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THE CIVIL CLAIM IN CRIMINAL PROCEEDINGS: A COMPARATIVE ANALYSIS OF BULGARIAN AND SERBIAN LAW

Summary

The paper examines the similarities and differences in the legal regulation of the Republic of Bulgaria and the Republic of Serbia regarding the admission of a civil claim for joint consideration in criminal proceedings. The prerequisites for admitting the civil claim within the framework of the criminal process are analyzed, distinguishing between substantive and procedural requirements. The specific features of the court's ruling on the civil claim in criminal proceedings are also examined.

Keywords: civil claim, criminal procedure, comparative legal analysis.

1. INTRODUCTION

In both Bulgarian and Serbian law, the commission of a criminal offense may simultaneously give rise to criminal law and civil law consequences. The act constituting the offense which causes harm also represents a tort from the perspective of civil law. Although the basis is the same—the committed act - the two forms of liability, civil and criminal, are independent and autonomous from one another. Criminal liability is the liability of the perpetrator towards the state and society within the framework of the criminal legal relationship and affects the injured party only indirectly - it protects their rights in an abstract manner, providing solely moral satisfaction that the state protects and cares for them.

In Bulgarian legislation, there are two possibilities for compensation for damages caused by an act constituting a criminal offence. One is to bring a claim for damages before the civil court under the rules of tort law, as regulated in Art. 45 et seq. of the

Law on Obligations and Contracts (LOC). The other is through the submission of a civil claim within the criminal proceedings. The elements of the factual composition of the tort are, in principle, also elements of the criminal offence; therefore, this overlap of the objective and subjective characteristics of the tort and the criminal offence constitutes a prerequisite for the joinder of the two proceedings (Smolichki, P., 2012, 23–25).

In legal doctrine, the institution of the civil claim within criminal proceedings is defined as "*a criminal procedural means by which injured persons or the prosecutor (in the cases provided by law) may seek, through criminal procedural rules, compensation from the accused and from the persons who bear civil liability in his stead or alongside him for the damages caused by the incriminated act*." (Radeva, R., 1972, 8–10). According to this definition, although a civil claim is grounded in a civil-law entitlement, it is regarded as a criminal procedural institution governed by the rules of the Criminal Procedure Code (CPC).

When a civil claim is admitted for joint consideration within criminal proceedings, the process is referred to as an adhesion or mixed procedure (Chinova, M., G. Mitov, 2021, 250–251). In Serbian legal literature as well, the process is defined as adhesive (Knežević, S., 2023, p. 228). Some authors maintain that this term is inaccurate, as it "... suggests the idea of a mechanical merging of the two proceedings—criminal and civil—which proceed in parallel." (Pavlov, St., 1989, p. 236). In fact, there is only one proceeding—the criminal one—within which the civil claim of the person injured by the offence is also examined. In this procedure, only criminal procedural legal relationships exist. Article 88(1) of the CPC explicitly provides that when a civil claim is examined within criminal proceedings, the rules of the CPC apply, and where it contains no specific provisions, the rules of the Civil Procedure Code (CivPC) shall apply. For this reason, it is accepted that the joint examination of the civil claim within criminal proceedings does not constitute a merging of two proceedings, but rather a feature of criminal proceedings, and the application of the rules of the Civil Procedure Code is subsidiary.

2. THE CONCEPT OF THE "INJURED PARTY" IN BULGARIAN AND SERBIAN LEGISLATION

Under Bulgarian legislation – Art. 74(1) CPC - *the injured party is the person who has suffered damages as a result of the criminal offence*. In the event of the person's death, this right passes to their heirs. The accused may not exercise the rights

of an injured party within the same proceedings. Another important point is that, *under Bulgarian law, only a natural person may qualify as an injured party. If a legal entity has suffered damage as a direct and immediate consequence of the offense, it may participate in the pre-trial phase of the proceedings in the capacity of a* "aggrieved *legal entity*."

The injured party from the offense may participate in the trial phase of the criminal proceedings by supporting the prosecution through the figure of the so-called "*private prosecutor*." When the offense is of a private character and is prosecuted only upon the complaint of the injured party, then the latter may participate in the proceedings before the court in their capacity as the principal prosecutor or, as such, the "*private complainant*."

However, this is not sufficient. A general principle of law is that anyone who causes damage to another is obliged to make reparation. This is most commonly achieved through compensation for the damages caused by the act. In order for the damages from the offense—whether pecuniary or non-pecuniary—to be compensated, *a natural person (the injured party) and a legal entity (the* aggrieved *legal entity) may file a civil claim in the trial proceedings*. Upon the admission of the civil claim for joint examination in the trial proceedings, the figure of the „*civil claimant"* is thereby constituted.

Bulgarian legislation also recognizes the figure of the „*civil defendant"*. Article 89 CPC provides that these are the persons against whom a civil claim has been brought, with the exception of the defendant (the accused). This means that when a civil claim is filed solely against the defendant, the latter is liable thereon and the figure of the civil defendant is not constituted. Civil defendants are the persons who bear civil liability for the damages caused by the criminal offence (Art. 86 CPC). In other words, these are persons who incur civil liability under civil law. They fall into two categories: the first includes parents and adoptive parents who exercise parental rights and are liable for damages caused by their children who have not reached the age of majority and live with them. The second category comprises those who have entrusted another person with a certain task and are liable for the damages caused by that person in the course of or in connection with the performance of that task, i.e. principals and employers (Art. 49 LOC).

The situation is different with regard to the concept of the injured party in Serbian legislation. The Criminal Procedure Code of the Republic of Serbia employs the term "injured party" (see further on the concept of the "victim" of a crime Grujić, Zdr, 2022, 85–90). This status may be held by both natural and legal persons

(Bejatović, St., 2010, p. 179). This is expressly indicated in the provision concerning the successors of the injured party—Art. 57(2) CPC.

Serbian law also draws a distinction between the injured party and the person authorized to file a civil claim within criminal proceedings, but it does not establish a separate party in the judicial proceedings comparable to the civil claimant under Bulgarian legislation. Furthermore, under Serbian law, it is not permissible in criminal proceedings to pursue a civil claim against other persons, including in cases where they are obliged to perform the obligation instead of the accused or jointly with him (Bejatović, St., 2010, p. 202). As discussed above, this is possible under Bulgarian legislation.

3. PRECONDITIONS FOR THE ADMISSION OF A CIVIL CLAIM FOR JOINT EXAMINATION IN CRIMINAL PROCEEDINGS

The prerequisites for admitting a civil claim for joint examination may be divided into two categories - substantive law prerequisites and procedural law prerequisites.

3.1. Substantive law prerequisites for the admission of a civil claim for joint consideration

a) An act incriminated as a criminal offence

The basis for filing the civil claim must be a committed criminal offense, i.e., that *claim must arise from a criminal offense*.

b) Damages

Damages may be pecuniary or non-pecuniary. From the provisions of the law of obligations – Art. 51(1) LOC - it follows that, within criminal proceedings, compensation may be awarded for both pecuniary (material) and non-pecuniary (intangible) damages. Non-pecuniary (moral) damage consists in the infliction of pain and suffering (physical and psychological), impairment of honor, dignity, and good reputation, emotional distress, and other adverse consequences that are not measurable in monetary terms.

Compensation for non-pecuniary damages is determined by the court ex aequo et bono – Art. 52 LOC. *Under Bulgarian legislation, a civil claim may seek compensation for non-pecuniary damages caused by the act only in monetary form*. This issue is regulated differently under Serbian legislation. Pursuant to Article 199 of the Law on Obligations of the Republic of Serbia, compensation for non-pecuniary damage may

take the form of publication of the judgment, the publication of a correction or retraction of the statement by which the damage was caused, or another measure by which the purpose of compensation may be achieved (Knežević, S., 2023, 229–230).

The same applies with regard to pecuniary damages. Under Bulgarian legislation, pecuniary damages may likewise be claimed only in monetary form. Pursuant to Art. 252(2) CPC of the Republic of Serbia, a civil claim may relate to compensation for damages, restitution of property, or the annulment of a specific legal transaction.

A civil claim brought by the injured party or the injured legal entity within criminal proceedings, seeking reparation of damages in a form other than monetary compensation, would be inadmissible under Bulgarian legislation. Article 37, paragraph 1, item 11 of the Criminal Code (CC) of the Republic of Bulgaria provides for the possibility of imposing the penalty of "public reprimand." The penalty of public reprimand consists of the public censure of the guilty party, which is announced before the relevant collective, through the press, or by another appropriate means in accordance with the particulars specified in the judgment (Art. 52 CC). Precisely through this penalty may the publication of the judgment be achieved and its dissemination to public knowledge. However, the civil claimant may not seek the imposition of such a penalty. Only a natural person who has suffered pecuniary and/or non-pecuniary damages from the offense may be constituted in the trial phase of the criminal proceedings and claim that the defendant be sentenced to the penalty of "public reprimand." A person constituted as a civil claimant may not take a position on issues relating to the penalty, since those do not concern civil liability.

Under Bulgarian legislation, the nature of the criminal offence - whether it is of a public, private, or private-public character—is irrelevant.

According to the established case law in the Republic of Bulgaria, the damages must constitute a direct and immediate result of the committed criminal offence for which the criminal proceedings have been initiated. Claims for loss of profit must be brought as a claim for damages in separate and independent civil proceedings. According to the Supreme Court of Cassation of the Republic of Bulgaria, loss of profit is the result of a civil-law transaction and, therefore, cannot be pursued within criminal proceedings. The civil claim in criminal proceedings is based on tort and cannot be grounded in a civil-law transaction, i.e. on a contractual basis. This issue is resolved differently in the Republic of Serbia, where, even within criminal proceedings, material damage is considered to encompass both actual loss, which results in a reduction of the injured party's assets, and loss of profit, expressed as the prevented increase of assets

which, according to the normal course of events and the circumstances of the case, could reasonably have been expected (Knežević, S., 2023, p. 229).

Furthermore, *it is not necessary for the occurrence of damage to constitute an element of the offence for which the criminal proceedings have been initiated*, i.e. it is not required that legally protected interests forming part of the offence be infringed. In all cases, it is sufficient that the injured party has suffered damages which are a direct and immediate consequence of the committed criminal offence. An argument in support of this is also found in Art. 102, item 2 CPC (subject of proof), where "the nature and extent of the damages" are explicitly listed as a separate category. If they constituted elements of the offence, they would have been included under Art. 102, item 1 CPC - "the committed offence and the participation of the accused therein."

c) Causal link between the act and the damages

As noted above in the discussion of damages, pursuant to Art. 51 of the Bulgarian LOC, *the damages must be a direct and immediate consequence of the act*. A civil claim within criminal proceedings cannot be based on a contractual ground, nor on both contractual and tortious grounds. Only a civil claim founded on tort may be admitted.

d) Fault of the Perpetrator

Article 45(2) of the Bulgarian LOC establishes the principle that, in cases of tort, fault is presumed until proven otherwise. Under this provision, the perpetrator of the tort must prove their innocence. *In criminal proceedings the defendant is presumed innocent until proven guilty by a final judgment*. For this reason, the burden of proving fault rests with the prosecutor or, respectively, with the private complainant in cases of a private character. The civil claimant also bears a burden of proof.

3.2. Procedural Preconditions for the Establishment of the Civil Claimant

a) Procedural legal capacity

Procedural legal capacity represents the ability of a person to participate in a specific procedural capacity within criminal proceedings.

Pursuant to Art. 84(1) CPC, the injured party or their heirs, as well as legal entities that have suffered damages from the criminal offence, may bring a civil claim for compensation within the judicial proceedings and be constituted as civil claimants. Therefore, *a person - whether natural or legal - who has suffered pecuniary and non-pecuniary damages as a direct and immediate consequence of the criminal offence has procedural legal capacity.*

Under Bulgarian legislation, legal entities do not possess, within their patrimony, rights that can be affected and redressed through moral satisfaction; therefore, legal entities may suffer only pecuniary damages, but not non-pecuniary ones. An aggrieved legal entity may bring only a civil claim within the judicial proceedings, seeking compensation for the pecuniary damages it has suffered as a direct and immediate consequence of the criminal offence. Consequently, an aggrieved legal entity may participate in the judicial proceedings solely in the capacity of a civil claimant, but cannot be constituted as a private prosecutor in cases of a public character or as a private complainant in cases of a private character.

In the case of natural persons, procedural legal capacity is heritable. Upon the death of a natural person, their right to be constituted in the trial proceedings (their procedural legal capacity) passes to their heirs. Where the injured party has brought a civil claim within the judicial proceedings and subsequently dies, their heirs may enter the proceedings and continue to exercise the rights of the civil claimant. If the injured party dies before bringing the civil claim, the heirs have the right to bring such a claim themselves and to participate in the criminal proceedings.

According to binding case law, after the death of the person, the following individuals may be constituted as civil claimants: the spouse, descendants, ascendants, a child who has been raised but not adopted, a person who cohabited with the deceased in a relationship akin to marriage, siblings, as well as grandparents. These persons may not necessarily be heirs under the Law on Succession.

The circle of persons who may inherit the procedural legal capacity of the injured party is expressly provided for in Art. 57(1) CPC of the Republic of Serbia. The first difference lies in the manner in which this issue is regulated - in the Republic of Bulgaria, through interpretative case law of the Supreme Court of Cassation, and in the Republic of Serbia, through an explicit provision in the CPC. The other difference concerns the scope of persons who may inherit the procedural legal capacity of the deceased who suffered damages from the criminal offence. In the Republic of Bulgaria, this circle is broader, as, in addition to those listed in Art. 57(1) CPC of Serbia, it also includes the grandparents of the deceased injured party.

The successors of a legal entity that has suffered damages from a criminal offence are not expressly specified in Art. 84 CPC of the Republic of Bulgaria. In the event of succession occurring after the commission of the act, it should be accepted, on the basis of the general rules of civil law, that the successor of the injured legal entity may also be constituted as a civil claimant, as the successor assumes both the assets and the liabilities of the reorganized entity (Smolichki, P., 2012, p. 76).

Another difference between the two legislations is the possibility, under the law of the Republic of Serbia, for a proprietary claim to be brought within criminal proceedings by a person who is authorized to pursue such a claim in civil proceedings but does not possess the procedural status of an injured party in the criminal proceedings. For example, a person to whom the injured party’s claim has been transferred in accordance with the rules of civil law (cession) is also entitled to bring a property claim within criminal proceedings (Knežević, S., 2023, p. 231).

In Bulgarian legislation, as explained in detail above, a civil claim may be brought only by a person (natural or legal) who has suffered damages from the criminal offence that are in a direct and immediate causal link. These same persons may also participate in the criminal proceedings as injured parties or injured legal entities. In the event of the death of the injured party, their procedural legal capacity passes to the above-mentioned persons, who then acquire the status of “injured party” within the criminal proceedings.

b) Procedural capacity to act

Procedural capacity to act denotes the ability of a person to perform valid procedural acts and to personally exercise the procedural rights conferred upon them, i.e. to possess legal capacity to act.

Persons with full legal capacity to act may enter the proceedings independently and personally perform all procedural acts. A procedurally capable person may also appoint a legal representative to represent them in the proceedings, provide assistance, and substantiate the civil claim. Minors (persons who have not attained the age of 14) and persons placed under full guardianship are represented by their legal representatives - parents or guardians. Juveniles (persons who have attained the age of 14 but not 18) and persons placed under limited guardianship perform acts related to the bringing and substantiation of the civil claim personally, but with the consent of their parents or custodians.

Where the civil claimant is a legal entity, the rules governing the representation of legal entities shall apply.

c) Pending judicial proceedings

There cannot be criminal proceedings instituted solely for the purpose of compensating damages suffered. *A claim for compensation may be brought only in the trial phase, after the first-instance proceedings have been initiated by an indictment filed by the prosecutor or by a complaint lodged by the private complainant.* Prior to the initiation of judicial proceedings, i.e. at the pre-trial stage, a civil claim cannot be

brought. This issue is regulated differently under Serbian legislation, which will be addressed further below.

d) The claim for compensation must not have been brought under the civil procedure

Pursuant to Art. 84(2) CPC, *a civil claim may not be brought within the judicial proceedings if it has already been brought under the Civil Procedure Code*. This provision establishes the alternative nature of the two forms of pursuing claims. It is up to the individual to decide which form of protection to choose.

e) Application for participation as a civil claimant

The application for bringing a civil claim or for being constituted *as a civil claimant may be written or oral* – Art. 85(2) CPC.

The application for bringing a civil claim shall indicate: the full name of the applicant and of the person against whom the claim is brought; the criminal case in which it is submitted; the offence from which the damages have arisen; and the nature and extent of the damages for which compensation is sought.

The application must specify the exact amount of compensation claimed. Consistent judicial practice (Resolution No. 9 of 25 December 1961, Plenum of the Supreme Court) requires the courts to demand that the person specify the precise amount separately for pecuniary and for non-pecuniary damages.

f) Time limit for submitting the application

A civil claim may be filed no later than the start of the reporting hearing, and for cases of private character - until the start of the judicial investigation before the court of first instance - Art. 85(3) CPC.

Pursuant to Art. 247c(2) CPC, the victim, their heirs, or the aggrieved legal entity shall be notified of the reporting hearing. Within seven days of the service of this notice, these persons may request to be constituted as civil claimants (Art. 247c(4) CPC).

As is evident from the foregoing, there is a lack of consistency between the two provisions. Since Article 85(3) CPC is located in the general part of the CPC, it takes precedence in the interpretation of the time limit for bringing a civil claim. The time limit set out in Article 85(3) CPC - namely, "until the commencement of the reporting hearing" in cases of a public character - is preclusive in nature and extinguishes the right to bring a civil claim within the judicial proceedings. By contrast, the time limit provided for in Article 247c(4) CPC is instructive and organizational. Failure to comply with it does not preclude the right to bring a civil claim within the proceedings.

A civil claim may be filed only before the court of first instance hearing the case. A civil claim may not be filed before the appellate or the cassation court, nor when the case has been remanded for retrial to the court of first instance.

The issue of the time limit for bringing a property claim is regulated differently under Serbian legislation (Art. 254 CPC of the Republic of Serbia). Depending on the stage of the proceedings, the property claim may be submitted to the public prosecutor (during the pre-trial phase) or to the court after the charges have been brought. The property claim may be filed at the latest until the conclusion of the trial before the Court of first instance**.** The court is obliged to notify the victim, who has not filed a property claim by the time the indictment was brought, that they may do so until the conclusion of the judicial investigation.

Bulgarian legislation does not provide for the possibility of filing a civil claim as early as the pre-trial phase of criminal proceedings (such a possibility existed under the repealed CPC prior to 2005, but not today). The deadline is also different. With the introduction of the reporting hearing in criminal proceedings in 2017, a final moment for filing a civil claim was established – until the start of the reporting hearing, i.e., until the reporting hearing has been opened. The reporting hearing is the first stage of the judicial phase of criminal proceedings. The second stage, during which the judicial investigation is conducted, is the trial hearing before the court of first instance.

g) Admission of the claim for compensation for damages sustained for joint consideration with the criminal case

The court decides on the admission of the civil claim during the first stage of the judicial phase of the criminal proceedings – preparatory actions for the consideration of the case in a trial hearing (Chapter Nineteen of the CPC). This stage is mandatory for every single criminal case (Chinova, M., G. Mitov, 2021, p. 425).

In 2017, the mandatory conduct of a reporting hearing was regulated for criminal cases initiated upon an indictment by the prosecutor. In cases of public character, the victim or their heirs and the aggrieved legal entity are constituted as civil claimants by the court via an order under Art. 248(5) CPC. The court's refusal to admit the civil claim for joint consideration with the criminal case is not subject to appeal, unlike the refusal to constitute a private prosecutor. When a civil claim is not admitted for consideration in the criminal proceedings, the claim for compensation for the damages caused may be filed before the civil court.

In cases of private character, for which no reporting hearing is conducted, the act is an order issued by the judge-rapporteur. The order shall specify by whom and against whom the civil claim is filed, for what amount, and for what damages.

Pursuant to Art. 88(2) of the Bulgarian CPC, the consideration of a civil claim may not be a reason for adjourning the criminal case. The court is not obliged to admit the civil claim for joint consideration, as it is accessory and should not hinder the normal course of the proceedings. For this reason, when the court deems that the consideration of the civil claim would lead to an adjournment of the case, it may refuse its admission. An analogous provision exists in the Serbian CPC – Art. 252(1), which states that 'the property claim... shall be considered upon the motion of the authorized persons in the criminal proceedings, provided that this would not cause a significant delay of said proceedings'. Although phrased differently, both provisions mean the same – if the consideration of the civil claim could cause a delay in the case, it should not be admitted for joint consideration.

Once the civil claim is admitted for joint consideration with the criminal case, the figure of the civil claimant is constituted from that moment on.

4. ADJUDICATION ON THE FILED CIVIL CLAIM IN CRIMINAL PROCEEDINGS

4.1. Adjudication on the filed civil claim in the Republic of Bulgaria

Not every criminal case involves a filed and admitted civil claim, but when such a claim has been admitted for consideration, the court is obliged to rule on it. Should the court fail to rule on the civil claim, it has the power to issue a supplementary judgment within the appeal period to supplement the judgment of the first instance - Art. 301(3) CPC.

The filing of a civil claim is not admissible in all criminal cases. When a case is heard under the rules of the fast-track proceedings (Art. 359(3) CPC) and in proceedings under Chapter Twenty-Eight of the CCP regarding the release of the accused from criminal liability with the imposition of an administrative penalty (Art. 376(4) CPC), the legislator has established a prohibition on the filing of civil claims by the victims.

In every outcome of the case, the court is required to rule on the civil claim, regardless of whether it awards or dismisses it. For this reason, a ruling on the civil claim is due even when the court finds that the act was not committed, does not constitute a crime, the authorship of the act has not been proven beyond a reasonable doubt, the guilt of the defendant in committing the act has not been proven, or the damages sustained are not a result of the defendant's activity.

Civil liability exists alongside criminal liability and independently of it; therefore, the court is obliged to rule on it even when it is found that there are no grounds for incurring criminal liability (Smolichki, P., 2012, p. 166).

When the court finds that the act constitutes a crime and convicts the defendant, the civil claim should be awarded if the act has caused damages. Not only the damages included in the statutory definition of the crime are subject to compensation, but also those damages which are an element of the specific criminal offense. Regarding the compensation for non-statutory damages from a crime, Interpretative Decree No. 9 of 25.12.1961 of the Plenum of the Supreme Court, amended by Decree No. 7/87, answers the question of whether the defendant should bear civil liability when acquitted of a crime for which 'significant' damages are a statutory requirement. For example, for embezzlement under Art. 219(1) CC to beconstituted, it is necessary that the defendant's activity results in 'significant damage, destruction, or dissipation of property, or other significant losses'. If the significance of the losses is not proven, an acquittal will follow, but this does not entail the dismissal of the civil claim. The claim should be awarded up to the amount of the proven damages, provided, of course, that the other prerequisites for civil liability are met.

The passing of a conviction does not always imply the awarding of civil claims, and conversely, the passing of an acquittal does not mean their dismissal. This understanding has found legislative expression in Art. 307 CPC, according to which „the court shall rule on the civil claim even when it finds that the defendant is not guilty, the criminal liability has been extinguished, or the defendant should be released from criminal liability”.

In the hypothesis where the commission of the act constituting a crime is proven, but the defendant's involvement in it is not proven beyond a reasonable doubt, an acquittal shall be passed and the civil claim shall be dismissed.

In the court's assessment of whether the act was committed culpably by the defendant, it should be borne in mind that under tort liability, fault is presumed untilproven otherwise. This means that a presumption operates which is opposite to the presumption of innocence in criminal procedural law. For this reason, when deciding on the subjective side of the committed act, a discrepancy is possible between the court's findings regarding the existence of a crime and a tort. A hypothesis is possible where the defendant, charged with committing an intentional crime - as are most of the offenses in the Bulgarian CC - is found not guilty by the judgment, yet the civil claim is awarded by the deciding body. The acquittal of the defendant for an intentional crime cannot result in the automatic dismissal of the civil claim. If it is established that the

damage is a result of the defendant's culpable conduct described in the indictment, even in the form of negligence, the civil claim should be awarded.

Unlike torts, crimes are exhaustively listed, and most of them constitute an offense only if committed intentionally. For this reason, it is possible for an act, which is not a crime due to the lack of an element of its statutory definition, to constitute a tort due to the violation of the general rule not to harm another (*neminem laedere*) (Salkova, E., *2017*, p. 206).

The passing of a conviction may also lead to the dismissal of the claim. To award a civil claim, it is not sufficient for the court solely to establish the commission of the crime by the defendant; it must also establish the occurrence of the claimed damages and that they were sustained by the person who filed the claim. By passing a conviction, the court finds that the committed act is unlawful and culpable, but for the ruling on the civil claim, it must also decide whether damages were caused, whether they are a direct and immediate consequence of the act, and what their amount is. In cases where the damage is an element of the statutory definition of the crime, these issues are resolved simultaneously with the criminal liability of the perpetrator.

In light of the above, *a ruling on the civil claim is always due; however, it should be dismissed when the grounds for the acquittal exclude the basis and the prerequisites for civil liability as well.*

It is within the powers of the court of first instance to award the filed civil claim in full, to award it in part, or to dismiss it. When it is established that the damages sustained are smaller in amount than those claimed in the action, the court shall award the claim only partially, up to the amount of the damages established in the case, whether pecuniary or non-pecuniary. In the event of a partially awarded civil claim, a dismissing operative part shall be issued for the unawarded portion of the claim. When the court finds that the amount of the damages caused is greater than those claimed, it does not have the procedural possibility to award more than what was requested (Radeva, R., 1972, 120–123).

Regardless of how the court rules on the filed civil claims, it is required to provide reasoning for its decision. The court is obliged to rule on and, accordingly, to provide reasoning for all objectively and subjectively joined claims, and reasons must be set out separately for both pecuniary and non-pecuniary damages, if such are claimed.

Upon passing the judgment, the court is obliged, of its own motion, to rule on the remand measure as well as on the measure for securing the civil claim – Art. 309(1) and (5) of the CPC (see criticism of the court’s obligation to address ex officio the issue

of the defendant's measure: Mitov, G., 2016, p. 170). The court shall rule by virtue of the law, without the need for a specific motion by the parties to the case. Measures for securing the civil claim may be taken as early as the pre-trial proceedings - Art. 73 CPC. Measures for securing the civil claim may also be imposed under the rules of the Serbian CPC – Art. 257. Differences exist in this regard as well, but their detailed examination falls outside the scope of this study.

Under Bulgarian legislation, it is not possible for the same claim for compensation for damages to be filed before a civil court as well. For this reason, Art. 318(5) CPC provides for the possibility for the civil claimant and the civil defendant to appeal the judgment if their rights and legitimate interests have been prejudiced. The appeal of the civil claimant and the civil defendant may be directed only against the judgment in its civil part, i.e., only on issues concerning the civil claim.

4.2. Adjudication on the filed property claim in the Republic of Serbia

Pursuant to Art. 258(2) of the Serbian CPC, *when the court declares itself incompetent over the criminal proceedings, it shall instruct the authorized person that they may file the property claim in the criminal proceedings that will be initiated or continued before the competent court*. There is no such provision in the Bulgarian CPC. Article 288(1) of the Bulgarian CPC provides that the court may terminate the criminal proceedings and remit the case to the respective prosecutor when it is established during the judicial investigation that the crime is subject to consideration by a higher court or a military court. However, there is no provision for the court to instruct the civil claimant that they may file their claim before the competent criminal court. Naturally, the civil claimant may do so, provided that the five-year statute of limitations for filing the claim has not expired.

Furthermore, *when the court passes a judgment acquitting the accused, or dismissing the charges, or when it terminates the criminal proceedings by an order, it shall instruct the authorized person that they may pursue the property claim in civil proceedings*. As previously stated, under Bulgarian legislation, hypotheses exist where the civil claim is awarded even when an acquittal is passed. However, the more significant difference lies elsewhere. The court must always rule on the filed civil claim, regardless of whether it awards or dismisses it. In most cases of an acquittal, the civil claimant's claim will be dismissed. In the Republic of Bulgaria, there is a principle of non-re-adjudication of disputes once they have been resolved by a final and binding decision – Art. 299(1) of the CCP of the Republic of Bulgaria. According to this

principle, a re-filed case shall be terminated by the court. This means that if the criminal court has ruled on the merits of the civil claim by awarding it in full, awarding it in part, or dismissing the filed civil claims, no new proceedings may be initiated before the civil court on the same grounds, between the same parties, and with the same subject matter.

Pursuant to Art. 258(4) of the Serbian CPC, it is provided that *in the judgment convicting the accused, or in the order imposing a security measure — mandatory psychiatric treatment - the court shall award the property claim in full or in part, and for the remainder, it shall refer the person to civil proceedings.* If the data from the criminal proceedings do not provide a reliable basis for either a full or a partial award, the court shall instruct the authorized person that they may pursue the property claim in full in civil proceedings. Firstly, in the Republic of Bulgaria, it is not possible for the court to rule on a civil claim within the order by which it rules on the imposition of compulsory medical measures (Chapter XXXIV, Section I of the CPC). Furthermore, what was stated above regarding the principle of non-re-adjudication applies; therefore, under Bulgarian legislation, there is no possibility for a person who has sustained damages from a crime to file a claim for the difference between what was awarded in the criminal proceedings and the dismissed part of their civil claim. The possibility of filing a claim before a civil court exists only when there is a difference in the parties, the subject matter, or the grounds between that claim and the one filed in the criminal proceedings.

The final two paragraphs of Art. 258 of the CPC of the Republic of Serbia refer to a property claim for the return of items or for the annulment of a specific legal transaction, a possibility which does not exist under Bulgarian legislation.

Of particular interest is the paragraph of Art. 255(1) of the CPC of the Republic of Serbia — authorized persons may, until the conclusion of the main trial hearing, abandon their property claim in the criminal proceedings and pursue it in civil proceedings. No such possibility is provided for in the Bulgarian CPC. The possibilities for abandonment or withdrawal of a claim are provided for in the Civil Procedure Code (CivPC). Pursuant to Art. 233 CivPC, the claimant may abandon the disputed right, in whole or in part, at any stage of the case. In such an event, they may not file the same claim again. Article 232 CivPC, on the other hand, regulates the withdrawal of the statement of claim. Given the subsidiary application of the CivPC in criminal proceedings, the civil claimant should also be able to abandon or withdraw their filed claims. Since the prosecutor may state that they do not maintain the charges — Art.

293 of the Bulgarian CPC — I see no obstacles for the civil claimant to abandon or withdraw their claims as well.

5. CONCLUSION

The pursuit of a property claim in criminal proceedings offers certain advantages compared to its resolution in civil proceedings. Firstly, it is more economical to resolve two subject matters (criminal and civil) in a single set of proceedings based on the same evidence. This eliminates the possibility of conflicting decisions on the criminal and civil issues. Furthermore, criminal proceedings are faster and less expensive than a civil trial. This issue stands the same under the legislation of both the Republic of Serbia and Bulgaria.

The present paper has primarily analyzed the differences between the legislations of the Republic of Bulgaria and the Republic of Serbia in the subject matter under consideration. The comparative legal analysis performed shows that, along with the highlighted significant differences, certain similarities are also established between the two legal systems. Particular attention deserves the framework in Serbian legislation, which allows for the filing of a property claim in criminal proceedings not only of a monetary nature but also for other forms of compensation for damages from a crime. This approach can be evaluated as both theoretically and practically effective, as it expands the possibilities for the protection of aggrieved persons. In this sense, the possibility for a potential improvement of the Bulgarian legal framework in such a direction should be a subject of in-depth discussion, with a view to achieving a more complete and effective protection of the rights and legitimate interests of victims of crimes.

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ГРАЂАНСКОПРАВНИ ЗАХТЕВ У КРИВИЧНОМ ПОСТУПКУ: КОМПАРАТИВНА АНАЛИЗА БУГАРСКОГ И СРПСКОГ ПРАВА

Сажетак

Извештај испитује сличности и разлике у правном оквиру Републике Бугарске и Републике Србије у омогућавању заједничког разматрања грађанске тужбе у кривичном поступку. Анализирани су услови за допуштање грађанскоправног захтева у оквиру кривичног поступка, при чему су разграничени материјалноправни и процесноправни захтеви. Такође се испитују специфичности судског одлучивања о грађанској тужби у кривичном поступку.

Кључне речи: имовинскоправни захтев, кривични поступак, компаративна правна анализа.

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