

Summary

The duty to redress damage in criminal law

The aim of this paper is to present the most important changes made to the Polish Penal Code and Code of Criminal Procedure in 2015, as a result of which the duty to redress damage was transformed from a penal into a compensatory measure. The author of this paper aims to provide an answer to the question of what the nature of this measure should be, so that it does not collide with the other institutions of penal law and so that there are not doubts as to how to apply it in practice. As a result, it is essential to determine if the duty to redress damage in the Penal and Civil Code should differ as regards their function. The other question is to what extent the criminal procedure can draw from civil law as regards the duty to redress damage.

The conclusion reached in this paper is that the duty to redress damage in penal law should be compatible with the regulations of the civil law regarding liability for damages and compensation. The justification lies in the fact that the more this duty diverges from its counterpart within civil law, the harder it will be for injured parties to take advantage of this option. The duty to redress damage within penal law should not perform any function (especially a penal one) other than making it easier for the injured party to receive compensation for damages incurred as a result of a crime. The aim does not have penal character, and redressing damage in criminal law has a purely civil law nature. However, its presence in criminal law is justified in view of its aim, for this institution enables the injured party to receive a fair conviction in any one proceeding and an enforcement order with regard to their claims under civil law. In the opinion of this author, granting any other function to the duty to redress damage inevitably leads to conflict arising between its civil law nature and the criminal law aims ascribed to it.

Unfortunately, the present legislation does not fully realise this premise, although the legal changes of 2015 were undoubtedly a step in the right direction. It is unfortunate that the duty to redress damage within criminal law is to a certain degree still a penal measure. The main problem stemming from this fact is that criminal law requires the duty to redress damage in the form of a probation condition. While the duty to redress damage can still be ordered in a criminal case as a compensation measure, it is also still possible to order it in the case of a conditional suspended sentence, conditional discontinuance of proceedings and parole. Failure to perform this duty during the probation period may result in the cancellation of the probation measures if the court deems the perpetrator's acts to constitute intentional avoidance of fulfilling this duty.

It is for these reasons that the author postulates removing from the Criminal Code the duty to redress damage in the form of probation, while leaving compensation as the only possibility. The author's other proposals are: for the legislator to establish more precisely when the duty to redress damage caused can be ordered only partially; awarding the right for the victim to lodge an appeal with regard to the damage redress declared in the verdict; removing the possibility of ordering restitution for the injured party (it is inessential, as the duty to redress damage better performs the compensatory function of penal law); explanation given by the legislator as to whether it is possible when announcing a verdict of damage redress in penal proceedings: use the regulations of civil proceedings and impose this duty on the perpetrator together with penal interest.

Translated by Rob Pagett