pogledi i mišljenja

Krstinic Dalibor*

UDK: 347.5:343(497.11)

COMPENSATION OF DAMAGES IN THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA

Abstract: Actuality on finding appropriate criminal sanctions has never lost significance. The practical actions of the legislator and theoretical considerations were related to criminal sanctions and special punitive measures. It is often stated in the literature that sanctions are specific in that they are aimed at protecting the general interests of a particular community. In the system of penalties for property fines belong to the group of the earliest known ones, they were accepted for the undoubted repressive and educational influence. The ways of their prescribing, measuring and pronouncing, as well as other relevant issues are the topics of this paper.

Keywords*: compensation for damages, property claim, material gain, Republic of Serbia*

1. Introduction

Penal damages can play a significant role in the domain of preventive action, but as a criminal law institute. This conclusion suggests our postwar penology experience and contemporary trends in comparative law. In that sense,

* Assistant professor, The Faculty of Law for Commerce and Judiciary in Novi Sad, The University of Business Academy in Novi Sad, e-mail: krstinicdalibor@yahoo.com

Frank[1] has the opinion that the penalty for remedying the damage differs from the compensation of damage in that it does not go to completely erase the consequences of the punishable offense, but its aim is to minimize its harmful social consequences. Therefore, the purpose of the penalty for remedying the damage is broader than the objective of compensation for damages. She does not have «in front of her eyes» only the interests of the injured party, but also the interests of the criminal who, by repairing the damage and repairing himself.

In the Criminal Code of the FNRJ[2] Immediately after the Second World War, a punishment for remedying damage was also prescribed, aimed at the destruction of socially dangerous activities, the re-education and correction of the perpetrator, deterring and preventing the perpetrator from committing criminal offenses, on general educational influence on other members of the society for deterrence from performing certain criminal offense.[3] Due to their focus on special prevention, criminal sanctions are strictly related to the personality of the delinquent. This characteristic is considered in the literature as a source of other distinctive features. It is often emphasized that penalties affect the personality of the perpetrator, and the sanctions that belong to the sphere of civil law - the property of the responsible person. However, Nikolic [4] states that it is stated only to a certain extent, because in practice, fines are imposed, which fall into the order of property sanctions, and besides, in our legal system, until recently there was also confiscation of property. Similar deviations can be observed in civil law. As an example, sanctions can be identified that do not affect the person's property, but affect his personality, for example, in case of public apology.

Some common features of civil and criminal offenses have led to the fact that civil and criminal law are closely linked in some cases, which implies certain similarities, but also differences. Differences are reflected in the diversity of cases they are subject to, in particular the principles and rules on which they operate, the manner in which these procedures are initiated, the course of the proceedings themselves, the types and content of the decisions they make, and so on.[5] On the other hand, it is common for them in both cases that

[1] Frank, S., (1950). Kazneno pravo – bilješke o Općem dijelu krivičnog zakonika od 4. XII. 1947. Zagreb, Jugoslavenska akademija znanosti i umjetnosti, p. 134.

[2] *Službeni list FNRJ*, br. 18/50.

[3] Nikolić, D., (1995). Građanskopravna sankcija – geneza i savremeni pojam. Novi Sad, Pravni fakultet, p. 144.

[4] Ibid. p. 142.

[5] Poznić, B., (1982). Građanskoprocesno pravo. Beograd, Savremena administracija, p. 74.

the court is obliged to establish the truth and make a legal decision both on a private and public complaint. In addition to deciding on a criminal offense, criminal proceedings may also be decided on minor cases other than a criminal law claim, such as property claim, costs of criminal proceedings, etc., if they are related to the main case.[6] It means that, in certain cases of criminal proceedings, a lawful litigation is allowed by law allowing the settlement of a property claim arising from a criminal offense. The litigation debate which, in connection with the filed property lawsuit, is conducted within a criminal case under the rules of criminal procedure is called an adhesion procedure. The management of any adhesion procedure further complicates the already complex work of the court because it requires the simultaneous conduct of two different court proceedings, which, despite being connected, retain their entity.[7]

2. Compensation in criminal law

The prescription, pronouncing and execution of sentences and other types of criminal sanctions has the priority objective of protecting social goods and values from all forms of exploitation and endangering. In order to accomplish this task, the competent criminal justice authorities apply appropriate types and measures of criminal sanctions. Criminal Law[8] (hereinafter referred to as the Criminal Code) prescribes criminal sanctions, which are: penalties, warning measures, security measures and educational measures. The measure of the security of confiscation of a case is a measure that is strictly limited to cases intended for the commission of a criminal offense and objects that have been committed by the commission of a criminal offense. It is primarily about cases that should not remain with the perpetrator, because by their very nature they can serve for the commission of a criminal offense or for reasons of security. The pronouncement of the measure is optional, and there are situations in which the seizure of the objects is prescribed.[9] Our legislator towards offenders predicted and a fine that is the sole property punishment in our criminal law.[10] It appeared very early in connection with the system of

[6] Vasiljević, T., (1981). Sistem krivičnog procesnog prava SFRJ, Beograd, Savremena administracija, p. 74.
[7] Više u: Petrušić, N., (1997). Adhezioni vanparnični postupci. *Pravni život,* 46(12), str. 119-131.
[8] Krivični zakonik, *Službeni glasnik RS*, br. 85/05, 88/05 – ispr., 107/05 – ispr., 72/09, 111/09, 121/12, 104/13, 108/14 i 94/16.
[9] Ibid., Chapter Six.
[10] Ibid., Articles 48-51.

composition, according to which the perpetrator of the criminal offense was forced to pay a certain sum of money to the injured party or his family as "compensation for the criminal act", which in effect avoided the use of blood revenge.[11] In this respect, the state initially reported only as a mediator, but in time it began to apply fines itself, that is, to charge the perpetrator a certain sum of money for the committed criminal act. In the Middle Century in addition to corporal punishment and the death penalty, a fine was frequently used. Ipak novčana kazna vremenom je potisnuta pojavom kazne lišenja slobode, da bi ponovo krajem XIX veka dobila širu primenu i to pre svega kao zamena za kratkotrajne kazne lišenja slobode. Novčana kazna se sastoji u plaćanju određenog novčanog iznosa u korist države, a naročito je pogodna za lakša krivična dela, može se primenjivati i na području tzv. srednjeg kriminaliteta.[12] It may be pronounced as a main or secondary penalty, and the term of payment of a fine is effective from the date of the validity of the judgment. Pursuant to the provisions of Article 49 of the CC, the fine is primarily imposed on daily amounts. When a fine is alternatively prescribed with a prison sentence, if a court decides to chose a fine, it can not be determined in a lesser amount than the one prescribed by law.[13]

2.1 The link between the seizure of unlawfully acquired property gain and compensation of damages

The measure of seizing property benefits as an independent institute is first mentioned in the General Criminal Code for the Kingdom of Norway in 1902. This measure, as an independent institute of criminal law in our criminal legislation, was introduced on July 2, 1959 by the Law on Amendments to the Criminal Code from 1951, and was classified into security measures.[14] With the adoption and entry into force of the 1976 SFRY Criminal Code [15] the measure of confiscation of property benefits is classified in our legislation in special measures. When it comes to the measure of taking away property gain, the issue of its legal nature is one of the most controversial. In legal theory

[11] Jovašević, D., (2005). Krivičnopravni aspekti prevencije imovinskog kriminaliteta. *Pravo - teorija i praksa,* 22 (7-8), p. 13.
[12] More in: Stojanović, Z., (2017). Komentar Krivičnog zakonika. Beograd, Službeni glasnik, p. 237-239.
[13] Krivični zakonik, op. cit., Article 50, paragraph 3.
[14] Vrekić, D., (1997). Mera oduzimanja imovinske koristi u krivičnom pravu, Novi Sad, Pravo, p. 27.
[15] *Službeni list SFRJ*, No. 44/76.

and comparative legislation, it is treated differently, as a punishment, security measure, specific criminal sanction, property law, etc. Determining the legal nature of this measure, in addition to theoretical, also has great practical significance, because it depends on the answer to many issues that arise as controversial in judicial practice, especially in relation to the determination of the proceeds of property in individual cases.[16]

In our current criminal legislation, this measure is regulated in a separate chapter (Chapter seven) of the Criminal Code because it is a measure that does not constitute a criminal sanction than a measure of *sui generis*.[17] Stojanović[18] emphasizes that because it is not confined or limited to a good perpetrator of the crime, but what does not belong to him in any way, it can not be a criminal sanction, and especially not a security measure, because there is no danger of committing a new criminal offense. It is a specific criminal law measure that is at the same time of a property right, and it is aimed at establishing the previous state, the situation before the crime was committed. It is based on the principle that no one can retain the property gain obtained by a criminal offense, on the basis of which it follows that confiscation of material gain is compulsory. The obligation to apply this measure excludes its subsidiarity in some cases, or if its goal is otherwise achieved (for example, if the injured party has set up a claim for property claim that corresponds to the amount of the benefit gained).

The confiscation of property gain is carried out by a court decision establishing that the criminal offense has been committed. It is also confiscated not only from the perpetrator of the criminal offense, but also from the other person who obtained such a benefit in a specific case by committing a criminal offense. In court practice and theory regarding the application of the mentioned measure, the issue of the term of property gain is considered, and it implies that any property effect that constitutes an unlawful profit for the perpetrator. In this case, the property effect implies not only money and objects, but also services, the use of certain objects, without giving adequate equivalent value, savings, etc., that is, everything that has some property value or financial effects. Confiscation of property gain may be complicated because it raises the question of whom to entrust worth keeping, especially perishable

[16] Kokolj, M., Lazin, Đ., (1986). Imovinske krivične sankcije i mere u jugoslovenskom krivičnom pravu, Beograd, Naučna knjiga, p. 186.
[17] The confiscation of proceeds is regulated by Articles 91 and 92 KZ.
[18] Stojanović, Z., op. cit., p. 363.

things or animals until the criminal, and then the execution procedure. This may affect a judge who can "foresee" the confiscation of property gain.[19]

In practice, determining the level of property gain appears as a controversial issue [20] which must be seized by a decision of the competent court. The position of the court practice can be seen on the basis of the Verdict of the Supreme Court of Serbia according to which "the court determines the amount of property gain obtained by the commission of a criminal offense ex officio and according to a free appraisal, using, if necessary, the opinion of an expert."[21]

It is relevant to point out that the confiscation of property benefits should be different from the rights of the injured party to the compensation for damages caused to him by the criminal offense. To that end, the provisions of the CC [22] regulate the protection of the rights of the injured party and the relationship of his right to the application of a special criminal law measure of confiscation of property gain. In this case, two situations are distinguished - when the injured party in the criminal proceedings filed a property claim and when he did not submit it. If the injured party in the procedure filed the property claim, two solutions are possible. According to the first decision, if in the criminal procedure the property claim of the injured party was adopted, the court impose the confiscation of property gain only if it exceeds the awarded property claim of the injured party and in that amount. And according to the second decision, if the injured party in the criminal proceedings in respect of his property claim is sent to a lawsuit, the injured party may request to settle from the confiscated proceeds provided he / she starts a lawsuit within six months from the date on which the decision for dismissing the decision becomes final (objective time limit).

If the injured party does not file a claim in the criminal proceedings in the criminal proceedings, he may claim forfeiture from the confiscated property gain only if, for the purpose of determining his claim, he initiated a lawsuit within three months of the knowledge of the judgment for the confiscation of property gain (subjective period), and the longest within three years from the date of the decision on the confiscation of property gain. In any case, the

[19] Nadrljanski, S., (2009). Zakon o oduzimanju imovinske koristi kao mera prevencije kriminaliteta u: Leposava Kron (urednik), Kazneno zakonodavstvo i prevencija kriminaliteta, Beograd, Institut za kriminološka i sociološka istraživanja, p. 320.

[20] More in: Vrekić, D., (1996). Utvrđivanje imovinske koristi u krivičnom pravu. *Pravo: teorija i praksa,* 13(10), p. 87-102.

[21] Presuda Vrhovnog suda Srbije Kž. Ok. 7/2005.

[22] Krivični zakonik, op. cit., Article 93.

injured party must within three months from the date of the validity of a decision that approved his property claim to seek settlement from the confiscated material gain.

3. Property Claim

The property claim is a lawsuit that is placed within the framework of criminal proceedings and therefore this procedure is conducted under the rules of a criminal rather than a litigation procedure. Thus, for example, proof is done according to the rules of criminal procedure, there is no judgment based on recognition.[23] Discussion of a property claim is a special type of procedure within the criminal procedure. More specifically, the criminal court goes beyond the scope of its ordinary competence, with the aim of effectively exercising its regular competence and with the aim of effectively exercising the rights of persons who have suffered a particular form of damage done by a criminal offense, discusses a request that is regularly realized within the framework of a civil procedure.[24] It can be said that the property claim in some way is a limited range. Namely, an authorized person in criminal proceedings can only claim compensation for damages, restitution of goods or annulment of certain legal transaction. On the basis of the foregoing, it can be concluded that a claim of property could not constitute an application to eliminate the risk of damage, which is otherwise permitted in a civil proceeding under the Law on Obligations.[25]

Depending on the stage of the proceedings, the claim for property claim may be filed with the public prosecutor or court, which is prescribed by Article 254, paragraph 1 of the Code of Criminal Procedure [26] (hereinafter referred to as the CPA) It is important to note that the filing of a claim for a property claim to the public prosecutor during the investigation phase has its procedural significance. In addition to the fact that such an action interrupts the obsolescence of claims, it also has an additional significance since the agreement between the public prosecutor and the defendant on the property

[23] Lazin, Đ., (2001). Imovinskopravni zahtev u krivičnom postupku za dela privrednog kriminaliteta u: Dobrivoje Radovanović i Đorđe Mihaljević (urednici), Privredni kriminal i korupcija. Beograd, Institut za kriminološka i sociološka istraživanja, p. 119-151.

[24] Ilić, P. G., Trešnjev, A., Majić, M., Beljanski, S., (2014). Komentar Zakonika o krivičnom postupku. Beograd, Službeni glasnik, p. 624.

[25] Zakon o obligacionim odnosima, Službeni list SFRJ, br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, Službeni list SRJ, br. 31/93 i Službeni list SCG, br. 1/03 – Ustavna povelja, Article 156.

[26] Zakonik o krivičnom postupku, *Službeni glasnik RS*, br. 72/11, 101/11, 121/12, 32/13, 45/13 i 55/14.

claim constitutes a compulsory integral part of the agreement on the recognition of a criminal offense [27] and agreement on the defendant's testimony.[28]

The property claim must be submitted until the trial is over before the first instance court. More precisely, it is about the moment when the president of the council and formally marks the completion of the main trial.[29] If an authorized applicant fails to file a claim for property right up to the moment, this will not preclude him from exercising his claim in civil proceedings. Also, submitting a request until the completion of the main trial is possible in the repeated procedure if the main trial is held. Resolving a property claim is characterized by complexity because the court also applies norms of civil law in addition to the norms of criminal law, which constitutes an additional burden for the judge.

The property claim can be made by an authorized person, and the authorized person is considered to be the one authorized to enforce such a claim in a lawsuit. An injured person may be the one who has suffered damage or is the owner or holder of the thing to be returned, and may also be the person who participated in the job to be canceled. The property claim in the criminal proceedings may also be imposed by persons who are not damaged by the criminal act, but to which the claim has been transferred out of the criminal offense. Namely, if the property claim is filed after the filing, and before the completion of the main trial, it is transferred to another person under the rules of property right, the person will be called to declare whether it remains with the request. If the invited is not responding, he is deemed to have given up the property claim.[30] The authorized person is most often damaged, but the damaged person can not make any property claim from the criminal offense in the criminal procedure and vice versa. An authorized person may, in the criminal procedure, only realize his property claims, not all of which are only those relating to compensation of damages, restitution or the annulment of a particular legal transaction.[31] Proposal for the fulfillment of other requirements, such as personal, family and similar, as well as public law requests, apart from criminal law, is not possible.

The issue of the waiver of the property claim in the criminal proceedings is prescribed by the provision of Article 255, paragraph 1 of the CPC. The said provision is not sufficiently precise because instead of giving up the

[27] Ibid., Article 314, paragraph 1, item 4.
[28] Ibid., Article 321, paragraph 1, item 4..
[29] Ibid., Article 414, paragraph 1.
[30] Ibid., Article 255, paragraph 2.
[31] Ibid., Article 252, paragraph 2

property claim, the legislator is talking about giving up the property claim, but by analyzing the same provision in which the legislator is talking about the possibility of obtaining a property claim in civil proceedings, it is clear that the situation in which an authorized person waived the request itself.

The property claim in a property proceeding must originate from the offense. Namely, according to the provisions of Article 252, paragraph 1 of the CPC, the legislature explicitly foresaw the possibility of discussing the property claim in a situation in which the request arises from the unlawful act designated by the law as a criminal offense. Therefore, the party can not demand that in the judgment on one criminal matter, its claim for compensation of damages[32] during the criminal proceedings suffered due to the illegal or irregular work of the court or individual workers in the court. An example may be the request for compensation of expenses which the party had to arrive at the court on the invitation in which the date was incorrect, although, according to the provision of Article 32, paragraph 2 of the RS Constitution, everyone has the right to compensation for pecuniary and non-pecuniary damage to which he is unlawful or irregular work is caused by a state authority, a holder of public authority, an autonomous province authority or a local self-government body.

In the criminal proceedings, the existence of the types and amount of damage caused by the criminal offense can not be established if the property claim is not set up, and such determination is not necessary for the application of the CC. In that case, it would be the gathering of evidence for a completely independent and only eventual dispute, which means that the claim must emerge directly from the work, that is, its consequence and there must be a proposal of an authorized person to discuss the property claim. In addition to the aforementioned conditions, the property claim in the criminal proceedings will be discussed only if it does not significantly delay the basic criminal proceedings. Namely, the discussion of the request should not be in terms of time, resources and capacity spent to overcome the debate on the basic criminal matter.

The property claim from the criminal offense if it is debated in the criminal proceedings will be debated before the criminal court competent for the criminal offense, regardless of the fact that a court of higher or lower ranking from the court hearing the criminal case would be competent to hear the same claim in civil proceedings , according to the value or nature of the dispute.

[32] The notion of damage and the scope of its compensation is determined by the rules of the obligation right.

Namely, it is a matter of association procedure and the rules on local and subordinate jurisdiction for civil litigation do not apply here.

The court is obliged to notify the authorized person who has not filed the property claim in the previous procedure that he can do so until the completion of the main trial. It is relevant to point out that the injured person is never called to apply, but only informs about one procedural opportunity. In criminal proceedings, when examining the injured party as a witness, the court is asked to ask whether he wants to obtain a property claim in criminal proceedings and, before a property claim is filed, to collect evidence and findings what is necessary for deciding on the request.[33] If the body of the proceedings, or the court decides not to discuss a claim for property claim, because the discussion about it would delay the criminal proceedings, it is obliged to collect data whose determination would not be possible later or would be significantly more difficult.[34]

Although a claim of property may be filed at any stage of the proceedings before any body that manages a particular phase, the decision on the application can be made only by a court. However, the court that declare itself incompetent at any stage of the proceedings can not make a decision on property claim, nor a decision on sending an authorized person to a lawsuit. In the aforementioned situation, the court can only instruct an authorized person to file a claim for property claim before a competent court when a criminal proceeding begins or begins. Once filed, the property claim is binding on the body of the procedure for hearing the defendant on the facts related to the request, as well as on checking the circumstances that are relevant to deciding on it. Depending on the stage of the proceedings, the body of the proceedings may be a court or a prosecutor, if the property claim is filed in a previous proceeding. However, the discussion of a property claim is not a primary task of a criminal court and therefore a court body should not allow the gathering of evidence and examining the circumstances of importance for deciding on a property claim threatens to lead the basic, criminal proceedings.

The court in criminal proceedings may award the property claim in whole or in part, exclusively in a judgment pronouncing the defendant guilty or in the decision on pronouncing the security measure of compulsory psychiatric treatment. More precisely, the court can fully accept the request of an authorized person both in terms of base and in terms of height,

[33] Zakonik o krivičnom postupku, op. cit., Article 256, paragraph 1.
[34] Ibid., Article 256, paragraph 2

awarding the property claim in its entirety. However, if the court assesses that the request is only partially established, for example, only in terms of height, the court property claim may be partially adopted, and for an excess authorized person to refer to a lawsuit. Any other decision authorizes the court only to refer the authorized person to the property claim in civil proceedings.[35] In this respect, when the accusation is dismissed against the defendant, he can not be obliged to pay compensation to the injured party, even when the accused agrees.[36]

The provision of Article 258, paragraph 5 of the CPC, prescribes the manner in which the court will act when adopting a property claim in respect of the return of the property. In this case, the decision on the adoption of a property claim will be imposed on the defendant, as well as to another participant in the criminal proceedings or to any third person in whom the matter is located, to hand over the matter to the injured party. Rejection of a decision on a property claim in criminal proceedings due to the delay of this procedure is not taken into consideration in cases where the court, for the purpose of resolving the criminal act itself, is obliged to determine the amount, that is, the value of the appropriated, evaded or misappropriated money or objects because these amounts must be precisely determined for the application of CC.

If the request is submitted by an unauthorized person, the court does not reject the request, but does not apply for its resolution and concludes that the person who appointed him does not have this legal right. Referring the injured party to a property claim to a litigation is a decision the court makes when rejecting this claim as unfounded. However, the law does not provide for such a decision, which means that the claim can not be settled negatively by the injured party. As a reason, it can also be stated that if the court rejected the request, the injured party should be allowed to appeal against such a decision, and this was precisely what he wanted to avoid in order to simplify the procedure.[37]

The court will refer the claimant to a lawsuit when issuing an acquittal, i.e. a judgment dismissing the prosecution or a decision to suspend the proceedings. It is relevant to point out that the fact that the defendant has not been found guilty does not exclude the possibility for an authorized person

[35] Ibid., Article 258, paragraph 3.
[36] Judgment of the Supreme Court, Kž., No. 50/90 dated November 14, 1990. Referenced by: Ilić, P. G. et al. (2014). Komentar Zakonika o krivičnom postupku. op. cit., p. 636.
[37] Lazin, Đ., op. cit., p. 145.

to succeed in litigation with his request, in accordance with the rules of civil law.

When filing a lawsuit, the court does not determine against whom the injured party can initiate a lawsuit - against the defendant or against a third person - and this depends solely on his will. If the court could convict the injured party in a judgment against a third party, this would tacitly mean the refusal of the claim to the defendant, which in the criminal procedure is not possible by law.[38] The decision to refer an authorized person to a lawsuit also constitutes a decision on the request. When the first instance court suspends the criminal proceedings due to the statute of limitations of prosecution and does not decide on the property claim, the second instance court has the power to change the first instance decision by deciding on the property claim.[39] Also, in addition to rendering a judgment pronouncing the defendant guilty of an offense or a decision on pronouncing the security measure of compulsory psychiatric treatment, the court may refer the person authorized to a litigation if the discussion of the property claim would lead to a significant delay in the procedure[40] or if the data of the criminal proceedings do not provide a reliable basis for either a full or partial trial. The very often stated ground is pointed out in the case-law as the reason for sending an authorized claimant to a lawsuit.

It is often the case that in practice, property claims are found that do not contain everything necessary to decide on them. Thus, authorized persons often declare that they claim a property claim, but they will subsequently determine the amount of the request, which, as a rule, is not done until the completion of the main trial or fail to provide evidence relevant to the determination of the damage sustained. Therefore, due to the lack of data on the basis of which a significant number of such procedures would be decided on the property claim, it will be concluded by referring the applicant to a lawsuit.[41] The impossibility of reapplying a property claim in the event of a denial applies only to criminal proceedings, which means that it does not prevent the filing of a claim with the same request in civil proceedings.

[38] Ibid.

[39] Presuda ASB, Kž. 2 br. 4250 od 16. novembra 2010. Referenced by: Ilić, P. G. et al. (2014). Komentar Zakonika o krivičnom postupku. op. cit., p. 633.

[40] Zakonik o krivičnom postupku, op. cit., Article 252, paragraph 1.

[41] Ibid. Article 258, paragraph 4.

Conclusion

When it comes to property offenses, the intention of the perpetrator of the criminal act to acquire the property for himself and the other is clear. It is an element of the criminal offense, so the property gain obtained by the crime is clearly and easily recognized. Therefore, it can be concluded that in these cases it is easy to obtain a claim and that no one can retain the property gain obtained by the criminal offense. Regardless of the recognizability of the material gain in these crimes, the study of theory and practice leads to the conclusion that the confiscation of property gain is rarely applied.

The property gain acquired by the offense for a long time was not confiscated by any special measure that would specifically be provided for in this criminal law. During the period of development of criminal law, the function of this measure was primarily a fine or confiscation of property. This function was partially achieved through the possibility of confiscation of objects obtained through criminal acts, and also through the possibility that the injured party from the perpetrator of the criminal offense would claim compensation for damage. The basic idea that led to the deterrence of a special measure for confiscation of property gain gained through criminal activity was, in accordance with the principle of fairness, to prevent the perpetrator from retaining any benefit from the committed criminal offense.

The specificity of the property claim is reflected in the fact that it does not realize the effect of punishing a perpetrator in the right way, but primarily tries to realize the principle that no one can benefit from committing crimes. In this sense, neither the state wants the property gain that is acquired illegally to become its property, but its purpose is to prevent its retention in the hands of persons who have acquired it and which it should not retain. For this reason, the existence of an institute of property claim of the injured party is relevant. The property claim requires damages for damages resulting from an offense. Relevant preconditions for initiating a property claim in criminal proceedings are that an authorized person has filed a claim and that it does not affect the prolongation of the criminal claim. If the court assesses that deciding on the request would significantly delay the criminal proceedings, the legislator should provide for the court's obligation that in this case the court is obliged to issue a reasoned decision to refer the injured party to a lawsuit against which the right of appeal would exist. The right to file a property claim is given to the injured party, but only on condition that it can be used if it does not influence the prolongation of the criminal proceedings.

Krstinić Dalibor
Docent, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Univerzitet Privredna akademija u Novom Sadu

NAKNADA ŠTETE U KRIVIČNOM PRAVU REPUBLIKE SRBIJE

Rezime: Aktuelnost na iznalaženju odgovarajućih krivičnih sankcija nikada nije gubila na značaju. Praktični zahvati zakonodavca i teorijska razmatranja bili su vezani za krivične sankcije i posebne mere kažnjavanja. U literaturi se često ističe da su kaznene sankcije specifične po tome što su usmerene na zaštitu opštih interesa određene društvene zajednice. U sistemu kazni imovinske kazne pripadaju grupi najranije poznatijih, prihvatane su zbog nesumnjivog represivnog i vaspitnog uticaja. Načini njihovog propisivanja, odmeravanja i izricanja, kao i druga relevantna pitanja tema su ovog rada.

***Ključne reči**: naknada štete, imovinskopravni zahtev, imovinska korist, Republika Srbija*

Literature

1. Frank, S., (1950). Kazneno pravo – bilješke o Općem dijelu krivičnog zakonika od 4. XII. 1947. Zagreb, Jugoslavenska akademija znanosti i umjetnosti
2. Ilić, P. G., Trešnjev, A., Majić, M., Beljanski, S., (2014). Komentar Zakonika o krivičnom postupku. Beograd, Službeni glasnik
3. Jovašević, D., (2005). Krivičnopravni aspekti prevencije imovinskog kriminaliteta. *Pravo – teorija i praksa*, 22(7–8), стр. 11-29
4. Krivični zakonik FNRJ, *Službeni list FNRJ*, br. 18/50
5. Krivični zakon SFRJ, *Službeni list SFRJ*, br. 44/76

6. Krivični zakonik, *Službeni glasnik RS*, br. 85/05, 88/05 – ispr., 107/05 – ispr., 72/09, 111/09, 121/12, 104/13, 108/14 i 94/16
7. Kokolj, M., Lazin, Đ., (1986). Imovinske krivične sankcije i mere u jugoslovenskom krivičnom pravu, Beograd, Naučna knjiga
8. Lazin, Đ., (2001). Imovinskopravni zahtev u krivičnom postupku za dela privrednog kriminaliteta. u: Dobrivoje Radovanović i Đorđe Mihaljević (urednici), Privredni kriminal i korupcija. Beograd, Institut za kriminološka i sociološka istraživanja, str. 119-151
9. Nikolić, D., (1995). Građanskopravna sankcija – geneza i savremeni pojam. Novi Sad, Pravni fakultet
10. Nadrljanski, S., (2009). Zakon o oduzimanju imovinske koristi kao mera prevencije kriminaliteta u: Leposava Kron (urednik), Kazneno zakonodavstvo i prevencija kriminaliteta, Beograd, Institut za kriminološka i sociološka istraživanja; str. 319-329
11. Poznić, B., (1982). Građanskoprocesno pravo. Beograd, Savremena administracija
12. Petrušić, N., (1997). Adhezioni vanparnični postupci. *Pravni život*, 46(12), str. 119-131
13. Stojanović, Z., (2017). Komentar Krivičnog zakonika. Beograd, Službeni glasnik
14. Vasiljević, T., (1981). Sistem krivičnog procesnog prava SFRJ, Beograd, Savremena administracija
15. Vrekić, D., (1997). Mera oduzimanja imovinske koristi u krivičnom pravu. Novi Sad, Pravo
16. Vrekić, D., (1996). Utvrđivanje imovinske koristi u krivičnom pravu. *Pravo – teorija i praksa*, 13(10), str. 87-102
17. Zakonik o krivičnom postupku, *Službeni glasnik RS*, br. 72/11, 101/11, 121/12, 32/13, 45/13 i 55/14.