

Compensation for the Damage Suffered Due to a Criminal Offence

If you have suffered loss, injury or damage as a result of a criminal offence, you have right to compensation of damage (legally defined as "property claim"). The damage you suffered as a result of the criminal offence can be material and non-material. Material damage is related to loss of your property and/or prevention of acquiring financial or property gain due to a criminal offence. Non-material damage is related to your physical or psychological pain and fear caused by the criminal offence. Aside from material and non-material damage compensation, the property claim can request recovery of an item that was taken from you or annulment of a specific legal transaction, e.g. if the contract was elicited illegally. During criminal proceedings you are entitled to have a legal representative.

What should I do?

If you have reported a crime or gave your statement to the police, tell the police about your injuries and any loss or damage that ensued because of the crime. Enquire with the police which prosecutor's office is in charge of investigation in your case.

Visit the prosecutor's office and find out who is the prosecutor in charge of your case. The prosecutor must enquire if you wish to file a property claim in case the perpetrator is prosecuted, and instruct you on what is needed for filing the property claim. Ask the prosecutor to explain everything you do not understand. It is important that you tell the prosecutor of expenses, any loss of earnings, pain and suffering that you may have experienced as a result of the criminal offence, for example, medical expenses or the cost of repairing or replacing your property. In this way you will help the prosecutor, as he has a duty to establish facts necessary for deciding on your property claim. You should also keep all receipts,

estimates or other documents related to any of these matters, if available, and submit them to the prosecutor in support of your property claim.

Ask the prosecutor whether he intends to make a plea bargain agreement with the perpetrator and ask him to inform you on time if this is the case. The prosecutor must give you the opportunity to give a statement on property claim.

Filing a property claim

You may submit the property claim with the prosecutor during the investigation or with the court at the trial. You can file the property claim orally or in writing.

If possible, it is important that you should express the value of your property claim and that you should support it with evidence of the damage you suffered.

Compensation in court

During the trial you will be again instructed to file a property claim with the court, in case you failed to do so with the prosecutor.

In case the prosecutor and the perpetrator concluded a plea bargain agreement which was accepted by the court, you have to be informed about this fact by the court.

After the presentation of the evidence, and before the verdict is reached, you have the right to give closing statements on the case.

Once the verdict is reached, you have the right to receive a copy of the verdict. You may appeal the verdict only as concerns the decision on the property claim and on the costs of the criminal proceedings.

If the perpetrator is found guilty by the court, the verdict should contain a decision and reasoning on the property claim that you pursued in the criminal proceedings. Exceptionally and for justified reasons, you may be instructed to pursue your property claim through a civil action.

If the court acquits the accused, rejects the charges, or if it decides to discontinue trial, it shall instruct you about the possibility of pursuing the property claim in a civil action.

Whether or not the perpetrator is convicted, you can sue him for damages in a civil action.

Victim or Witness of a Criminal Offence?

Know Your Rights And Duties

This leaflet has been developed by the OSCE Mission to Bosnia and Herzegovina to explain to you what to expect as a witness or victim of a crime and thus lessen your inconvenience throughout the criminal proceedings.

The Experience of Testifying

Who can be a witness?

If you reported a crime or if there is a possibility that you could give information about a crime, you can be heard as a witness by the police, the prosecutor and the court. You may also be called by a defendant to testify in his favour.

What if I receive a summons?

A summons is a prosecutor or court order asking you to be present at the time and place stated in order to testify. Once you are served with a summons, you are obligated to appear either before the prosecutor or the court as directed in summons. Your failure to appear may be understood as contempt of court and you may be fined by the judge. If you are unable to appear, you should inform the prosecutor or the court in advance of questioning and state your reasons. Tell the prosecutor or the court of any special needs due to a disability or illness, so that they may consider questioning you at your home, hospital or other appropriate location.

If you are employed, your employer must give you the time off in order to be heard as a witness. Your costs will be covered either by the prosecutor's office or the court. You can also be accompanied to the court by a person of your choice. However, a situation may arise when you cannot be accompanied by a person of your choice. For instance, in the event that the public is excluded from the main hearing.

Before the trial

If the prosecutor decides not to investigate a crime which you reported or of which you were a victim, or if the prosecutor decides to close the investigation, he must inform you of the reasons for doing so. In that case, you have a right to file a complaint with the prosecutor's office within eight days. Also, if the prosecutor decides to withdraw the indictment, he must inform you about such decision.

Testifying in trial: what will happen?

Main trial hearings are scheduled according to judges' availability to hear a particular case. Be prepared to wait. Court hearings can be and are postponed for any number of reasons. It is common procedure for the trial court to exclude all witnesses from the courtroom while others are testifying. This is to insure that your testimony does not influence the testimony of other witnesses. Do not discuss the testimony of witnesses who have already testified.

At the beginning of the hearing you will be asked to give your personal details, and then the prosecutor or the defence will ask you details of the event you testify about. Before you start your testimony, you will be asked by the judge to take an oath. During your testimony the most important thing to remember is always to tell the truth. You will be warned that false testimony represents a criminal offence. If you are a prosecution witness, you will be questioned by the prosecutor and then by the defendant's attorney, who may ask you additional questions. Although your answers may be challenged, remember that the questioning is not meant to be a personal attack against you. It is to ensure that all sides of the case are heard, because every person accused of a crime is presumed innocent until proven guilty in a final and binding verdict.

You may feel nervous or confused: this is normal. If you do not understand a question, do not be afraid to say so - ask for an explanation. You can ask for a break during the questioning if you feel stressed, tired or for other justified reasons. You have the right to be treated with respect, dignity and sensitivity while at the court and the judge is there to protect and assist you.

If any question posed by the prosecutor, the defence, or the court would expose you to criminal prosecution, you do not need to answer such question. The same applies if you are a victim of sexual offence and you are asked about your previous sexual experience. This is to protect your privacy.

In the case your child is to appear as a witness, she or he may be heard with the assistance of a pedagogue, psychologist or other professional. You have the right to be present when your child

is examined, except when this is contrary to the interests of the proceedings or the interests of the child's protection.

Once you have testified, you are free to leave the courtroom or remain in the audience, unless otherwise ordered by the court.

Unless the perpetrator of a crime pleads guilty or enters into a plea bargain agreement, his guilt or innocence will be determined at a trial on a date set by the court, and the verdict will be pronounced. You may be present in this hearing.

Can I be protected?

Various forms of protection are available to you and your family. You have the right to be protected from the perpetrator of a crime. The police, the prosecutor or the judge are required to inform you of protection available to you under the law. Your consent is needed for the application of all forms of protection. If you do not get this instruction, ask them at the beginning of your questioning to tell you which protective measures are available to you under the law.

If you require protection or psychological and social assistance, raise this with the prosecutor in the investigation, and the court after the indictment is raised against the perpetrator. This will help to ensure that you are adequately supported to testify.

You may be asked by them to state your reasons for requesting assistance and protection. These reasons can be:

If someone is making you feel afraid or distressed about going to court by saying or doing something, like following you, offering bribe, making threatening phone calls or threatening signals to you or your family, it is important to report this to the police and the prosecutor immediately.

Similarly, if you have been made vulnerable by your experience or suffered trauma, for example, you have been a victim of sexual offence, trafficking in human beings, rape, domestic violence, witnessing murder, certain protective measures or assistance may be afforded to you by the court. The same goes for your personal circumstances, such as, for example, physical disability or disorder.

If you are under 18 years of age, protection must be afforded to you automatically.