to trauma (retraumatization). The authorities allowed the applicant to be repeatedly questioned about humiliating details and had to relive the trauma. As with the judgment in *A. v. Turkey*, the judgment in *M.C. v. Bulgaria* sets a high standard of sensitivity that must be applied to victims throughout the proceedings.

11 Official Journal of the European Union L 315/57 of 14.11.2012

12 *"Montenegro guarantees and protects rights and freedoms. Rights and freedoms are inviolable.*

Everyone has a duty to respect the rights and freedoms of others."

13 *"Everyone has the right to equal protection of their rights and freedoms."*

14 *"Everyone has the right to a fair and public trial within a reasonable time by an independent,*

In cases where domestic regulations are not sufficiently clear or do not cover all situations concerning injured parties, the procedural authorities (courts and the public prosecutor's office) are obliged to apply ratified international conventions and developed international standards, including the case law of international courts and bodies of the Council of Europe and the European Union. Under Article 118 of the Constitution of Montenegro, the courts are autonomous and independent and adjudicate cases on the basis of the Constitution, laws and ratified and published international treaties.

This approach obliges courts and prosecutors to consider the issue of compensation for damage to the victim primarily in criminal proceedings, while referral to litigation should remain an exception, in accordance with the principles of efficiency, frugality and protection of victims' rights.

2. The Concept and Rights of the Victim

A victim (injured party) is a person whose personal or property rights have been violated or threatened by a criminal offence.^[15] Thus, according to the aforementioned legal definition, a victim is a person who has been directly harmed by a criminal offence in his or her body, health, freedom, sexual freedom, dignity, property or other legally protected good, and in a broader sense, a person who has suffered physical, psychological, emotional or proprietary consequences as an indirect consequence of a criminal offence. In the event of the death of the victim, certain close relatives may be considered victims within the meaning of the Criminal Procedure Code of Montenegro. This term is aligned with the standards of the Victims' Rights Directive 2012/29/EU.

The rights of victims, as prescribed by the Criminal Procedure Code of Montenegro, must be interpreted in accordance with ratified international treaties and the EU's Victims' Rights Directive.

The right of the victim to receive information at the first meeting with the competent authority is a prerequisite for the realization of all other rights of the victim, among which the right to compensation for damage stands out as one of the most important. The obligation of the State Prosecutor and the court to inform the victim of his/her rights is established in the basic provisions of the Code, according to which the procedural authority is obliged to instruct the participants in the proceedings about the rights to which they are entitled and to warn them of the consequences of failure to do so.^[16] Particularly important is the role of the public prosecutor, who in practice comes into contact with the victim first.

In accordance with international standards, the information provided to the victim must be provided in a manner that is understandable to the victim, in plain language, preferably by means of a leaflet setting out the basic conditions for the exercise of rights, with sufficient information to enable the victim to make a decision on how to exercise his or her rights, taking into account his or her individual needs. Victim support services play an important role in informing and supporting victims, so they should be established as soon as possible at basic, high and misdemeanour courts in Montenegro and state prosecutor's offices, as well as free legal aid services that have been established at basic courts in Montenegro.^[17]

¹⁵ Article 22, paragraph 1, item 5 of the CPC.

¹⁶ Article 14 of the CPC
²⁰ GUIDELINES FOR THE EXERCISE OF THE RIGHT TO COMPENSATION FOR VICTIMS IN

¹⁷ The state system for providing free legal aid in Montenegro was established by the Law on Free Legal Aid

Within the framework of current national case law, all victims of war crimes and/or their families in Montenegro are guaranteed access to justice, compensation and reparations. In civil proceedings initiated by victims of war crimes by lawsuits for compensation for non-pecuniary and/or material damage, the courts act in a manner that applies the provisions of the Law on Contracts and Torts (ZOO) and the Law on Civil Procedure (ZPP). With the provisions of Art. 207, 208, 209, 210, 211 and 212 of the ZOO, compensation for non-pecuniary damage is more precisely standardized, while compensation for material damage in the event of death, bodily injury and damage to health is prescribed by Articles 200, 201, 202, 203 and 204 of the ZOO. In this regard, it is of particular importance to adopt guidelines for compensation to victims of war crimes, in order to ensure uniform access to a comprehensive system of compensation for victims of serious human rights violations, to unify case law and to strengthen the principles of truth and fairness of criminal proceedings. This conclusion is supported by a number of standards from international human rights treaties and humanitarian law, which are binding on Montenegro. Namely, the State of Montenegro is obliged to provide adequate, effective and timely reparations for victims of acts or omissions attributable to the State.^[18]

Victims of crimes with elements of violence and trafficking in human beings should also be provided with information on their right to free legal aid, including the right to

18 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law.*

19 In the case of **Kračunova v. Bulgaria, no. 18269/18**, judgment of 28 November 2023, the ECtHR dealt for the first time with the possibility of a victim of trafficking in human beings to claim compensation in respect of lost gain from forced prostitution. The ECtHR referred to the need to protect victims of trafficking in human beings from the aspect of their recovery and reintegration into society. It is from this perspective that the possibility for victims to claim compensation from their traffickers in respect of lost earnings would constitute a means of ensuring *restitutio in integrum*, and would also contribute to a considerable extent (by providing financial resources to rebuild their lives) to preserve their dignity, help their recovery and reduce the risks of becoming victims of traffickers again. Moreover, such a possibility would help to prevent traffickers from enjoying the fruits their crimes, which would reduce the economic incentives for committing them. In addition, it could provide an additional incentive for victims to expose trafficking, thereby increasing the chances of holding traffickers accountable and preventing future cases. Therefore, the Court held that such a possibility must be an essential part of the integrated State response to trafficking in human beings required by Article 4 of the Convention. He noted that such an approach has found support in the available comparative legal material, in relevant international instruments (Palermo Protocol, Convention on the Suppression of Trafficking in Human Beings), as well as in the recommendations and reports of UN bodies, GRETA and the Parliamentary Assembly of the Council of Europe. On this basis, the Court introduced in Article 4 a new positive obligation for the Contracting States to enable victims of trafficking in human beings to seek compensation from their traffickers in respect of lost earnings.

lawyers/attorneys when provided for by law, to the possibility of granting the status of protected witness,^[20] as well as on other rights belonging to victims of such crimes, in accordance with ratified international treaties. The obligations of the state in dealing with victims of serious crime also refer to special protection measures, the provision of which is a prerequisite for exercising the right to compensation.

When it comes to the right of the victim to submit a proposal and evidence for the enforcement of a reparation claim in criminal proceedings and to propose interim measures for its security, when informing the victim of his/her rights, it is necessary for the procedural authority to specifically point out the advantages of pursuing a reparation claim in criminal proceedings. In order to effectively exercise this right, it is desirable to submit a brochure on rights to the victim along with the invitation, and during the first interrogation of the victim as a witness in simple and understandable language, it is obligatory to:

- To inform the victim about what the reparation claim may relate to;^[21]
- ~ warn her that if she submits a reparation claim, she is obliged to clearly mark it and substantiate it with evidence;^[22]
- ~ explain that the claim must be determined by the type of damage (material or non-material), the forms of damage (non-material: reduced life activity, physical pain suffered, fear, injury, defamation, freedom or personal rights, death or severe disability of a close person; material: actual damage, lost gain, lost maintenance), as well as the amount of damage;^[23]
- ~ explain which persons are authorized to submit the claim (victim and close relatives in the event of death or severe disability of the victim);
- ~ explain to whom and by when the request may be submitted, as well as that until the end of the main hearing, the request may be waived, provided that in the event of withdrawal, the request may not be re-submitted;^[24]
- ~ point out to the victim his/her right to attend the first hearing for the main hearing at which he/she may present a civil claim, if he/she has not done so before, with a warning that the main hearing may be held at the preliminary hearing and that if it is then completed, the victim will no longer have the opportunity to file a claim.

When instructing on rights, the procedural authority is obliged to indicate to the victim in particular that it may hire an attorney from the ranks of lawyers, within the meaning of Article 64 of the Criminal Procedure Code of Montenegro. On the other hand, the victim

20 Articles 122 and 123 in conjunction with Article 124 of the CPC.

21 Article 234, Paragraph 2 of the CPC.

22 Article 236, Paragraph 3 of the CPC.

23 Articles 200-212 of the ZOO.

24 Articles 236 and 237 of the CPC.

should be acquainted with the possibility of securing evidence in accordance with the Law on Civil Procedure of Montenegro, which may be requested during but also before the initiated proceedings.^[25]

As medical expertise in criminal proceedings is sometimes insufficiently detailed, such a finding cannot always be used in civil proceedings, so it is necessary to order a supplementary expert opinion, which further traumatizes the victim and delays the exercise of their right to compensation for damage. Some expert opinions can no longer be performed after the passage of time, especially in the case of crimes against sexual freedom, which is why it is necessary to refer the victim to the possibility of securing evidence during the investigation or investigation.

In the procedure of securing evidence, evidence may be taken by hearing witnesses whose subsequent hearing will be difficult or impossible (stay abroad, work on a ship, serious health condition), as well as an inventory of belongings or an investigation.

When regards to victims of crimes against sexual freedom, domestic violence, trafficking in human beings and other particularly vulnerable victims, it is recommended that the victim be granted the status of a protected witness,^[26] in which case he or she has the right to an attorney and to be questioned under special rules, which is of particular importance for their position in the proceedings and protection from secondary victimization. Although prescribed, this arrangement is still insufficiently used in jurisprudence, although its application fully complies with international standards for the protection of victims of serious crimes.

The Law on Free Legal Aid of Montenegro provides for the conditions under which victims of serious crimes, including trafficking in human beings, domestic violence, torture and other serious crimes, may exercise the right to free legal aid. After providing all the necessary information, the victim should be given sufficient time for declaration on his/her rights, so that he/she can consult with trusted persons and make a decision on further actions in the procedure.

25 Articles 266-270 of the ZPP.

26 Article 124 of the CPC, according to which the provisions of the Law on Protected Witnesses shall also apply to the participation and hearing of the injured party in criminal proceedings.

3. Reparation Claim – Conditions for Obtaining and Collecting Evidence for Decision-Making

A reparation claim arising from a committed criminal offense or other unlawful act that the law treats as a criminal offense may include a claim for damages, the return of a confiscated item or the annulment of a certain legal transaction.^[27] According to the Criminal Procedure Code of Montenegro, the court is obliged to decide on such a request within the framework of criminal proceedings, if the procedural prerequisites for doing so are met. An exception to this, i.e. a situation in which the request will not be discussed in criminal proceedings, must be interpreted restrictively in order to avoid unnecessary delays in the exercise of victim's rights.

In order to enable the reparation claim to be resolved in the criminal proceedings already, it is necessary to collect evidence in a timely and effective manner on which the decision on the application can be based. Evidence relevant to this request may be obtained in parallel with evidence relating to the criminal liability of the accused, for example by extending the expert witness warrant or other evidentiary actions that contribute to a more complete clarification of the situation. Such evidence is important both in the proposal of the state prosecutor for a criminal sanction, as well as in the assessment of the court.

The procedural authority, as a rule, the state prosecutor, is obliged to collect evidence in relation to the gravity of the criminal offence, which is also important for the reparation claim even before the claim itself is formally filed. Article 238 of the CPC stipulates that it is necessary for the court to hear the defendant regarding the facts affecting the decision on this claim, and to verify all the circumstances relevant to its determination. The court is obliged to collect evidence and determine what is necessary to decide on the application even before such a motion is filed.

In crimes involving an element of violence, the consequences most often include physical or psychological injuries to the victim, manifested by visible marks on the body or changes in the mental state. Such traces are usually not permanent, so as time passes, the possibility of documenting them and later using them in evidence decreases, which directly affects the victim's ability to exercise the right to compensation. That is why it is extremely important that evidence is collected as early as possible.

27 Article 234 of the CPC.

In order to exercise the rights of the victim, in particular the right to reparation, the public prosecutor or the court is required to take the following actions during the investigation, and if necessary during the investigation, i.e. in exceptional situations and at the main hearing:

- ~ question the victim about all the circumstances relating to the civil claim and instruct the victim to provide evidence or propose evidentiary actions that may contribute to determining the amount of damages;
- Order a medical examination of the victim to determine the nature and extent of the bodily harm, as well as the possible presence of sexually transmitted infections in the case of acts of sexual violence or exploitation, which is the basis for subsequent compensation;
- Schedule a psychiatric examination to determine the psychological state of the victim and the impact of the crime on his/her emotional and mental stability;
- ~ hear the defendant about the facts concerning the reparation claim;
- ~ obtain a statement of the defendant on his property, in accordance with the CPC of Montenegro, in order to assess the means from which compensation for damage can be obtained;
- ~ hear witnesses who can corroborate the victim's allegations, especially bearing in mind that victims of violence are often unable to present all the circumstances consistently and in detail due to their emotional state;
- Obtain a report from the social welfare centre to assess the victim's family, personal and social environment before and after the act, which may be relevant to determining the damage suffered;
- Determine the expertise in the field of forensic medicine, psychiatry or other relevant profession in order to determine the mechanism of injury, the degree of impairment of life activities, the intensity of pain, fear and other consequences that affect the amount of non-pecuniary damages;
- Order an economic and financial report to determine the amount of material damage, including actual damage and lost gain.

The expert order must be precisely formulated and contain clear questions to the expert, in order to obtain a comprehensive finding that enables a proper decision on the reparation claim.

In situations where there is a basis for suspicion that the defendant is in possession of property derived from a criminal offence, it is possible to initiate a financial investigation procedure in accordance with the Montenegrin Law on Confiscation of Assets Acquired through Criminal Activity.^[28] Confiscated assets can be used to settle the victim's claim, and if there is a final decision on the reparation claim, the court is obliged to

28 The Law on Confiscation of Assets Acquired through Criminal Activity of Montenegro, the Official Gazette of Montenegro, no. 058/15 of 09/10/2015, 047/19 of 12/08/2019 and 054/24 of 11/06/2024.

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DOMESTIC AND INTERNATIONAL	3.1. Actions of the State Prosecutor and the Victim's Attorney
CONCEPT AND RIGHTS	In the process of providing protection to the victim and exercising their rights, the role of the state prosecutor is of particular importance, as well as that of the attorney of the injured party who represents the interests of the victim as a separate procedural party. The State Prosecutor is obliged to take actions at the beginning of the proceedings that will ensure the timely collection of facts and evidence important for the protection of the victim's rights, including those necessary for deciding on the reparation claim. Thus, in accordance with the Supreme State Prosecutor's Instruction for the Conduct of State Prosecutor's Offices in Cases of Domestic Violence, already during the investigation and investigation, the State Prosecutor will collect the victim's statement regarding the reparation claim and propose its resolution in criminal proceedings, in order to avoid civil proceedings and re-victimization of the victim.^[29]
REPARATION CLAIM	The Prosecutor is obliged to inform the victim of his/her rights in accordance with Article 58 of the Criminal Procedure Code of Montenegro, to inform the victim about the options available to him/her, as well as to take actions that prevent secondary victimization.^[30] In this regard, the prosecutor is entitled to hear the victim
DETERMINATION OF THE	29 Instruction of the SSP for the action of state prosecutors in cases of domestic violence Tu. No. 473/24 of 11.10.2024, p. 4. 30 Article 58 of the Criminal Procedure Code: <i>"(1) The injured party shall have the right to point out all facts in the course of the investigation and to propose evidence that is relevant to the criminal case and his or her reparation claim.</i>
SPECIAL	<i>(2) At the main hearing, the injured party and the private prosecutor have the right to propose evidence, ask questions to the accused, witnesses and experts, to make comments and explanations regarding their testimonies and to make other statements and proposals.</i> <i>(3) The injured party, the injured party as a prosecutor and a private prosecutor have the right to examine the files and inspect the objects that serve as evidence. The injured party may be denied consideration of the file until an order is issued to conduct an investigation or until he or she is heard as a witness.</i>
CONCLUSION	<i>(4) An injured party who is a victim of a criminal offence against sexual freedom has the right to be heard and the proceedings are conducted by a judge of the same sex, if the personnel composition of the court so allows.</i> <i>(5) The State Prosecutor and the President of the Court Chamber shall acquaint the injured party and the private plaintiff with the rights under Art. 1 to 4 of these people.</i>
ANNEXE	<i>(6) When criminal proceedings are conducted for a criminal offence punishable by imprisonment for more than three years, and the injured party cannot bear the costs of representation according to his/her financial status, an attorney may be appointed at his/her request if the representation of the injured party by the attorney is in the interest of fairness. If the injured party is a minor, the court will ex officio assess whether it is necessary to appoint an attorney during the entire criminal proceedings .</i> <i>(7) The right to legal aid shall be exercised by the injured party in accordance with a special law."</i>

in a manner that is adapted to her vulnerability, to involve professionals if necessary, and to take all actions that contribute to their sense of security during the procedure.

During the proceedings, the prosecutor shall endeavour to obtain evidence that is relevant to deciding on the reparation claim, including medical documentation, expert findings and opinions, reports of the social work centre, witness statements, as well as information on the defendant's property that can be used for the subsequent settlement of the victim's claim. In this regard, the prosecutor shall also undertake actions of questioning the defendant on the circumstances relating to the property and other facts relevant to the decision on the injured party's claim. The Police Directorate, at the request of the State Prosecutor, is obliged to collect data relevant to the assessment of the amount of damage and financial capabilities of the defendant, including financial data, records of income, real estate and other elements of property.

The attorney of the injured party, as a lawyer representing the victim, has the right and duty to take actions in the interest of the victim in a timely manner, including the preparation and submission of a civil claim, the presentation of evidence and participation in the examination of witnesses and experts. The attorney is obliged to inform the victim about the course of the procedure, legal possibilities and consequences of taking or omitting certain actions, as well as about the real scope of the reparation claim. The attorney is expected to actively participate in the collection of documentation and evidence, especially in situations where the victim is unable to independently provide information that is important for determining the damage due to health condition or emotional anguish.

The attorney of the injured party is obliged to cooperate with the state prosecutor in the part related to the protection of the interests of the victim, including the timely submission of relevant information that may contribute to the efficient conduct of the proceedings. The victim is authorized to attend the interrogation of the victim if it does not pose a threat to his or her mental stability, as well as the interrogation of witnesses and the accused, and to ask questions through the court or the prosecutor when provided for by the procedural rules. In proceedings in which the victim has acquired the status of a particularly sensitive witness, the attorney is obliged to act with special care, taking into account the protection of the victim's dignity and the prevention of secondary victimization.

The attorney of the injured party is also authorized to propose interim measures to secure the reparation claim, such as a ban on managing the defendant's property, temporary confiscation of property, prohibition of alienation of immovable property and other measures that guarantee that the victim can be satisfied after the judgment becomes final and enforceable. In cases where there are indications that the defendant has transferred property to third parties in order to avoid the fulfilment of obligations, the victim's attorney may initiate the procedure of contesting legal transactions in accordance with the relevant provisions of the Law on Contracts and Torts and the Law on Enforcement and Security.

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At all stages of the proceedings, the attorney of the injured party and the state prosecutor should act in a coordinated manner, bearing in mind that the common goal is to ensure the protection of the victim, create conditions for the smooth conduct of the proceedings and the efficient realization of the reparation claim. Timely communication between the prosecutor and the attorney of the injured party contributes to a more complete establishment of the facts, better protection of the victim and faster decision-making, especially in cases with elements of violence and in cases where there is a high risk of secondary victimization.

Finally, bearing in mind the procedural position of the victim in criminal proceedings and his constitutional right to effective access to justice, it is of particular importance to enable him or her to clearly and unambiguously explain his or her civil claim at the stage of closing presentations – which is one of the key points of the proceedings. Pursuant to Article 363 of the Criminal Procedure Code of Montenegro, the injured party or his/her attorney has the right to present his/her closing statement, within which he/she may:

- ~ clarify the submitted reparation claim,
- ~ justify its amount,
- ~ indicate the evidence presented that confirms the extent and type of damage and
- ~ remind the court of the obligation to act under Article 234 of the CPC, which stipulates that a reparation claim is to be decided in criminal proceedings.

In this way, the victim is enabled, once the evidentiary action has been completed, to indicate in a concise and precise manner the relevant facts relating to the damage he or she has suffered. At this stage, the court already has complete evidence and is able to accurately assess whether there are conditions for deciding on damages in the same proceedings.

If the victim has an attorney-at-law, he or she should in the closing argument:

- ~ to point out to the court the importance of adopting a reparation claim in order to avoid secondary victimization of the victim and his reconfrontation with the defendant;
- ~ systematize the legal basis of the request,
- ~ point out the substantive legal provisions that apply (ZOO as a source of substantive law),
- ~ recall expert assessments and other evidence;
- ~ Finally, propose to the court to decide on the claim in whole or in part, with reference only to any remainder that cannot be determined without delaying the proceedings.

Since reference to litigation is the exception rather than the rule, it is essential that the injured party's closing argument is clear, reasoned and supported by evidence already on file.

3.2 Interim Measures to Secure a Reparation claim

Interim measures are a means of enabling the victim to secure his or her claim for the duration of the criminal proceedings, before its final conclusion. These measures are determined exclusively on the basis of the proposal of the authorized person referred to in Article 243 of the Criminal Procedure Code of Montenegro and are applied in accordance with the rules of the Law on Enforcement and Security, since the Criminal Procedure Code does not regulate the material prerequisites necessary for their determination, but only the procedural steps and competences.

The jurisdiction to decide on the motion differs depending on the stage of the procedure: while the investigation or investigation is ongoing, the decision is made by the investigating judge, and after the indictment has been issued, outside the main hearing, the decision is made by the president of the panel, and at the main hearing by the panel.^[31] An appeal against the decision of the Chamber on interim precautionary measures is not allowed. In other cases, the appeal shall be decided by the panel referred to in Article 24, paragraph 7 of the CPC. The appeal does not suspend the enforcement of the decision.^[32]

An interim measure (temporary relief) may also be ordered against third parties, when the circumstances indicate that they are in possession of objects or funds obtained through a criminal offence, or that they have acquired material gain from the committed offence.^[33] In this way, the transfer or concealment of assets in order to avoid obligations towards the injured party is prevented.

After the proceedings are concluded with a convicting judgment, or a decision introducing a security measure, the court shall cancel the interim measures if they have not already been revoked or will refer the injured party to civil proceedings.^[34] If the injured party is referred to litigation, the time limit for initiating proceedings is set by the court, and failure to comply with this deadline leads to the cancellation of the measure.

In order for an interim measure to be introduced, the victim must make probable that the existence of the claim and the circumstances indicating that without the measure, the recovery could be called into question or seriously hindered. The danger may exist due to the intention of the executing debtor to dispose of the property, to hide it, to charge it or to make it inaccessible, as well as if there is a risk of irreparable damage. Both conditions must be met at the same time in order for the measure to be introduced.

31 Article 243, Paragraph 2 of the CPC.

32 Article 243, paragraph 3 of the CPC.

33 Article 245 of the CPC.

34 Article 245, paragraph 3 of the CPC.

A motion for an interim measure must contain the type of measure, its time frame, a precisely marked subject matter and means of enforcement, as well as the competent public enforcement officer, except in situations where the procedure is within the exclusive jurisdiction of the court. The court decides by a decision, which must be precise and specific, with a clearly stated object of security, type of measure, means of enforcement and duration.^[35]

In order to achieve the purpose of security, various types of interim measures may be ordered, such as:

- ~ prohibition of theft, encumbrance or concealment of movable property, with the possibility of their seizure and keeping;
- ~ prohibition of disposal of immovable property or other rights registered in favour of the debtor, with a record of the prohibition in the cadastre;
- ~ blocking of funds in the debtor's accounts and their transfer to the deposit;
- ~ temporary seizure of cash and securities and their placement in an appropriate deposit;
- ~ orders ordering the preservation of property from damage, alteration or destruction.

A decision on the determination of an interim measure has the legal effect of a decision on enforcement.

3.3. Lodging a security instead of an interim measure

Instead of imposing an interim measure, it is possible to order a security if the creditor agrees that the security objective is achieved by depositing the security in a court deposit.^[36] This possibility may also be proposed by the debtor, provided that the injured party gives consent. If the security has been lodged before the decision on the interim measure is issued, the court rejects the application for the measure; If it is deposited after the measure has been determined, the court suspends the precautionary procedure.

The withdrawal of the proposal for a civil claim automatically leads to the cancellation of the interim measure, as the further application of the measure loses its legal basis.

3.4. Significant delay in proceedings and referral to litigation

A reparation claim arising from the commission of a criminal offence, pursuant to Article 234 of the Criminal Procedure Code of Montenegro, shall in principle be discussed in criminal proceedings, provided that its consideration does not lead to a significant delay in the proceedings. This norm confirms the basic rule that the protection of the victim's rights is exercised primarily in the context of criminal proceedings, while the

35 Article 243 of the CPC.

36 Article 33 of the Law on Enforcement and Security.

Reference to civil procedure is an exception, which is accessed only when the circumstances of the case unequivocally require it.

The criterion of *"significant delay"* is not defined numerically or formally, but is assessed by the court in accordance with the nature of the specific case, taking into account the complexity of the request, the type and scope of evidence, the availability of expert findings and the time needed to obtain new evidence that is not necessary to decide on criminal liability.

In other words, courts should refer the injured party to litigation only when deciding on a reparation claim would significantly disrupt the efficiency of criminal proceedings, primarily in terms of their duration, concentration of evidence and timely rendering of a judgment.

On the contrary, in the previous case law, we find short and brief explanations, such as, for example, *"that ascertaining the facts necessary to make a decision on a reparation claim would lead to a delay in the procedure"*. However, such a statement of reasons should be precise and contain answers to the following questions:

- ~ Is it necessary to hear additional witnesses solely in relation to the amount of damage?
- ~ Does the consideration of property law require additional, extensive expert opinions (economic, financial, construction, health) that are not necessary for a decision on criminal liability?
- ~ What is the estimate regarding the time duration of the procedure (delay), if a reparation claim were to be decided?
- ~ Is the damage complex and does its determination go beyond a typical reparation claim (e.g. lost profits for companies, complex medical costs, long-term impaired health that requires multidisciplinary expertise)?

On the contrary, *"referral to litigation"* should not be used by the courts as a means of disencumbering the criminal proceedings, nor as a way for the court to avoid the obligation to decide on a civil claim when it is indisputably possible to discuss, or even from a delay that is not significant.

In particular:

- ~ A simple medical exam,
- ~ documentary evidence from health care institutions,
- ~ determining the physical and psychological consequences of victims of violent acts,
- ~ invoices, work orders, findings of small-scale economic experts,

do not constitute grounds for referral to litigation, because they do not delay the proceedings to the extent that would justify an exception from Article 234 of the CPC.

The standards of the European Court of Human Rights also affirm that unreasonable delay of proceedings constitutes a violation of the right to a trial within a reasonable time, but at the same time indicate that states must ensure effective protection of victims' rights, especially when it comes to the right to compensation, as a form of reparation for the consequences of a crime. It follows that the court is obliged to carefully consider whether the assessment of the adverse consequences in the context of criminal proceedings would actually amount to delay or, on the contrary, would be in the interests of fair and complete protection of the victim.

In each individual case, the court should assess whether the need to conduct certain expert opinions, or to give supplementary orders to experts, delays the proceedings to the extent that a reference to civil proceedings is justified. Certainly, the victim's insistence that the court make a decision within the criminal proceedings should be an alarm for judges to allow victims to exercise their right within the criminal proceedings, with a particular emphasis on serious crimes, in order to avoid double and in some cases multiple victimization of victims. This implies that the victim-injured party is sufficiently informed that he or she can exercise his or her right in criminal proceedings.

When the court assesses that the consideration of a civil claim would cause a significant delay, the victim is instructed to pursue his/her claim in civil proceedings. This reference must be explicit, reasoned and based on clear factual and legal reasons, in order to avoid the possibility of arbitrary decision-making. In addition, the court must take special care not to deprive the injured party of the opportunity to use all evidence obtained in the criminal proceedings, including medical findings, records, expert reports and other documents that may be of decisive importance for the civil proceedings.

Therefore, despite the possibility of referring to litigation, this decision should be an exception in the practice of courts, because in most cases a civil claim can be heard within the framework of criminal proceedings, especially in the following cases:

- › war crimes,
- › trafficking in human beings,
- › domestic violence,
- › crimes against full freedom.
- › physical assaults.
- › crimes against life and body,
- › as well as in cases with clear and immediate damage.

Such an interpretation makes it possible, on the one hand, to respect the principle of urgency of criminal proceedings and, on the other, to provide the victim with more complete protection and enable them to exercise his rights without undue delay and additional financial and time burden of civil proceedings.

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4. Determination of the amount of damage

By committing a crime, the victim may suffer material and non-material damage. Material damage includes the reduction of property (ordinary damage) and the absence of material gain (lost gain),^[37] while non-material damage is any physical or psychological suffering, violation of the integrity of personality, reputation or other personal goods.^[38]

When it comes to material damage, the court can usually determine its amount without much difficulty, especially when it comes to the costs of medical treatment, therapy, funeral, repair of damaged property, lost earnings or other clearly documented costs. The decision on material damage can also be partial, if part of the claim is not fully but partially established.

Unlike material damage, determining non-pecuniary damages in criminal proceedings is a challenge, because it requires an assessment of subjective suffering – the intensity and duration of physical pain, fear, impaired mental state, reduction of life activities, altered appearance, as well as mental suffering due to the violation of personal rights or the death of a close person. That is why this chapter provides guidelines on when non-pecuniary damage can be decided in criminal proceedings, and when expert witness is required.

4.1. Non-pecuniary damage

Non-pecuniary damages is a form of satisfaction for the victim that mitigates the consequences of impaired integrity and emotional balance.^[39] It does not constitute a sanction in the criminal sense, but a civil obligation of the offender to compensate for the consequences of the act with their own assets.

The law recognizes the following forms of non-pecuniary damage:^[40]

³⁷ Article 196, paragraph 1 of the ZOO.

³⁸ Article 206-212 of the ZOO.

³⁹ Personal rights due to the violation of which the law provides for compensation for non-pecuniary damage are: the right to life, the right to physical (physical) integrity, the right to mental integrity, the right to freedom, the right to honour, the right to reputation, the right to protection of private life, the right to dignity, the right to one's own image, the right to one's own voice, the right to correspondence and personal records, the right to personal identity, The moral component of copyright, as well as other personal rights prescribed by the Constitution, ratified and published international treaties and generally accepted rules of

³⁴ international law and special laws, Article 207 of the Copyright Act

⁴⁰ Article 206-210g of the Zoo.

- ~ Physical integrity,
- ~ Psychic (mental) integrity,
- ~ Mental anguish due to:
 - defamation of character and infringement of the freedom of private life, dignity, the right to one's own image, the right to one's own voice, the right to correspondence and personal records, the right to personal identity, the moral component of copyright, as well as other personal rights prescribed by the Constitution, ratified and published international treaties and generally accepted rules of international law and special laws
 - death of a close person or severe disability of a close person,
 - a punishable promise or punishable fornication, as well as another criminal offense against sexual freedom.

In practice, the most common forms of non-pecuniary damage are those related to mental suffering due to reduced life activity, disfigurement, fear, physical pain and violation of various personal rights. These are also the most typical types of damage that courts consider in criminal proceedings when deciding on a victim's reparation claim.

When deciding on the amount of non-pecuniary damage, the court is obliged to analyse all relevant circumstances. The following are valued: the type and severity of the injury, the duration and intensity of physical pain, the strength and duration of the fear, the degree and character of disfigurement, as well as the percentage and practical effect of reduced life activity. In particular, it is taken into account to what extent and in what way the injury has affected the daily functioning of the victim – whether he can perform normal activities as before, whether he needs increased effort or whether the disturbances are of a permanent nature.

These facts are established on the basis of the findings and opinions of forensic experts in the medical profession, depending on the type and localization of the injury. Forensic experts, orthopaedists, traumatologists, ophthalmologists, ENT specialists, maxillofacial surgeons, neurologists, psychiatrists, gynaecologists, pulmonologists and others are most often engaged in cases, in accordance with the need to determine the intensity of pain, fear, permanent consequences and general functional state of the victim.

When making a decision, the court must take into account all the circumstances of the particular case, as well as the possible contribution of the victim to the occurrence or increase of the damage, in accordance with the general rules of the law of obligations.

4.1.1. Aspects of non-pecuniary damage that can be decided without an expert opinion

Courts should determine the amount of non-pecuniary damage without conducting special expert opinions in the following cases:

- ~ damage to honour and reputation.
- ~ violation of freedom,
- ~ mental distress due to the death of a close family member (including brothers and sisters, if there was a community of life between them)
- ~ mental anguish due to a particularly severe disability (if it has already been established by an expert witness and when it is awarded to the spouse, children, parents, foster parents and adoptive parents).

The violation of personal rights itself (Article 207 of the ZOO) is the basis for decision-making, while expert opinion should be an exception. However, in the practice of Montenegrin courts, in these and similar cases, an expert opinion is ordered, so that the expert witness can declare how long the fear lasted and what was the intensity. In practice, non-pecuniary damage, if it relates to a violation of physical or mental integrity, is determined with the help of an expert opinion. When exacting compensation, the court takes into account: all the circumstances of the case, and in particular the type, manner of infliction and permanent consequences of the injury, the age of the injured party, the occupation and personal situation of the injured party in general, the fact whether the parties are insured, the economic status of the injured party and the injured party, the purpose of the monetary compensation, but also the fact that it does not favour aspirations that are incompatible with its nature and social purpose.

The provision of Art. Article 210a of the ZOO stipulates that in the event of a violation of a person's rights, which include the right to life, according to the severity of the violation and the circumstances of the case, the court shall award fair financial compensation, regardless of compensation for material damage, as well as in the absence of material damage. Furthermore, Art. Article 210b stipulates that in the event of the death of a person that occurred as a result of the violation of personal rights, the court may award members of their nearest family (spouse, children, adoptive parents, parents and adoptees) fair financial compensation for their mental anguish, while paragraph 2 of the same article stipulates that this compensation referred to in paragraph 1 of this Article may also be awarded to brothers and sisters if there was a more permanent community of life between them and the deceased.

Article 210b, in addition to death, prescribes that compensation shall also be awarded in the case of a particularly severe disability of a person that occurred due to the violation of personal rights, the court may award his spouse, children, adoptive parents, parents and adoptees fair financial compensation for their mental anguish. The fee from para. 1 and 3 of this Article may also be awarded to an extramarital spouse if there was a cohabitation between him or her and the deceased or injured party for at least three years prior to the death or injury, and if a common child was born in the civil union or if the marriage was continued before the expiry of the period of three years. Parents are entitled to fair financial compensation in the event of the loss of a conceived and unborn child, which occurred due to the violation of personal rights.

The right to fair financial compensation for mental anguish suffered shall be granted to a person who, by fraud, coercion or abuse of a relationship of subordination or dependence, has been led to carnal knowledge or punishable fornication, as well as a person against whom another criminal offence against sexual freedom has been committed.^[41]

Regarding the compensation for non-pecuniary damage due to the defamation of character and infringement of freedom or personality rights, as well as in situations of death of a close family member, the court, as a rule, does not resort to expert witnessing by a psychiatric expert. In most cases, decision-making is based on a direct hearing of the victim, i.e. the injured party, who is given the opportunity to describe how the harmful consequence has affected his or her private, social and professional life. The court especially appreciates whether the event caused psychological strain, stress, insomnia, anxiety or other manifestations that indicate a disturbance of emotional balance. In doing so, the specific circumstances of the case and the individual specifics of the victim are always taken into account, instead of relying on formal expertise.

Thus, in these cases, the court makes a decision on the basis of:

- ~ direct hearing of the victim about the injury suffered,
- ~ the circumstances of the event,
- ~ the way the injury has affected their daily life and behaviour,
- ~ the duration of the emotional reaction and the disordered condition.

The court evaluates whether the victim has been subjected to humiliation, derision, social stigma, insomnia, anxiety, fear, lost sense of security and other repercussions. If the circumstances indicate that the claim is justified, the court shall award fair monetary compensation, taking into account the significance of the injured property, the individual characteristics of the victim and the purpose of compensation.

When awarding fair monetary compensation in criminal proceedings, the practice of civil departments, examples of which are given in Annex 5 of these Guidelines, should be taken into account.

4.1.2 Expert report to determine non-pecuniary damage

An expert opinion is determined when, in order to establish or assess an important fact, it is necessary to obtain a finding and opinion from a person who has the necessary professional knowledge.^[42] The expert opinion is determined by the authority conducting the proceedings (the court or the state prosecutor's office, and in cases of urgency also the Police Directorate) by a written order that must include: the task and scope of the expert opinion, the deadline for the submission of written findings and opinions

41 Article 210v ZOO.

42 Article 136 of the CPC.

and the designation of the person who will perform the expert testimony and who is registered in the Register of Court Experts or the Register of Legal Entities for the Performance of Expert Witness. The order is also served on the parties, which includes the injured party/victim. The court seized of the matter shall hear the defendant on the facts stated in the motion and shall examine the circumstances relevant to the determination of the civil claim. The court is obliged to collect evidence and determine what is necessary to decide on the application even before such a motion is filed.^[43]

When concerns criminal offences against life and body, in criminal proceedings medical expertise is most often ordered to determine the mechanism of inflicting injuries and whether the injuries are of minor or severe intensity, and whether the injuries are life-threatening, as opposed to civil proceedings in which it is determined whether the victim suffers mental anguish due to the violation of the right to physical and mental integrity and whether there is a reduction in the general life activity of the victim, to what extent, while the expert witness is invited to state on the intensity and duration of physical pain and fear, and possibly the existence of injuries.

Therefore, an expert opinion to determine non-pecuniary damage is necessary when:

- ˆ there is no injury, but due to fear, there is a long-term or permanent reduction in life activities,
- ˆ there is permanent psychological trauma,
- ˆ it is necessary to determine the intensity and duration of physical or mental suffering,
- ˆ there is a suspicion of post-traumatic stress disorder, depression or long-term fear,
- ˆ the physical appearance has undergone disfigurement,

scarring or severe deformities. The authority adjudicating the case

must include the following in the order for expert witnessing:

- ˆ assessment of the severity and duration of pain (surgeon, traumatologist, forensic expert, and other specialties depending on the injury) and fear (psychiatric expertise),
- ˆ determination whether the victim has been harmed and to what extent.
- ˆ percentage and type of reduction in life activity.

If there are permanent consequences of a physical and psychological nature, experts perform a consiliary expert opinion, determining the total decrease in life activity, without simply adding up percentages, but taking into account the overall functioning of the body.

43 Article 238, paragraph 1 of the CPC.

4.1.3. Assessment of monetary compensation for non-pecuniary damage

In the event of a violation of personal rights, the court shall, according to the severity of the violation and the circumstances of the case, award fair monetary compensation, regardless of compensation for material damage, as well as in the absence of material damage.^[44]

When deciding on the claim for fair compensation and its amount, the court takes into account all the circumstances of the case, and in particular the type, manner of infliction and permanent consequences of the injury, the age of the injured party, the occupation and personal situation of the injured party in general, the fact whether the parties are insured, the economic situation of the injured party and the injured party, the duration of the unjustified deprivation of liberty, the purpose for which the financial compensation serves, but also about not favouring aspirations that are incompatible with its nature and social purpose.^[45]

Compensation may be awarded for physical pain, mental anguish due to reduced life activity, injury, injury to reputation, honour, freedom or personal rights, death of a close person, as well as for fear suffered. If the circumstances of the case – especially the severity and duration of pain and fear – justify awarding compensation, the court will award a fair amount of money, even if the material damage is not pointed out or does not exist.

When deciding on the merits and amount of non-pecuniary damage, the court appreciates the significance of the injured value and the purpose of the compensation. Remuneration must not grow into a means of obtaining benefits contrary to its nature and social function. In particular, the court is obliged to respect the principle of individualisation of compensation – each victim suffers the consequences in a uniform way, and the compensation must reflect the specific circumstances of their case.

The intensity and duration of pain and fear, together with the personal characteristics of the victim (age, health status, occupation, family circumstances), can significantly affect the total amount of compensation. Ignoring the individual characteristics of the victim and relying solely on the "objective indicators" would be contrary to the standards of fair compensation.

Monetary compensation for physical pain may be awarded regardless of the legal qualification of the injury. Even in the case of minor bodily injuries, compensation can be awarded if the pain was intense or long-lasting. The same applies to compensation for fear: the right exists even when the fear has lasted for a short time, but the victim's emotional balance has been disturbed for a long time. In situations where the fear was so strong and long-lasting that it led to permanent psychological consequences – e.g. post-traumatic stress disorder – the victim is also entitled to separate compensation for reduced life activity.

44 Article 201a, paragraph 2 of the ZOO.

45 Article 201a, paragraph 2 of the ZOO.

As a rule, compensation for mental anguish due to reduced life activity is awarded in the form of a single total sum of money.

The amount of compensation is also influenced by many additional circumstances: the age of the victim (younger people, as a rule, are awarded higher amounts due to the longer duration of the consequences), gender, family circumstances, disorders that are not necessarily related to pain (e.g. the need to wear orthopaedic aids), functional impairments of the reproductive organs, as well as possible limitations in performing activities that the victim was engaged in before the harmful event (sports, recreation, social activities).

Courts, although always starting from individualization, have developed certain proportions between certain types of non-pecuniary damage in their practice. As a rule, the highest amounts are awarded for a complete reduction in life activity or a particularly pronounced disfiguration of appearance. Current case law shows that the amount of compensation ranges from a range that depends to a large extent on the circumstances of the specific case, the findings of the expert, the age of the victim and the duration of the consequences.^[46]

Thus, when assessing fair compensation, the court takes into account:

- ~ the intensity, duration and nature of pain and fear,
- ~ the degree and duration of the psychological consequences,
- ~ duration of treatment,
- ~ the age of the victim,
- ~ duration and form of disruption of life activities,
- ~ Stigmatization, stigmatization, and loss of social function.

In cases where further evidence would require extensive expert evidence that would significantly delay the criminal proceedings, the court should partially accept the claim (e.g. fear) and refer the victim to litigation for the remaining part (e.g. permanent reduction in life activities).

An example of the part of the operative part of the judgments by which a reparation claim is decided in criminal proceedings is contained in Annex 3.

Examples of current case law of civil courts on the method of exacting the amount of non-pecuniary damage are contained in Annex 5.

46 The legal position of the Civil Department of the High Court in Podgorica dated February 20, 2004, on which the current case law is based, and according to which it is envisaged that the amount of EUR 3,000.00 to EUR 4,000.00 shall be awarded permanently for suffered and future mental pain due to a reduction in life activity of 10%, depending on the circumstances of the case as envisaged by Art. 210a ZOO.

4.2 Material damage

Material damage includes the reduction of existing assets (ordinary damage) and the prevention of its increase (lost gain). When, during the criminal proceedings, the available evidence can be assessed in such a way as to enable a decision to be made on this part of the reparation claim, the court is obliged to decide on it in the criminal proceedings, in accordance with the principle of economy and protection of the victim's rights. The obligation to decide also exists when the decision can be made only partially – then the court issues a partial judgment in the part that is undisputed, and the victim is referred to civil proceedings in the remaining part.

If the evidence available in the criminal proceedings is not sufficient to establish with the necessary certainty the existence or amount of material damage, the court will refer the victim to litigation in whole or in part. Referral to civil proceedings is the exception rather than the rule, as unnecessarily delaying a decision in criminal proceedings would be contrary to international standards of victim protection and the court's obligation to provide the victim with effective access to justice.

When deciding on material damage, the court particularly appreciates:

- ~ the actual costs incurred by the victim (costs of treatment, medical interventions, therapies, medicines, medical travel expenses, purchase of orthopaedic aids, costs of care and care, damaged or destroyed property, etc.);
- ~ lost gain, if as a result of the criminal offence the victim was prevented from earning the income that he or she would have earned in the ordinary course of things;
- permanent or temporary incapacity for work;
- ~ the need for additional costs of treatment, rehabilitation or care in the future, if the above is determined in the procedure;
- ~ the real market value of the damaged or destroyed items;
- ~ any other circumstances affecting the amount and extent of the damage.

The court bases its decision on the evidence presented in the proceedings – invoices, medical documentation, findings and opinions of economic and medical experts, testimonies and other material evidence. If a part of the damage is indisputably established, the court will accept that part and refer the victim to litigation only in relation to the part for which the evidence is not sufficient. Such a solution ensures compliance with the principles of fairness and efficiency of the procedure, and prevents the reparation claim from being unnecessarily delayed.

Material damage is, as a rule, awarded as a one-off compensation, unless the nature of the damage or legal rules dictate otherwise. The court must ensure that the compensation is fair,

proportionate, evidence-based and in accordance with the overall objective of the civil claim – to put the victim in a position as similar as possible to the one she would have been in if the crime had not been committed.

5. Special procedures

5.1. Deferred prosecution and compensation for damage to the victim^[47]

The option of postponement of criminal prosecution, regulated by Article 272 of the Criminal Procedure Code of Montenegro, enables the victim of a criminal offence punishable by imprisonment for up to five years to be provided with full or partial compensation for damage without conducting full criminal proceedings. This mechanism is a quick and effective way to compensate for the damage done, without waiting for the completion of the court proceedings, which can take some time.

Namely, the State Prosecutor may postpone criminal prosecution for criminal offences punishable by a fine or imprisonment for up to five years if finding that it would not be expedient to conduct criminal proceedings, given the nature of the criminal offence and the circumstances under which it was committed, the earlier life of the perpetrator and his/her personal characteristics, if the suspect accepts the fulfilment of one or more of the following obligations:

- 1) to eliminate the harmful consequence caused by the commission of a criminal offence or to compensate for the damage caused;
- 2) to fulfil due maintenance obligations, i.e. other obligations determined by a final court decision;
- 3) to pay a certain amount of money to a humanitarian organisation, fund or public institution;
- 4) To do some charitable or charitable work.^[48]

Before issuing a decision on deferred prosecution, the state prosecutor is obliged to obtain the consent of the victim for the measures under point 3 (to pay a certain amount of money to a humanitarian organisation, fund or public institution) and 4 (to perform certain socially useful or humanitarian work).^[49] Prior to the issuance of the decision on the postponement of prosecution, the State Prosecutor may, with the assistance of specially trained persons - mediators, conduct a mediation procedure between the victim and the suspect, to which the provisions of the law governing the rules of the mediation procedure for the obligations referred to in item 1 (to eliminate the harmful consequence caused by the commission of the criminal offence or to compensate for the damage caused) and 2 (to fulfil the due obligations (i.e., other obligations established by a final court decision).

47 The Guidelines do not refer to the application of deferred criminal prosecution in cases of endangering public transport by negligence, bearing in mind that in these criminal offences, compensation for damage is usually achieved through special insurance mechanisms and civil proceedings initiated against insurance companies.

48 Article 272, paragraph 1 of the CPC.

49 Article 272, Paragraph 4

Therefore, when the damage is caused by the commission of a criminal offence, the state prosecutor is obliged to invite the victim to specify the amount of the claim and to inform them of the possibility of exercising their rights through this procedure. This enables the victim to obtain his/her property protection in a timely manner, and the procedure is relieved of the need for lengthy court proceedings. In deciding whether to apply deferred prosecution, the prosecutor must, in addition to the formal requirements, take particular account of the interests of the victim, in particular whether the damage can be compensated in this way. If the suspect agrees to perform the obligation related to the elimination of consequences or compensation for damage in the amount stated by the victim, the prosecutor shall determine the deadline and manner of fulfilment of that obligation.

It is crucial that the prosecutor clearly warns both the suspect and the victim that:

- If the obligation is fulfilled in full, the criminal charges are dismissed;
- If the obligation is fulfilled only partially, the postponed procedure will no longer be an obstacle for the victim to pursue the remainder of the claim in civil proceedings, whereby the partial payment does not affect the right of the victim to claim the remaining compensation in full.

In this way, the institute of postponement of criminal prosecution not only contributes to the efficiency of the procedure but can also be the fastest way for the victim to exercise his rights, provided that there is a willingness of the suspect to compensate for the damage.

5.2 Dismissal of criminal charges on grounds of fairness

The option of dismissal of a criminal complaint on grounds of fairness is rarely used in jurisprudence, although it can have an extremely beneficial effect for both parties. For the victim, in particular, this mechanism represents an opportunity to pursue a reparation claim faster than through the regular course of criminal proceedings and to make the collection before the judgment is issued.

The application of this institute is possible only in the case of minor criminal offences, i.e. those for which a prison sentence of up to three years or a fine is prescribed, provided that the suspect has prevented the occurrence of damage due to actual remorse or has already fully compensated for the damage, and the state prosecutor, according to the circumstances of the case, assesses that the imposition of a criminal sanction would not be fair.^[50] Thus, if the perpetrator and the victim successfully agree on all the elements of compensation for damages, the court may release the perpetrator from punishment provided that the perpetrator has fully fulfilled the assumed obligations, i.e. previously fully compensated for the damage. Thus, this arrangement has a dual purpose: to relieve the judiciary and to compensate the victim faster.

5.3. Understanding of the Confession to the Crime and the Victim's Reparation

Claim

A plea bargain is a special way of ending proceedings based on negotiations between the state prosecutor and the accused. One of the mandatory elements of this institute, if the victim has filed a claim, is the regulation of the reparation claim.^[51]

The procedure for concluding a settlement is regulated in more detail by the Guidelines of the Supreme Court of Montenegro and the Supreme State Prosecutor's Office,^[52] and the essence is that negotiations for the conclusion are conducted exclusively between the state prosecutor and the defendant. After the state prosecutor's office concludes an agreement with the defendant, the victim is summoned to the first hearing for the main hearing at which the court decides on the acceptance of the agreement, with the victim having the right to appeal against the content of the agreement,^[53] which is why the obligation of the state prosecutor to take care of the protection of the victim's interests is of particular importance, especially in cases where the victim does not have a qualified attorney – legal representative.

Given that an agreement can be concluded in the time span from the issuance of the order to conduct an investigation until the beginning of the main hearing, the State Prosecutor is obliged to verify whether the victim has filed a civil claim before the start of the negotiations. If they fails to do so, the prosecutor must invite them to formulate their request and provide appropriate evidence.

Prior to negotiations with the accused, the prosecutor is obliged to conduct an interview with the victim, obtain information on the amount and type of damage, instruct the victim about his/her rights, and take actions to determine the property status of the accused. This information is necessary for the plaintiff to be able to include in the understanding a clear part relating to the civil claim, the type of damage, the amount, the deadlines and the manner of enforcement.

A reparation claim within the framework of the agreement can be resolved in whole or in part, while for the uncovered part, the victim can be referred to litigation. Reference to litigation is an exception and is considered only if the information in the proceedings does not provide sufficient grounds for either a full or partial adjudication.

51 Article 301, paragraph 1, point 2 of the CPC.

52 sudovi.me/vrhs/sadrzaj/JO4r

53 An appeal may be lodged against the decision by which the plea bargain is accepted by the injured party, and against the decision rejecting the agreement by the State Prosecutor and the defendant, Article 302, paragraph 10 of the CPC.

It is particularly important to emphasize that the prosecutor, in the course of negotiations, may, as a condition of understanding, require the defendant to fulfil the obligations under Article 272, paragraph 1 of the CPC (obligations that normally apply when postponing criminal prosecution). This may be, for example, an obligation to compensate the victim, eliminate the consequences of a criminal offence or fulfil maintenance obligations, if the nature of the obligation allows the execution to begin before submitting an agreement to the court.

When considering the settlement, the court is obliged to verify whether the plaintiff acted, whether the victim was informed by the state prosecutor of his or her rights regarding the civil claim. If the court finds that there is no evidence of this in the files, it will oblige the prosecutor to submit it or supplement the agreement.

The court may reject the agreement (Article 302, paragraph 7 of the CPC), refuse it (Article 302, paragraph 9 of the CPC) or establish that the agreement is not in accordance with the law and the standards of victim protection guaranteed by international instruments, especially if the agreement does not contain a decision on the victim's claim, even though it was submitted in a timely manner. The court shall adopt a plea agreement and make a decision corresponding to the content of the agreement, if it finds, among other things, that the agreement did not violate the victim's rights.^[54]

This approach ensures that the understanding of the confession to a criminal offence is not a mechanism that ignores the rights of the victim, but an instrument that enables faster and more efficient enforcement of his/her reparation claim, with full protection of the interests of the victim and respect for his/her procedural guarantees.

5.4. Obligation to compensate for damage with a suspended sentence

A suspended sentence, in accordance with Article 53, paragraph 2 of the Criminal Code of Montenegro, may be supplemented by a special obligation of the offender to compensate for the damage caused by the criminal offense, return the property gain or fulfil some other obligation prescribed by law (e.g. regular maintenance or obligations determined by a final court decision) within a certain period of time. The time limit for fulfilling these obligations is set by the court within a certain verification period.

In practice, in summary proceedings, the state prosecutor should propose, in addition to the imposition of a suspended sentence, an additional obligation to compensate for damages within a certain period of time. Such a suggestion can also be made in the closing remarks. Even if the prosecutor does not propose this obligation, the court is authorised to impose it on its own, as it is not bound by the proposed type of sanction.

54 Article 302, paragraph 8, point 4 of the CPC.

If the defendant fails to comply with the obligation to compensate for damage within a certain period, proceedings may be initiated to revoke the suspension of sentence. Namely, if the suspended sentence determines the fulfilment of an obligation by the convict, and he fails to fulfil that obligation within the time limit specified in the judgment, the court may, within the time of verification, extend the deadline for the fulfilment of the obligation or may revoke the suspension of sentence and impose the sentence determined before suspension.^[55] If it finds that the convicted person, for justified reasons, is unable to fulfil the imposed obligation, the court shall release them from the fulfilment of that obligation or replace it with another appropriate obligation provided for by law. The request for revocation is submitted by a competent prosecutor, and in practice, in a large number of cases, the defendants decide to fulfil the obligation in order to avoid the revocation of the sentence suspension and the enforcement of the prison sentence.

This mechanism, although simple, is an important instrument for the protection of the victim, because it exerts strong procedural pressure on the defendant to compensate for the damage in order to retain the benefits of a suspended sentence.

5.5. Confiscation of proceeds

No one may withhold the proceeds of assets obtained by an unlawful offence which is defined by law as a criminal offence.^[56] The Criminal Code of Montenegro in Articles 112 and 113 clearly stipulates that such gain must be confiscated, either directly from the perpetrator or from a third party to whom it was transferred. Also, the Law on Confiscation of Proceeds of Crime regulates the conditions for confiscation of proceeds of crime, the procedure of confiscation and other issues of importance for the confiscation of such gain, as well as the management of confiscated assets from criminal activity and confiscated proceeds of criminal activity, objects of criminal offences and objects temporarily confiscated in criminal proceedings and property given in the name of surety.^[57] Money, valuables and any other property gain obtained through a criminal offence shall be confiscated from the perpetrator, and if confiscation is not possible, the perpetrator shall undertake to pay a sum of money corresponding to the property gain obtained. Proceeds reasonably suspected to have been acquired through criminal activity may also be confiscated from the perpetrator of a criminal offence, unless the perpetrator makes it probable that its origin is lawful (extended confiscation).^[58]

Thus, if the reparation claim of the injured party is accepted in the criminal proceedings, the court shall impose the confiscation of assets only if it exceeds the awarded reparation.

55 Article 57 of the CPC.

56 Article 112 of the CC.

57 Article 1 Law on Confiscation of Proceeds of Crime.

58 Article 113, paragraphs 1 and 2 of the CPC.

A victim who has been referred to litigation in criminal proceedings in respect of his/her reparation claim may request to be settled from the confiscated assets, if he/she initiates a lawsuit within six months from the date of the final decision by which he/she was referred to litigation and if, within three months from the date of the final decision by which his/her reparation claim was adopted, he/she requests settlement from the confiscated assets.^[59] A victim who has not filed a reparation claim in criminal proceedings may claim compensation from the confiscated assets if, in order to establish his/her claim, he/she has initiated litigation within three months from the date of knowledge of the judgment pronouncing the confiscation of assets, and no later than three years from the date of the final decision on the confiscation of property gain and if within three months from the date of the final decision by which his/her reparation claim was accepted request settlement from confiscated assets.

In the case of certain criminal offences that carry an element of violence in their nature, such as human trafficking, robbery, extortion or other serious offenses, the perpetrator, as a rule, achieves a certain material gain. In practice, however, there are still a significant number of judgments in which the proceeds are not confiscated in full, despite the fact that it is a legal obligation. The consequence of this is a direct weakening of the position of the victim, because Article 114, paragraph 1 of the Criminal Code explicitly allows the victim's reparation claim to be settled from the confiscated assets. Therefore, the proper implementation of the institute of confiscation of property gain is inextricably linked to the exercise of the victim's right to compensation for damages.

The law also provides for the option of substitute property: if the specific benefit is no longer in the possession of the perpetrator, other property of the same value may be confiscated from them, or he may be obliged to pay a sum of money corresponding to the value of the illegally acquired benefit. This is especially important in works where assets are quickly exchanged, consumed, or transferred to third parties.

In order for the victim to be able to truly exercise his or her right to compensation from confiscated property gain, it is necessary for the State Prosecutor and the Police to take actions in the pre-investigation phase to determine:

- ~ if there is a way to generate profit,
- ~ in what form the benefit was acquired (money, objects, digital assets, assets in which the value was invested),
- ~ where the actual assets are located.
- ~ to whom they may have been transferred,
- ~ what is the total value of assets that the defendant possesses?

59 Article 114 CC, Paragraph 2.

Only when these data are collected and documented, the court will be able to pronounce a quality and complete measure of confiscation of property gain in the judgment, which lays realistic foundations for full or at least partial compensation to the victim during the criminal proceedings.

For this reason, confiscation of assets is one of the most important instruments of victim protection, not only as a criminal sanction against the perpetrator, but as a practical mechanism for the victim to exercise their property right even before the end of the lengthy civil proceedings.

Conclusion

The aim of these Guidelines is to clearly demonstrate that the existing procedural and substantive arrangements in the Montenegrin legal system allow the victim's right to compensation to be fully protected within the criminal proceedings themselves, without unnecessarily referring to civil procedures. This approach is in line with European standards and the obligations that Montenegro has assumed by ratifying the relevant international treaties.

In the so far practice, it has been noticeable that victims' reparation claims are often left pending, although the CPC prescribes the possibility and obligation to consider them. This leads to a situation in which the victim, after going through the criminal proceedings, has to go through emotionally demanding proceedings before the civil courts again, exposed to re-contact with the offender, without adequate protection mechanisms. Such an approach is not in line with the modern understanding of victims' rights or the goal of procedural economy.

Contemporary international practices and EU directives indicate that the victim must be given the opportunity to obtain both protection and reparation in one procedure, especially in cases of violence, trafficking in human beings, domestic violence and other forms of criminal offenses that leave long-term consequences. Prompt, comprehensive and humane action by law enforcement authorities and courts is the basis for strengthening trust in the justice system.

It is the duty of the prosecutor and the court not only to establish criminal liability, but to act in such a way that the victim gains access to his or her rights, including the right to fair compensation, in a manner that is not formal but effective. That is why it is necessary to consider the reparation claim immediately, through carefully conducted evidence, with the consultation of medical, psychological and economic experts where necessary.

Referral to civil proceedings must remain a matter of extreme necessity, limited to those situations where adjudication of the claim in criminal proceedings would be objectively impossible or would cause a measurable, serious extension of the duration of the criminal proceedings. Such a decision must be duly reasoned, measurable, and in accordance with Art. 234 of the CPC, because any unjustified referral of the victim to litigation represents an additional burden and a deviation from the principle of access to justice.

The application of these Guidelines creates conditions for decisions on victims' reparation claims to be made faster, fairer and more uniform, and at the same time raises the level of protection of procedural and human rights of victims in Montenegro. This is in the interest of the victim, but also of the judicial system as a whole, as it enables legal,

Annexes

Annex 1 – Model/Form of Reparation Claim

The Basic/High Court in _____

K.br. _/

Injured:

Name and surname, address, personal identification number

Attorney (if any) Defendant:

Name and

surname

Case:

Filing a Civil Claim in Criminal Proceedings (Article 234 of the CPC)

Pursuant to Article 234 of the Code of Criminal Procedure, the injured party submits the following:

REPARATION CLAIM

1. Subject of the claim

The injured party makes a civil claim against the defendant in order to receive:

Compensation for material damage in the amount of _ EUR, with statutory default interest from the date of the harmful event until the final payment.

Compensation for non-pecuniary damage due to:

- suffered physical pain,
- mental anguish due to injury to reputation, honour, dignity,
- mental anguish due to fear and suffering,
- A decrease in life activity.

The total request is as follows: _____ EUR.

2. Reasoning

By the action described in the indictment, the defendant caused damage to the injured party. The consequences of the crime are:

- material costs: medical treatment, medical documentation, therapy, transport, lost earnings, other direct expenses (specify).
- non-material damage: physical pain, fear, psychological consequences, defamation, violation of personality rights, long-term stress and suffering.

3. Evidence

The following evidence is proposed in support of the application:

- ~ medical documentation (attached),
- ~ bills and fiscal accounts for treatment/repairs/expenses,
- ~ The medical profession's expertise,
- ~ psychological expertise (if any),
- ~ testimony of the injured party,
- ~ other relevant evidence.

4. Legal grounds

The request is based on Article 234 of the Criminal Procedure Code, Art. 200-212 of the Law on Contracts and Torts, as well as the standards of the European Court of Human Rights, according to which the court is obliged to enable the injured parties to obtain compensation within the criminal proceedings in order to avoid secondary victimization.

5. Proposal

I propose that the court, after the evidentiary procedure has been conducted, fully accept the reparation claim and oblige the defendant to pay the injured party the amount of EUR, with the corresponding statutory default interest, within 15 days from the date of the final judgment.

In _____, on _____

Injured party / attorney:

Annex 2 – Model order/decision for expert witness

DECISION^[60]

Medical experts, Neuropsychiatrist Dr Z.N. and Orthopaedic Doctor D.P., are appointed to provide expert testimony in the case as designated above.

After reviewing the medical documentation and the direct examination of the plaintiff at the main hearing, the experts are obliged to give a finding and opinion whether, due to the injuries sustained on the actual day, the plaintiff suffers mental anguish due to the violation of the right to physical integrity and mental integrity (which is the degree of impairment of life activity, and the intensity and duration of physical pain and fear, and whether the plaintiff has been injured).

Experts are obliged to present their findings and opinions conscientiously and in accordance with the rules of science and skill, within 8 days from the date of the prosecutor's examination. The court will impose a fine of up to EUR 500.00 on an expert witness who unjustifiably fails to submit his findings and opinion within the set deadline or unjustifiably fails to come to the hearing even though he or she has been duly summoned. The court shall also impose a fine on an expert who refuses to provide an expert opinion without a justified reason (Article 182 of the ZPP). An expert witness is entitled to remuneration and reimbursement of costs.

Reasoning

The plaintiff filed a lawsuit against the defendants for compensation of non-pecuniary damage.

The attorney of the same proposed an expert opinion by a neuropsychiatrist and orthopaedist, court experts in the medical profession.

Following the above, and in terms of Art. 249 ZPP, it was decided as in the operative part.

JUDGE

Legal remedy:

No appeal is allowed against this decision.

60 Only the part of the Decision that relates to the determination of the expert's terms of reference is displayed.

DN/a, a copy of the decision must be submitted:

- - Expert witnesses
- The State Prosecutor's Office
- - the attorney of the defendant

.....

MONTENEGRO

.....THE STATE PROSECUTOR'S OFFICE

Kti no.

Podgorica, ... The

year of AK

..... the State Prosecutor's Office in Podgorica, in the case against the defendant for criminal offense of Trafficking in Human Beings referred to in Article 444, paragraph 3 in conjunction with paragraph 1 of the Criminal Code of Montenegro, pursuant to Article 137, paragraph 1 of the Criminal Procedure Code, on of the current year, hereby issues the

ORDER

That an expert opinion be carried out by a forensic expert N.R., who will on the basis of a physical examination of the injured minor and an insight into the medical documentation under the name of the witness-injured party , as well as on the basis of the complete files.

In the written finding and opinion, declare whether the person has found the existence of bodily injuries, and if so, state on the type, severity, mechanism and time of infliction of each individual injury and their overall effect, with regard to the nature or special circumstances of the case, what they were inflicted, in what way, and on the time of their infliction.

For the purpose of making findings and opinions, copies of the case file shall be

handed over to the expert for inspection. Hand over the order to the expert.

The expert shall give the findings and opinion in writing as soon as possible.

STATE PROSECUTOR

MONTENEGRO

- ----THE STATE PROSECUTOR'S OFFICE

KO. No.

Podgorica, -----.year

----- The State Prosecutor's Office in Podgorica, State Prosecutor , in a criminal case

----- charged with the crime of rape under Art.204 para.5 in conjunction with paragraph 1 of the Criminal Code of Montenegro, on the basis of Art. 137 para. 1 of the Code of Criminal Procedure, issues the

ORDER

for psychiatric expertise determined by the Commission of Experts, which will consist of court experts: neuropsychiatrist, psychiatrist psychologist, who, after insight into the case file and obtaining medical records if any, under the name of the juvenile, direct examination and an interview with the juvenile, shall make a statement whether she is suffering from a mental illness or mental disorder, and if she suffers from a mental disorder, determine the nature, type, degree and permanence of the disorder, after which give an opinion on whether and what impact it has on the reliability of the juvenile's testimony, as well as whether she is prone to fantasies or fantasies, or whether she can give a reliable witness testimony.

Within the meaning of Article 140, paragraph 1 of the Criminal Procedure Code, expert witnesses are warned of the consequences of giving false findings and opinions.

The order is to be serviced to the Commission of Experts.

The findings and opinion of the Commission of Experts shall be given in writing as soon as possible.

I note that this is a detention case, which is why urgency is needed in the proceedings.

Attachment: Copy of the case file

STATE PROSECUTOR

Annex 3 – Model of the segment of operative part of judgment in criminal proceedings in which a civil claim is decided

JUDGMENT^[61]

The defendant R.S., personal identification number , of father I. and mother D., née R, born in ..., citizen of the Republic of Serbia, with registered residence in ..., Street No. ..., a painter by profession, graduated from a high school of civil engineering, divorced, father of one child, owner of an apartment at the address, convicted several times, namely: by the judgment of the Municipal Court in Novi Sad. No. K 299/99 of 04.12.2002 for the criminal offence referred to in Art. 166 para.1 point.1 of the Criminal Code of the Republic of Serbia to a suspended sentence with a fixed prison sentence of ten months and a period of verification of four years, by the judgment of the Municipal Court in Novi Sad. No. K 1970/04 of 24 August 2006 for the criminal offence of violent behaviour under Art. 344.1 of the Criminal Code for a suspended sentence with a fixed prison sentence of three months and a period of verification of three years, by the judgment of the Municipal Court in Novi Sad. No. K 757/04 of 15.01.2007 for the criminal offence referred to in Art. 221. 1 of the Criminal Code, to a suspended sentence with a fixed prison sentence of three months and a period of verification of two years and a judgment of the District Court in Novi Sad after the judgment of the District Court in Novi Sad. Case no. Kž 210/06 of 25 April 2007 for the criminal offence referred to in Art.195 para. 1 of the CC to a suspended sentence with a fixed prison sentence of six months and a probation period of two years,

IS GUILTY

of:

From an unspecified date at the end of 2020 to June 2021, in Novi Sad, in Street. ..., no. ..., in a state where he was able to understand the significance of his act and to direct his actions, was aware of his act and willed its execution, and was aware that his act was prohibited, on several occasions, by the use of force, he forced the child to commit an act equivalent to adultery, in such a way that he forced his stepdaughter, the injured juvenile. ..., born in 2013, grabbed her neck with his fists and pushed her head in the direction of his sexual organ, and then penetrated the victim's mouth with his genitals, whereby, holding the victim's neck with his fists, he moved her head in front of her, in order to force her to give him oral pleasure, and, after sexual intercourse, threatened the victim with a wave of his finger and said that he should not tell anyone about everything that had happened before and that it was a secret. He was charged with the crime of rape under of Art. 178 para.4 in conjunction with para. 1 and Art. 61 of the CC.

61 The judgment of the High Court in Novi Sad, K. no. 67/22 of 13/02/2023

On 15/09/2021, in Novi Sad, at St. ... no. ..., in a state where he was able to understand the significance of his act and to direct his actions, was aware of his act and wanted it to be carried out, and was aware that his act was prohibited, endangered the safety of several persons by threatening to attack their life and body, in such a way that, while carrying in his hand a knife about 40 cm long, ran down the street after the injured and shouted after them, telling them "Return the phone, I'll slaughter you", he committed the crime of endangering the safety under Art. 138 para.2 and Art. 1 of the CC.

And the court, according to Articles 4, 42, 45 and 54 of the CC,
ESTABLISHES

- For the offence of rape under Art. 178 para.4 point 1 4 in conjunction with para. 1 and Art. 61 of the CC.– imprisonment for a term of 12 (twelve) years, and
- for the criminal offence of endangering the safety under Art. 138 para.2 in conjunction with para.1 of the Criminal Code – imprisonment for a term of 6 (six) months

The court ruled under Art. 60 of the

CC, the defendant is condemned
TO A SINGLE PRISON SENTENCE
FOR 12 (12) YEARS AND 4 (4) MONTHS

Pursuant to Art. 258 para.4 of the CPC, the defendant R.S. is obliged to the juvenile injured party. The amount of 600,000.00 (six hundred thousand) dinars shall be paid to the injured party, as compensation for non-pecuniary damage due to mental anguish due to the violation of human dignity, within one month of the judgment becoming final, under the threat of execution, while the injured party shall be referred to litigation over the awarded 600,000.00 dinars up to the requested 3,000,000.00 dinars.

From the reasoning:

From the testimony of the juvenile injured party and appreciating the forensic psychiatric findings and the opinion of the expert, determined a high degree of mental anguish due to the violation of human dignity. Human dignity belongs to the corpus of personal rights, the protection of which is provided for by the Law on Contracts and Torts in the form of compensation for non-material damage due to the violation of these rights.

The court found that the juvenile injured party suffered mental anguish for a long period of time caused by the continuous repetition of the actions of the commission of the criminal offence that the defendant undertook against her in order to satisfy his sexual instinct. The extent of this mental anguish is best illustrated by the fact that the juvenile injured party did not turn to anyone for help precisely because of fear, and the court cannot ignore her attempt – a "call for help" – when she told the kindergarten teacher that she did not know the defendant who came to pick her up, trying to avoid leaving school with him and spending time alone with him at home until her mother returned from work.

The court accepted her testimony and attitude during the proceedings as sincere. Human dignity is acquired by every human being, including every child, at birth, regardless of gender, race or nationality, and no one has the right to take it away from him or hurt him, and sexual violence is one of the most serious forms of violation of human dignity that creates a frightening, hostile and humiliating atmosphere, to which the behaviour of the accused and the obvious objective impotence of the minor victim to prevent him from doing so, to resist him or to denounce his work.

Article 200, paragraph 1 of the Law on Contracts and Torts (ZOO) stipulates that for physical pain suffered, for mental anguish suffered due to reduction in life activity, injury, injury to reputation, honour, freedom or rights of person, death of a close person, as well as for fear, if the court finds that the circumstances of the case, and in particular the severity of pain and fear and their duration justify it, it shall award fair monetary compensation, regardless of compensation for material damage, as well as in its absence.

Pursuant to paragraph 2 of the same Article, when deciding on a claim for compensation for non-pecuniary damage, as well as on the amount of its compensation, the court shall take into account the significance of the injured good and the purpose of that compensation, but also that it does not favour aspirations that are incompatible with its nature and social purpose.

According to Article 232, if it is established that a party is entitled to compensation for damage, to a sum of money or to a fungible item, and the amount of the amount, i.e. the quantity cannot be determined or could only be determined with disproportionate difficulty, the court shall determine the amount of money, i.e. the amount of fungible items at its own discretion.

Based on all the above-mentioned circumstances and facts that have been established from the testimony of the injured party, and taking into account the fact stated by the expert witnesses that, speaking of possible permanent consequences for the injured party, they could not be accurately estimated from this time distance, but that certain psychological problems are currently observed that result in her additional withdrawal, as well as the same as the description of ailments occurring as her reaction to the disputed events, the court finds that the fair amount of compensation

for non-pecuniary damage due to mental anguish due to the violation of human dignity is the amount of 600,000.00 dinars, which the defendant is obliged to pay within one month of the judgment becoming final, under the threat of execution.

Over the amount awarded, up to the requested 3,000,000.00 dinars, the reparation claim was rejected as too high. In making its decision, the court took into account the significance of the injured property and the purpose of this compensation, but also that it does not favour aspirations that are incompatible with its nature and social purpose.

The juvenile victim did not request statutory default interest on the amount awarded, so the court did not decide on it.

The injured party did not claim damages, i.e. they did not file a reparation claim in connection with the criminal offence of endangering security.

JUDGMENT^[62]

The defendant Ž.

IS GUILTY

Of the following:

In the period from the beginning of _____ year to _____ year in Belgrade, at the street _____ and at the street _____, in a state of sanity, aware of his act and the prohibition of it, and desiring to carry it out, by force, misleading and abusing the trust and difficult circumstances of the injured M, recruited her and transported her for the purpose of prostitution, in such a way that, as a neighbour of the injured party in the common yard, he took advantage of her relationship with her civil partner (whom he abused and persuaded to leave the injured party), by leaving her civil partner, and he moved in with her and her minor child, offering her money and help, then taking her eventually in the periods after she left her civil partner to live with the defendant together in rented apartments

62 The judgment of the High Court in Belgrade, K. no. 424/23 of 30/01(2024).

and apartments at the specified addresses, which he then forced to engage in prostitution, setting the price of sexual services, namely 50 euros for half an hour or 70 euros for an hour, and that for arrival at the client's address the price was 60 and 90 euros, and the advertisement with her pictures of the victim was sent to the client's address over the phone, When she went to the client's address, the defendant had to follow her, and he sent her back, and the defendant, together with the victim, used taxi transport to the addresses, and beat the victim and forced her to engage in prostitution, gave her alcohol and enabled the victim to consume the narcotic drug "Speed", and all the money she earned in this way had to be handed over to the defendant. On 28 April 2023, when she went to the client's address located in Belgrade, which she reached together with the defendant Ž, she took advantage of the propitious moment and ran away from there, and then went to the police station where she reported everything,

– – whereby he committed the criminal offense of Trafficking in Human Beings under Article 388, paragraph 1 of the Criminal Code.

And the court of the defendant Ž, by applying the aforementioned legal provision and the provisions of Articles 4, 42, 45 and 54 of the CC and Article 424 of the CPC

imposes

Imprisonment for a term of three (three) years and 8 (8) months.

A prison sentence, within the meaning of Article 63 of the Criminal Code, shall include the time spent in custody determined by the decision of the judge for preliminary proceedings of the High Court in Belgrade KPP.no. from 25 May 2023, i.e. from the day of deprivation of liberty from 24 May 2023, until 30 January 2024, when the detention against the defendant was lifted after the judgment was pronounced.

The defendant Ž. is obliged to pay the amount of RSD 500,000.00 to the injured M. upon the reparation claim, within 15 days from the date of the final judgment, under the threat of enforcement, within the meaning of the provision of Article 258, paragraph 3 of the CPC.

The defendant Ž. is obliged to reimburse the injured M. for the costs of the criminal proceedings related to the work of the attorney, the amount of which will be decided by the court in a special decision, within the meaning of the provision of Article 264, paragraph 1 in conjunction with Article 261, paragraph 2, item 8) of the Criminal Procedure Code.

The defendant Ž. is relieved of the obligation to pay the costs of criminal proceedings related to the costs of expert witnessing and payment of lump sums, in accordance with the provision of Article 264, paragraph 4 of the CPC.

Reasoning

The indictment of the High Public Prosecutor's Office in Belgrade Kto.no. from _ year, amended on the day _ The defendant Ž. was charged with the commission of the criminal offense of Trafficking in Human Beings under Article 388, Paragraph 1 of the Criminal Code.

As at the end of the main hearing held on January 30, 2024, after the pronouncement of the judgment, the Public Prosecutor of the HPPO __, the defendant Ž, the *ex officio* defence counsel and the attorney of the injured party , stated that they were fully satisfied with the decision and that they did not ask for an explanation of the judgment, which is why, in terms of the provision of Article 429, paragraph 1, item 1 of the CPC, the reasoning of the judgment was omitted.

For the above reasons, the judgment K.no. 424/23 of 30 January 2024 became final on the day of its adoption and publication – 30 January 2024.

INSTRUCTION ON THE LEGAL REMEDY:

An appeal against this judgment is not allowed, bearing in mind that the parties have waived the right to declare it, and the judgment K.no. 424/23 of 30 January 2024 is final on 30 January 2024.

Annex 4 – Model Decision on the Introduction of Temporary Relief

MONTENEGRO

_____ COURT IN PODGORICA

Kris. no. _____

Podgorica, _____ Year

_____ COURT IN PODGORICA, investigating judge, in the proceeding of confiscation of proceeds from criminal activity, against the accused..... and others, for the criminal offence of Creation of a Criminal Organization referred to in Article 401a, paragraph 1 in conjunction with paragraph 6 of the Criminal Code of Montenegro, etc., deciding on the proposal of the Special State Prosecutor's Office Ufi-S No. 17/25 of 21/10/2025, pursuant to Art. 2, 4, 5, 19 para. 1 point. 1a, point 4 and point 7, para. 2, Art. 20, 21, 22, 24, 25, 26, 27, 32, 33 and 34 of the Law on Confiscation of Proceeds of Crime (ZOOIKSKD), and Articles 288, 289 and 290 of the Law on Enforcement and Security (ZIO) year,

DECISION

A TEMPORARY MEASURE OF SECURITY IS ISSUED

Prohibition of disposal of fixed assets with annotation of the prohibition in the real estate cadastre referred to in Art. 19 para. 1 point 1a of the Law on Confiscation of Assets Acquired through Criminal Activity, which refers to fixed assets owned by:

M.M, JMB ..., of father ... and mother..., born..., born... with residence in the place of birth, street ..., of a citizen of Montenegro, registered as:

Office buildings in the off-road area of 1099 m² (consisting of PD 1 of 1040 m² and PD 2 of 86 m²), with an auxiliary building of 25 m² and a plot of 5908 m², registered in LN 1279 KO Ibarac I, PJ, floor. Plot 1221/1, within the scope of rights 1/1;

Three auxiliary buildings with an area of 352 m², 197 m² and 78 m², with an associated 8th class pasture of 11891 m² and a 7th class meadow of 60915 m², registered in LN 164 KO Seošnica, PJ Rožaje, cat. Plots 148 and 149, in the extent of the right 1/1;

Three business premises in the off-road area of 8 m², 8 m² and 37 m², registered in LN 222 KO Rožaje, PJ Rožaje, cat. Plot 964, in the extent of right 1/1;

House and building of 112 m², auxiliary building of 35 m² and yard of 353 m², registered in PL 2053 cadastre municipality of Tuzi, PJ Podgorica, floor. Plot 1616/5, in the circumference of the right 1/1.

because there is a reasonable suspicion that the said property and fixed assets were acquired through criminal activity.

This Decision shall be submitted to the competent authority for the management of state property – the Cadastre and State Property Administration and the Cadastre and State Property Administration – Podgorica, which are obliged to ensure the enforcement of this Decision (Article 53 of the Law on Confiscation of Assets from Criminal Activities - ZOOIKSKD).

This Decision shall be published in "The Official Gazette of Montenegro" and on the notice board of the court.

Conscientious third parties are invited to enter into the procedure until the decision on the confiscation of assets acquired through criminal activity becomes final.

Conscientious third parties have the procedural rights that the injured party has in accordance with the ZOOIKSKD and the CPC.

The holder or owner, defence attorney or attorney may file an appeal against this Decision to the Criminal Chamber of this Court within 8 days from the date of servicing the Decision. Along with the appeal, the holder or owner, defence attorney or attorney may submit evidence of the origin of the assets for which the temporary relief has been determined.

The temporary measure of seizure of moveable assets may last no longer than until the decision on confiscation of the proceeds of crime becomes final. The interim measure and seizure of movable property shall be revoked *ex officio* if the indictment does not enter into force within two years from the date of the adoption of the Decision on the determination of the temporary measure of securing and seizure of movable property.

Appeal shall not delay the enforcement of the Decision.

Annex 5 – Examples from current case law on the method of measuring the amount of non-pecuniary damage to victims of serious crime

Example I^[63]

The injured worker (hereinafter: the victim) was employed by the defendant company as an unskilled worker in construction work. The employment was based on a fixed period of time, with a proper medical certificate of work ability. On the day of the critical event, the victim, together with other workers, was engaged in the dismantling of the formwork under the reinforced concrete slab on the second floor of the building under construction. During the performance of this work, he climbed onto the work platform, which was not built in accordance with the rules of occupational safety, the platform was unstable and improperly secured, due to cracking or destabilization of the structure, the victim fell from the second to the first floor, where he suffered severe head injuries (skull fracture, intracranial bleeding), from which he died the next day. The Criminal Court has finally established that the responsible persons at the employer committed a serious offense against general safety due to the failure to provide safety measures at work. The victim was the husband of the first plaintiff, the father of the second plaintiff, then 21 years old. In particular, it was established, through testimonies and medical documentation, that the plaintiffs were in a close emotional relationship with the victim, that the death occurred suddenly and tragically, that the plaintiffs developed severe and long-lasting mental pain, manifested through: permanent sadness, a sense of emptiness, sleep disorders, emotional crises when recalling the event, in the case of the son – severe stress, the need for tranquillisers and psychiatric monitoring; in the case of the wife – a state of loss of life support. The court found that the pain referred not only to the moment of learning of the death, but also to the lasting psychological consequences of the loss of a family member, especially when it comes to a young family, a common household and everyday emotional ties. On the basis of the final criminal judgment and the established facts, the court concluded that there is liability of the employer for damage resulting from the death of the employee, because the accident occurred due to an improperly constructed work platform, which is a classic example of a violation of the employer's obligation to provide safe working conditions, which is directly causally related to the death. The court emphasized that workers on the construction site are expected to move on platforms, so even the entry of the victim on the platform does not represent any contribution to the occurrence of damage, but the sole cause of the accident is the employer's omission.

Non-material damage (mental anguish)

The court of first instance ruled that under Art.200 of the ZOO the plaintiffs (wife and son) should be paid the amount of 8,000 € as a compensation for non-pecuniary damage due to mental anguish caused by death of a close person.

The court took into account: the degree of emotional connection, cohabitation, duration and intensity of pain, that the claim was made in a significantly lower amount than the average in the case law for the death of the husband/father, but that the court could not award more than the requested. The court explicitly rejected the defendant's objection that neuropsychiatric expertise was necessary, appreciating that these are well-known emotional reactions to the death of the closest family member, and that in this particular case it is possible to decide by applying Art. 220 of the ZPP.

Material damage (costs of the tomb and monument)

The first-instance court rejected the claim for compensation for material damage for formal reasons (non-payment of the advance for expert witnessing), but the High Court found on appeal that the plaintiffs had submitted the invoices of the utility company and the stonemasonry shop, that the court could have obtained the relevant data on its own, and that there were no grounds for rejecting the claim by applying Art. 217 and 219 of the ZPP. The case was remanded for retrial in order for the court to determine the actual costs of the construction of the tomb and the monument, as well as the amounts that the defendant had already paid to the plaintiffs on that basis.

Legal principle (*ratio decidendi*)

The court may determine compensation for non-pecuniary damage without neuropsychiatric expertise, when it comes to the generally known consequences of the death of the closest relative.

The court cannot refuse material damage only because of an unpaid advance, if there is other evidence or if it is possible to obtain information.

The amounts of compensation must be in accordance with the case-law but must not go beyond the claim .

Example II^[64]

In a traffic accident that occurred in the early morning hours in a coastal town, two passenger motor vehicles (vehicle A and vehicle B) were involved, the plaintiff (a young man) was sitting by the roadside, on a chair, as a seller at the refrigerated showcase, the driver of vehicle A did not respect the traffic sign "STOP" and did not miss vehicle B that was moving on the main road, there was a collision between vehicles A and B, after which vehicle B turned left, hit the refrigerated display case, which further hit the plaintiff. The plaintiff suffered serious life-threatening injuries. Vehicle A was insured by the first defendant (insurance company 1) and vehicle B by the second defendant (insurance company 2).

64 Judgment of the High Court in Pedagogica, Č. j. 4925/21 of 23.11.2021

The first defendant has already paid the plaintiff a certain amount (€38,750) on the basis of insurance. The court conducted a traffic expertise, several medical expertise (orthopaedist, urologist, pulmonologist, surgeon), psychiatric expertise. Medical experts agreed that the plaintiff had a permanent reduction in general life activity of 70%. An expert psychiatrist determined that the mother of the plaintiff (second-class plaintiff) suffered from mental pain of moderate intensity for the first two months due to her son's injuries, and then permanent mental pain of mild intensity. The lawsuit sought compensation for non-pecuniary damages for the plaintiff (son): due to the reduction of general life activity, due to the violation of physical integrity, due to the violation of mental integrity, due to disability. For the plaintiff (mother) – compensation for non-pecuniary damage due to mental anguish due to the particularly severe disability of her only son, according to Art. 210b ZOO. The Court of First Instance upholds the plaintiff's (son's) claim and awards him: €9,400 – reduction of general life activity, €4,700 – physical integrity, €3,133 – mental integrity, €2,350 – mental integrity due to disability, all with default interest from the date of the judgment. It also upholds the plaintiff's (mother's) claim and awards her €7,000 – due to mental anguish due to her son's particularly severe disability. The High Court, deciding on the appeal, confirmed that there is a liability of the defendants for the damage caused to the plaintiff – the injuries occurred as a direct consequence of the traffic accident for which the insurers are responsible, accepted the findings of the expert witness that the reduction in general life activity was 70%, found that the amounts awarded to the plaintiff were properly measured, applying Art. 207 of the ZOO and Art. 220 of the ZPP, taking into account: the type and severity of injuries, the intensity and duration of physical pain, psychological consequences, injuries.

With regard to compensation for non-pecuniary damage to the mother due to the particularly severe disability of her son, the High Court finds that the first-instance court awarded compensation prematurely and without a complete determination of the facts, incorrectly applied Art. 210b ZOO. In accordance with Art. 210b ZOO compensation to a close person due to a particularly severe disability of the injured person may be awarded only if two conditions are cumulatively met:

- ~ That the injured person has a particularly severe disability (not only a high percentage of impairment of general life activity, but also a particularly severe quality – practical loss of independent functioning),
- ~ That the injury is such that there is a particularly severe disfigurement, which causes long-lasting and severe mental pain in close persons (in addition to the medical aspect, a strong psychological and social one).

The High Court also emphasizes an additional condition from the case law that a close relative is constantly exposed to someone else's disability and suffering in everyday life (by nurturing, caring, seeing permanent consequences).

The High Court found that the plaintiff was found to have a 70% decrease in general life activity, but the experts did not explicitly assess that it was a "particularly severe disability" in the case of the applicant

within the meaning of Art. 210b ZOO, nor about "particularly serious disfigurement". The first-instance court did not ask for a precise statement from the expert on whether the violations and their consequences reached the standard of "particularly severe disability" and "particularly severe disfigurement" required by the case law. In the repeated proceedings, the first-instance court had to supplement the medical expert opinion (or order a new one) with clearly formulated questions: whether in this particular case it is a particularly severe disability within the meaning of Art. 210b ZOO, whether there is a particularly severe disfigurement, what is the objective appearance, functional abilities and degree of dependence of the injured party on the help of others. In particular, to determine how much the mother is really engaged in daily care, whether she is realistically a "constant eyewitness" to her son's suffering, the duration and intensity of her mental pain. On the basis of such a complete factual situation, it is necessary to assess whether both cumulative conditions of Art. 210b of the ZOO is fulfilled, only then decide whether the mother is entitled to compensation and in what amount.

Legal principle (*ratio decidendi*)

A high percentage of disability and the existence of mental anguish are not enough to compensate a parent for a particularly severe disability (Article 210b of the Law on Contracts and Torts). It is necessary to establish:

- ~ particularly severe disability,
- ~ particularly severe disfigurement,
- ~ continuous exposure of a close person to the suffering of the injured person through care and living together.

The finding of "70% reduction in general life activity" is not automatically "particularly severe disability". The court must ask for a precise statement of the expert on the quality of the disability, not just the percentage.

Compensation to a parent on this basis is an exceptional category and must be interpreted narrowly – so that it does not become "default" for every serious injury to the child.

Example III^[65]

The late O.H. was the son of first plaintiff H.H. and second plaintiff S.H. and brother of third plaintiff D.H. At the time of the traffic accident (21.09.2017), O.H. was 21 years old (born 24.01.1996), living in a common household with his parents and brother, in a stable family unit. The accident occurred on the main road G... – P... while driving a VW Golf III driven by O.H.

shared responsibility and contribution of the deceased driver O.H: 65%, contribution of the defendant (non-maintenance of the road, dangerous pothole): 35%. The Court of First Instance awarded the parents (H. and S.H.) €10,000 each as fair financial compensation for the mental anguish suffered due to the death of the child, the brother (D.H.) the amount of €5,000 on the same basis. As the main plaintiff, H.H. was awarded the amount of € 8,330 (in full as determined by the expert in the field of economics), with statutory default interest from the date of the judgment. Over that (another €20,000 to the parents and another €10,000 to the brother) – the request was rejected as unfounded. The first-instance court accepted the existence of shared responsibility (65/35), but in the specific amounts of fair compensation it remained closer to the "upper middle range" of the then practice for the death of a child/brother in the circumstances of a traffic accident. The second-instance court fully accepted the facts and shared responsibility (65% – O.H., 35% – defendant), determined that the "full" fair compensation, without contributions, would amount to €15,000 for each parent, €10,000 for the brother, but, by applying Art. 199 ZOO (reduction of compensation due to the contribution of the injured party), awarded the parents € 5,250 (15,000 – 65%), the brother 3,500 €, material damage for the funeral was reduced to 2,544.50 €. The plaintiffs appealed against the second-instance judgment on all the grounds provided for by law, arguing that the awarded amounts of fair compensation were too low in view of the intensity and duration of mental anguish, the age of the victim, the closeness of the family and the current case law. They requested that the amounts of non-pecuniary damage be increased within the limits of the claim, that the claim for funeral costs be accepted in its entirety and that they be reimbursed for the costs of the procedure and review. Three key expert opinions were conducted in the procedure: expert opinion of the traffic profession, to determine the cause of the accident, the speed of the vehicle, the technical elements of the accident and the degree of contribution of the driver and the condition of the road, the speed of the vehicle O. H. approx. 113.57 km/h, adjusted safe speed in the given conditions max. 56.76 km/h, a pothole filled with water in conditions of rain and night visibility is a dangerous and hardly noticeable obstacle, driver's contribution: 65%, contribution to the condition of the road (defendant's liability): 35%, expert opinion of the construction (road) profession to determine the characteristics and dimensions of the pothole and the defendant's obligations under the maintenance contract, hole area approx. 1.68 m², depth over 4 cm, The repair of the hole was a contractual obligation of the defendant under the concluded Contract on Regular Maintenance and Protection of State Roads, with 24-hour on-call duty, expert opinion of the economic profession to determine the realistic amount of the costs of the funeral of O.H. The Supreme Court modifies the judgment of the High Court in Bijelo Polje in the part rejecting the larger amounts of non-pecuniary damage and in the part on the costs of the procedure, and obliges the defendant to pay each plaintiff: H.H, S.H. and D.H. €1,750 respectively, as fair compensation for the violation of psychological integrity due to the death of a close person. It dismisses the claim over the amounts thus determined as unfounded, taking into account the shared responsibility (65% contribution of the deceased). In the remaining part, the plaintiffs' revision is rejected as unfounded (e.g. in the part of material damage over € 2,544.50 and in the part of greater non-pecuniary damages than recognized).

Legal principle (*ratio decidendi*)

In the case of compensation for non-pecuniary damage due to the death of a close person, the amount of fair financial compensation must be determined in accordance with the intensity and permanence of mental anguish, the age of the victim and the family situation (community of life), current case law, and then, in the case of shared responsibility, this compensation is proportionally reduced according to the percentage of the victim's contribution (Article 199 of the Act). At the same time, material damage (e.g. funeral costs) is also awarded in proportion to the established contribution, while the right to interest is tied to the limits of the claim made, although there could be an earlier award of interest under the law, the court is not authorized to go beyond the parties' claim.

The tests were necessary because:

- ~ precise determination of the causal relationship and percentage contribution (traffic + construction),
- Objective proof of material damage (economic expertise),
- ~ in order to properly apply the provisions on objective/liability for dangerous activity and shared liability (Article 199 of the Act), and to delimit the roles of the driver and the defendant in the occurrence of damage.

Example IV^[66]

The accident was caused by the defendant crossing into the opposite lane. The driver of the second vehicle was in a drunken state (0.94‰), which was visible and recognizable. The injured C.C. was in the company of the driver all day, aware of his alcoholism. She died as a passenger in a vehicle whose driver was visibly under the influence of alcohol. Expert opinions issued: traffic, forensic and medical, construction, financial and commercial. The court of first instance awards partial compensation with the application of 30% of the injured party's contribution. The court of second instance cancels the contribution and significantly increases the amounts. The defendant declares a request for review. The Supreme Court upholds the review, annuls the judgment of the second-instance court in the part that ignored the contribution of the injured party, confirms the first-instance judgment in the part that applies 30% of the contribution, obliges the plaintiffs to pay the costs of the revision. Reason - the rules on joint and several liability of the vehicle owner do not exclude the application of the article on shared liability towards the injured party (Article 192 of the Insurance Act / now Article 199 of the Insurance Act). In other words: even when there is joint and several liability on the part of the tortfeasor – the contribution of the injured party is always assessed.

66 Judgment of the Supreme Court of Montenegro Rev. no. 145/22 of 14/06/2023.

Legal principle (*ratio decidendi*)

When the injured person agrees to drive with a driver who is visibly intoxicated, such behaviour constitutes a contribution to the occurrence of damage within the meaning of Art. 192 of the ZOO (Article 199 of the current ZOO), and the amount of compensation must be proportionally reduced, regardless of the existence of joint and several liability of the vehicle owner.

Expert opinions were conducted in order to precisely determine the percentage contribution of each participant in the accident (traffic expert), to determine the visibility of the driver's alcohol intoxication and whether the injured party could and should have known about alcohol intoxication (forensic medical expert), to quantify material costs – grave, funeral, monument (construction and financial experts).

Example V^[67]

The plaintiff is a police officer who is publicly recognized in the local community. On the occasion of the news about his wounding during the official intervention, published on a news portal (and shared on the social media "Facebook" under titles such as "Policeman Wounded in Cetinje"), the defendant, using his profile on that platform, posted several comments with offensive contents. In his comments, among other things, he called the plaintiff "rubbish@", "the worst scum", the "asshole" of a political party, claimed that "there would be no one to mourn him", accused him of being a "spy" who abused his powers, arrested protesters, gave false testimony in court, identified believers in churches, etc. It is a publicly available post on a social media platform, visible to a wide range of people. In the misdemeanour proceedings, the defendant was found guilty of grossly insulting the plaintiff, and fined (€500). The plaintiff then initiated a lawsuit for compensation for non-pecuniary damage due to the violation of personality rights – honour and reputation. The plaintiff demanded compensation for non-pecuniary damage in the amount of €1,500, with default interest from the date of filing the lawsuit, for violation of personality rights – defamation of character through public insults on Facebook. The Court of First Instance partially upheld the claim and awarded the plaintiff €500 for non-pecuniary damages due to the defamation of character, with default interest from the date of filing the lawsuit, the remaining part (another €1,000) was rejected as unfounded. The court found that the defendant had violated the honour and reputation of the plaintiff with his comments but considered that fair compensation was €500. The High Court confirms that there were no significant violations of procedure, accepts the facts and the legal basis of responsibility – it is a violation of the rights of personality – honour and reputation, accepts that the comments are offensive, personal, rude and publicly stated, emphasizes that the integrity of the plaintiff as a human being and as a police officer (public office) was violated. The Court refers to Art. 207 and 210a ZOO (fair monetary compensation for injury of personal rights) defining the purpose of

67 High Court in Podgorica, Gž.br. 3222/24 of 14/01/2025.

compensation as satisfaction – alleviation of mental pain and the establishment of psychological balance. The amount of compensation is determined according to: the significance of the infringed property, the intensity and duration of the violation, the manner of the violation (public announcement, social networks, wide reach). However, the High Court finds that the first-instance court underestimated the fee of €500, having in mind the content and severity of the offensive comments, the public nature of the post (Facebook), the fact that the plaintiff was already the target of a rough attack at the moment when the text mentions his wounding on official duty. That is why the High Court reverses the judgment in part of the amount of compensation, and awards the plaintiff another €300, so the total compensation is €800 for defamation of character, with default interest from the date of filing the lawsuit. In the remaining part (another €700), the claim is rejected as unfounded – the court considers that a higher compensation would exceed the measure of fairness and the purpose of satisfaction. The High Court considers that both "gross insults" and "violation of dignity" are subsumed under the violation of personal rights, that in such situations double compensation is not awarded on different grounds, but a single fair compensation for the violation of honour, reputation and dignity. Therefore, the omission of a specific reference to "dignity" in the operative part does not affect the legality of the decision, since the compensation has already been awarded on the same legal basis.

Legal principle (*ratio decidendi*)

Public insults via social media, especially with a specific mention of the name and professional attribute (e.g. police officer), may constitute a violation of personality rights – honour and reputation, which establishes liability for compensation for non-material damage. When determining the amount of fair compensation, the court appreciates:

- ~ the content and severity of the insult,
- ~ The public calling out (*online*) and it is available to the general public,
- ~ the position of the injured party (e.g. an official person),
- ~ the duration and intensity of mental anguish.

Violation of dignity and gross insult do not represent a separate, parallel basis of compensation in addition to the defamation of character, but all of this is treated as a single violation of personal rights. The court has the power to adjust the amount of compensation if it assesses that the first-instance court has weighed the amount too low or too high, but it must still adhere to the criteria of fairness and avoid the punitive function.

Example VI^[68]

The plaintiff, a citizen of another country (Albania), was deprived of his liberty in Montenegro on the basis of an international arrest warrant and a request for extradition from the Republic of Italy, for the purpose of executing the remainder of the prison sentence imposed by the judgment of the Italian court. 15.03.2018. – Plaintiff deprived of liberty in Montenegro, 16/03/2018. – The High Court orders extradition custody for extradition to Italy, 08/05/2018. – The High Court determines that the "prerequisites" for extradition have been met, the plaintiff remains in custody until 15.09.2018, when his detention expires, because the Italian authorities did not respond within the prescribed period. Upon subsequent verification, the court found that the plaintiff had already served his sentence in Albania, following the recognition and execution of the Italian court's judgment in that country. The High Court issued a decision rejecting the extradition request as unfounded, because the sentence had already been executed. The Court of Appeals upholds such a decision. The plaintiff unjustifiably spent the period from 15 March 2018 to 15 September 2018 in extradition custody, there were no legal conditions for his extradition to Italy, as the sentence had already been recognized and executed in Albania. In the lawsuit, the plaintiff seeks compensation for non-pecuniary damage due to the violation of personal rights due to unjustified deprivation of liberty and defamation of character. The Chief Prosecutor's request for €20,001 for non-pecuniary damage, with statutory default interest from the date of filing the lawsuit. The Supreme Court upheld the plaintiff's claim in part: €6,000 for non-pecuniary damages due to unjustified deprivation of liberty (extradition detention), violation of personal rights, defamation of character; rejected the request over that amount (another €14,001). By a supplementary judgment, it awarded statutory default interest from the date of the judgment until the final payment. By the second supplementary judgment, it rejected the request that the interest run from the date of filing the lawsuit. The High Court, deciding on the appeal, proceeds from Art. 38 of the Constitution of Montenegro (unlawful/unjustified deprivation of liberty), Art. 502 of the then valid CPC (responsibility for unjustified detention, extradition detention, etc.), Art. 207 of the ZOO (non-pecuniary damage – satisfaction) and confirms that the detention was unfounded, because the sentence had already been served in Albania, that the plaintiff is entitled to compensation for non-pecuniary damage due to unjustified deprivation of liberty, that the state (Montenegro) is responsible for the damage and assesses that the first-instance court took into account the duration of detention (6 months), the circumstances of the plaintiff's personality (he has not been previously convicted – mitigating circumstance), the severity of the interference with the freedom and psychological suffering of the plaintiff, the case law in Montenegro for this type of damage, and that the amount of € 6,000 in accordance with the case law, corresponding to the importance of the violated good (freedom, honour, reputation), is purposeful – it provides satisfaction, but does not lead to the commercialization of personal rights. The Court emphasizes that compensation for non-pecuniary damage for unjustified detention is not compensation "in kind", but has the goal of moral rehabilitation and alleviation of mental suffering, and must not take on the character of "money" or punishment for the state.

Legal principle (*ratio decidendi*)

The State shall be liable for non-pecuniary damage due to unjustified deprivation of liberty (including extradition detention) when it is subsequently established that the legal prerequisites for extradition or execution of the sentence have not been met. When determining fair compensation for unjustified detention, the court assesses: the duration of deprivation of liberty, whether the injured party has previously been convicted (lack of conviction is a mitigating circumstance), the circumstances of the place and manner of deprivation of liberty (foreign state, uncertainty), the case law in the country. The amount of compensation must have the nature of satisfaction, must not lead to the commercialization of injured personal rights, must be reasonable in relation to domestic case law (in this case, €6,000 for 6 months of unjustified detention).

Example VII^[69]

The plaintiff is a former prisoner of war, a member of the Armed Forces of the Republic of Croatia, who was captured by the then JNA during the armed conflict in 1991, held in the "Morinj" camp for 71 days (3 October 1991 – 12 December 1991). The High Court (Special Department) convicted several members of the Yugoslav People's Army (JNA) (guards, cooks, officers) for war crimes against prisoners of war, it was established that the prisoners in Morinj were exposed to inhumane treatment, infliction of suffering, violation of physical integrity, violation of personal dignity. On the basis of that criminal judgment, the plaintiff received €9,199.77 as non-pecuniary damages due to mental and physical pain suffered, violation of personal rights, torture, inhuman and degrading treatment in an earlier lawsuit. That earlier lawsuit was about pain and fear during his stay in the camp. In the new lawsuit, the plaintiff seeks compensation for non-pecuniary damage after leaving the camp due to a permanent reduction in general life activity as a result of post-traumatic stress disorder (PTSD) in the amount of €4,800 (€4,200 awarded, €600 € rejected). It is, therefore, new grounds to claim damages, different from the one already decided (physical pain and fear during abuse). By an orthopaedic expert, neck pain, dizziness, chronic pain in the lumbar spine, joint pain were recorded in the medical documentation, from which it was concluded that the injuries are considered minor, the changes are in accordance with age, there is no orthopaedic impairment of general life activity. An expert neuropsychiatrist determined chronic post-traumatic stress disorder (PTSD), the dominant symptoms of anxiety and depression syndrome, adjustment disorder, continuous psychiatric treatment since 1992, and determined a 12% permanent decrease in general life activity, which affects daily functioning, social and civic life, the ability to communicate, the need for continuous therapy, all of which significantly impairs the quality of life of the plaintiff. The expert did not assess the physical pain and fear suffered during the plaintiff's stay in the camp

69 Judgment of the High Court in Podgorica, Gž. No. 341/2021-17 of 15/06/2021.

because he had already done it in an earlier case. In an earlier lawsuit (P. no. 305/17), the court had already awarded €4,200 for the reduction of life activity, rejected €600 over that, rejected the claim for physical pain and fear as already adjudicated (*ne bis in idem*). The High Court partially annulled that judgment (in the part of the amount for the reduction of life activity) and returned the case for a retrial. In the repeated proceedings, the court again awarded €4,200 for suffered and future mental anguish due to the reduction of general life activity, rejected the request for an additional €600, starting from the fact that the earlier judgment (€9,199.77) did not cover this particular disease (PTSD) and its impact on life activity, the request was not time-barred, there is an objective responsibility of the state (Article 172 of the Zoo) as the legal successor of the FRY for the work of its authorities (JNA). The High Court, deciding on the appeals, assesses that the expert neuropsychiatrist has clearly described the impaired life functions, confirmed the permanent reduction of life activity of 12%, explained the consequences on everyday life (social, family, professional). The Court correctly distinguished this type of damage from the previously compensated pain and fear in the camp, applied Art. 200 ZOO (Fair Monetary Compensation for Reduced Life Activity), took into account the scope of the restrictions, the need for long-term treatment, took into account the purpose of the compensation – satisfaction, not "penalty" or "earnings". For this reason, the High Court rejects the appeal of the plaintiff (who asks for another €600) and the appeal of the defendant (who asks for a reduction) and confirms the amount of €4,200 as fair compensation for the 12% permanent reduction in life activity due to PTSD.

Legal principle (*ratio decidendi*)

The state is responsible for the damage caused by the actions of members of the then Yugoslav People's Army in the "Morinj" camp according to the principle of strict liability under Art. 172 of the ZOO, because it is a damage caused by the work of state authorities, and the state of Montenegro is the legal successor of the obligations of the former FRY. If the damage was caused by actions that legally constitute a war crime (Art. 144 of the Criminal Code of the FRY – war crimes against prisoners of war), the claim for damages is not time-barred, because criminal prosecution is not time-barred. The plaintiff may seek compensation regardless of the passage of time.

If, after compensation has already been awarded (e.g. physical pain and fear during abuse), subsequent consequences arise (e.g. chronic PTSD, permanent reduction in life activity), such new damage constitutes a special basis for compensation and may be the subject of a new lawsuit.

Reduction of life activity – the necessity of psychiatric expertise.

The amount of compensation must be based on medical documentation, neuropsychiatrist's findings, a specific description of the plaintiff's daily functioning, the degree of permanent decline in life activity. In the given case, 12% of the permanent reduction in life activity (PTSD) was sufficient for a benefit of €4,200. The purpose of the fee is satisfaction, not

commercialization. Compensation for non-pecuniary damage serves to alleviate mental suffering and restore the psychological balance of the injured party (Article 200 of the Criminal Code). The court is obliged to determine the amount in such a way as to provide fair satisfaction, not to the commercialization of personal rights, to take into account the intensity and duration of the consequences.

Example VIII^[70]

The juvenile victim (10 years old at the time of the event) was a victim of a criminal offence against sexual freedom, which was committed by a much older adult perpetrator (64 years old). The act is classified as an unlawful act. The perpetrator was sentenced to an effective prison sentence in the criminal proceedings, and the judgment is final. After the event, the minor victim developed pronounced mental suffering, practically proven by the circumstances of the case, the age of the child and the nature of the crime. The injured party demanded €3,000 in fair compensation for non-pecuniary damages. The court of first instance determines the basis of the defendant's liability on the basis of a final criminal judgment, 2,000 €, rejects the remaining part of the claim (another 1,000 €). The minor injured party appeals against the part of the judgment relating to the amount of compensation, considering the amount of 2,000 € too low in relation to the gravity of the act and the consequences. The High Court finds that the mental anguish of the minor victim intense, taking into account the age (10 years), the significance of the injured property (sexual integrity), the age difference between the girl and the perpetrator, the manner of committing the criminal offense and its psychological consequences. The court of first instance assessed the fee too low, despite the properly established facts. A total fee of €3,000 (2,000+1,000) is fair and in accordance with the case law for acts of this gravity. Compensation should provide subjective satisfaction, mitigation of long-term emotional consequences, respect for the principles of protection of underage victims of sexual violence. The High Court reversed the judgment of the first-instance court. The defendant is required to pay an additional €1,000, bringing the total compensation to €3,000.

Applicable legal principle (*ratio decidendi*)

In the case of compensation for non-pecuniary damage to victims of crimes against sexual freedom, especially when the victim is a minor, the intensity of mental anguish is of a high degree, and fair compensation must be determined in such a way as to reflect the severity of the injury, the special vulnerability of the victim and the objectives of satisfaction referred to in Art. 210v of ZOO. The court must particularly appreciate the age of the child, the age difference between the victim and the perpetrator, the nature of the violation of sexual integrity, the duration and intensity of the emotional consequences, the social purpose of the compensation and the need to protect children.

Example IX^[71]

According to the established facts, in the period during 2022 *until September 2022), the defendant, knowing that the injured party was a minor (born in 2005) and a victim of human trafficking, took advantage of her vulnerable position and enabled her sexual exploitation for the purpose of prostitution. The defendant, by prior agreement with a third party who was convicted of the criminal offence of trafficking in human beings, accepted to provide the minor victim with accommodation and conditions for the provision of sexual services, and for a fee of 50 euros, he rented a hotel room in which sexual exploitation was enabled. The defendant acted with full awareness of the minor of the injured party and the prohibition of his actions and committed the criminal offence with premeditation.

On the basis of the above facts, the court accepted the plea agreement and found the defendant guilty of the criminal offense of trafficking in human beings under Article 388 paragraph 9, in conjunction with paragraphs 8 and 1 of the Criminal Code. The defendant was sentenced to 1 (one) year in prison, which is to be served in the premises where he lives (house arrest without electronic surveillance), including the time of deprivation of liberty and with a warning that in case of violation of the regime of servitude, the sentence will be executed in the Institute for the Enforcement of Criminal Sanctions. With regard to the reparation claim, the court, by applying Article 258, paragraph 4 of the Criminal Procedure Code, accepted the reparation claim of the injured party and obliged the defendant to pay her the amount of 300,000.00 dinars as compensation for non-pecuniary damage, within three months from the date of the final judgment.

Example X^[72]

Over a long period of time, the defendants A and B, by abusing the difficult life circumstances of the injured persons, organized their transfer from the Republic of Serbia abroad for exploitation through the commission of criminal offences of theft, whereby they brought the injured parties into a state of de facto dependence and subordination. The exploitation was reflected in the confiscation of travel documents, the provision of accommodation under the full control of the defendants, the taking over of money obtained through unlawful actions, as well as in the continuous indebtedness of the injured parties for the costs of accommodation, food and transport, which left the injured parties without any real possibility of disposing of their own work and income. In the same case, it was also established that the defendant A, without the permission of the competent authority, was in unauthorized possession of firearms and convertible weapons in his household. On the basis of the above facts, the court found the defendant A guilty of the criminal offence of Trafficking in Human Beings under Article 388, paragraph 6 in conjunction with paragraph 1 of the Criminal Code, as well as of the criminal offence of illicit production,

71 Judgment of the High Court in Niš SPK no. 19/24 of 24/04/2024.

72 Judgment of the High Court in Novi Sad, K. no. 136/21 of 30/04/2024.

possession, carrying and trafficking of weapons and explosive substances referred to in Article 348, paragraph 1 of the Criminal Code. of the Criminal Code, while the defendant B was found guilty of the criminal offence of trafficking in human beings under Article 10 of the Criminal Code.

388. paragraph 1. The Criminal Code. The defendant A was sentenced to a single prison sentence of 7 (seven) years and 6 (six) months, with a fine in the amount of 50,000.00 dinars, while the defendant B was sentenced to imprisonment for a term of 3 (three) years and 6 (six) months, including the time spent in custody.

With regard to the consequences of criminal offences for the injured parties, the court found that the injured parties, due to the longer duration of exploitation, suffered non-material damage in the form of mental anguish due to the defamation of character, infringement of freedom, personal rights and dignity, as well as fear, which was the basis for deciding on reparation claims in criminal proceedings. In making its decision, the court took into account the provisions of Article 200 of the Law on Contracts and Torts, taking into account the significance of the injured goods, the severity and duration of mental anguish and fear, as well as the goal of fair monetary compensation. Pursuant to Article 258(4) of the Criminal Procedure Code, the court awarded compensation for non-pecuniary damage in the total amount of RSD 800,000.00, namely RSD 500,000.00 for mental anguish due to the defamation of character, infringement of freedom, personal rights and dignity and RSD 300,000.00 for the fear suffered, and the defendants A and B are obliged to pay the said amount jointly and severally, in equal shares, i.e. 400,000.00 dinars each, within six months from the date of the final judgment, under the threat of forced execution. The injured party was sent to litigation with an excess of the amount awarded up to the requested 1,300,000.00 dinars. At the same time, the court awarded compensation for non-pecuniary damage in the amount of 600,000.00 dinars, namely 400,000.00 dinars for mental anguish due to the defamation of character, infringement of freedom, personal rights and dignity, and 200,000.00 dinars for the fear suffered, with the obligation of the defendant A to pay the awarded amount, while the injured party was referred to litigation for the excess of claims over the awarded amount up to the requested 1,000,000.00 dinars.

Example XI^[73]

The defendant, after the termination of a long-standing emotional relationship with the injured party, came to the city where the injured party lived, and first contacted her, and then the next day waited for her in front of the building where she lived, carrying a knife with him. At the time of the offence, the defendant was able to understand the significance of his actions, while his ability to manage his actions was impaired due to personality disorders and anger affects, but not to a significant degree. Guided by the motive of ruthless revenge, the defendant used intense physical violence against the injured party, inflicting multiple blows, cuts and stab wounds in the neck

and chest area, due to which the injured party suffered pain of

73 Judgment of the High Court in Novi Sad, K. no. 114/20 of 24.03.2021.

a highest intensity and a feeling of suffocation, only to die in a short period of time. In connection with the event in question, the court found that the mother of the injured party, due to the violent death of the child, suffered mental anguish of the strongest possible intensity, bearing in mind that the loss of a child under all relevant medical and psychiatric measures represents a stressful event of the highest rank, whereby the manner of loss – murder further intensifies the intensity and durability of the consequences. Based on the findings and opinions of neuropsychiatric experts, the court found that mental pain in the period of at least six months, up to two years after the event, was of strong intensity, while in the further course it can turn into medium intensity, but can never reach a mild degree, or stop completely. As an additional aggravating circumstance, it was taken into account that the husband of the injured party, i.e. the father of the murdered woman, died less than a year after the loss of her daughter, which undoubtedly contributed to the deepening of the victim's mental pain. Proceeding from the above facts, as well as from the final criminal judgment by which the defendant was found guilty of the criminal offence of aggravated murder under Article 114, paragraph 1, point 5 of the Criminal Procedure Code and sentenced to life imprisonment; the court, by applying the provisions of Article 200 of the Law on Contracts and Torts, established the obligation of the defendant to compensate the injured party for the damage caused by the commission of a criminal offence against the life and dignity of the person. The Court obliged the defendant to pay the injured party, in the name of compensation for non-pecuniary damage due to mental anguish due to the death of a close person, the amount of 3,000,000.00 dinars, with statutory default interest from the date of the judgment until payment, while the injured party was referred to litigation for the remainder of the claim over the awarded amount up to the requested 100,000.00 euros. In addition, the defendant is obliged to compensate the injured party for material damage in the form of usual funeral costs in the amount of 161,041.00 dinars, with statutory default interest from the date of occurrence of the damage until payment.

Example XII^[74]

The final judgment of the High Court in Niš accepted the agreement on the recognition of the criminal offense by which the defendant was found guilty of the criminal offence of Trafficking in Human Beings under Article 388, paragraph 2, in conjunction with paragraph 1 Criminal Code of the Republic of Serbia. It was established that in the period from June 2022 to September 2022 in Niš, the defendant recruited a minor victim (born in 2005) for prostitution, enabling and organizing the provision of sexual services to third parties for financial compensation, although she was aware that the injured party was a minor. The defendant was sentenced to 3 years in prison, which includes the time spent in custody from 17 January 2024 to 12 March 2024.

⁷⁴ Judgment of the High Court in Niš SPK no. 9/24 of 12/03/2024

Following the reparation claim, the court obliged the defendant to pay the injured party 500,000.00 dinars as compensation for non-pecuniary damage, within 15 days of the judgment becoming final. The Court concluded that the amount of the sentence and the awarded compensation for damages is in accordance with the gravity of the committed crime, the intensity of the violation of the rights and dignity of the minor victim, as well as with the aim of fair satisfaction.

