SECURING THE INJURED PARTY'S CLAIM FOR COMPENSATION: STRIKING AN APPROPRIATE BALANCE BETWEEN COMPETING INTERESTS*

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Abstract: The article examines the institute of securing the injured party's claim for damages in criminal proceedings and its relationship to the protection of the accused's fundamental rights. Its aim is to highlight the need to strike a balance between the effective protection of the injured party's rights and interference with the property sphere of the accused. The author analyses the legal framework and practice, focusing on the principle of proportionality as a key tool for assessing the legitimacy of such interference. The core of the article lies in the application of the proportionality test (suitability, necessity, and proportionality in the strict sense) when deciding on the securing of property. The article points out shortcomings in practice, particularly formalism, insufficient reasoning of decisions, and the weakening of the requirement to demonstrate the necessity of securing measures. It emphasizes that any interference with property rights must be individually assessed and proportionate to the pursued objective.

Keywords: injured party; damage; securing the injured party's claim; proportionality test

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1. INTRODUCTION

Securing the injured party's claim for damages [Sections 50 to 52 of the Slovak Code of Criminal Procedure (hereinafter also "Code of Criminal Procedure")] constitutes a protective, provisional, and pecuniary measure. Its purpose is to ensure the satisfaction of a claim for compensation for damage caused by a criminal offence, which the injured party has duly asserted in criminal proceedings in the prescribed manner. It therefore represents a mechanism by which the accused's rights are temporarily restricted, primarily in relation to their own property, as well as to other property rights connected to the accused in a specific, albeit in a direct or indirect manner, as specified in detail, in particular, in Section 50(1) of the Code of Criminal Procedure. Accordingly, the seizure of property under Section 50(1) of the Code of Criminal Procedure does

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not constitute a deprivation of property, but rather a regulation of the use of property.[1] Through this measure, an effective property reserve is created to secure the possible future satisfaction of the injured party's claim for damages lawfully awarded at the conclusion of the criminal proceedings. The institution under analysis thus serves to protect the injured party's property rights already during the course of criminal proceedings and, in its broader normative rationale, contributes to the currently much-discussed strengthening of victims' rights within criminal justice systems.[2]

On the other hand, this instrument may also operate as a means of confiscating proceeds, particularly those derived from economically motivated criminal activity. It should not be overlooked that the satisfaction of the victim's claim likewise serves to deprive the offender of gains obtained to the detriment of another's property and takes precedence over the imposition of a penalty of forfeiture or a protective measure involving the confiscation of property.[3] This mechanism is therefore frequently employed in connection with various forms of criminal activity associated with economic gain. Based on practical experience, these include, for example, various types of fraud offences (often credit fraud), breaches of duty in the management of another person's property, money laundering, offences affecting the financial interests of the European Union, tax offences, which are regulated as several formally distinct offences under the Criminal Code, and others.

The primary aim of this article is to outline some of the contentious aspects of securing the injured party's claim. Emphasis is placed primarily on experiences with the disproportionate securing of the injured party's claim (from the perspective of disproportionate interference with the accused's property rights), which recurs with a certain regularity; from this perspective, a call is made for the rigorous application of the proportionality test. From a methodological perspective, the method of abstraction is primarily used, as individual findings regarding the securing of the injured party's claim, obtained through an analysis of the literature and practical knowledge, are generalised

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1 See the judgment of the European Court of Human Rights in the case of *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, judgment of 9 October 2008, § 63.

2 Slovak criminal law devotes due attention to the issue of victims' rights in criminal proceedings, particularly under the influence of European legislation. This has manifested itself in a number of legislative initiatives, notably the enshrinement of the fundamental principle of the protection and support of victims of crime, which must be taken into account and applied when interpreting the individual provisions of the Code of Criminal Procedure. See ŠIMOVČEK, I. Procesné postupy ochrany vlastníckych práv poškodeného v trestnom konaní [Procedural Measures for the Protection of the Victim's Property Rights in Criminal Proceedings]. In: ROMŽA, S. – ŠTRKOLEC, M. – VINEROVÁ, B. (eds.). *KOŠICKÉ DNI TRESTNÉHO PRÁVA 2023, VII. ročník. Ochrana vlastníckeho práva normami trestného práva: zborník vedeckých príspevkov z celoštátnej interdisciplinárnej vedeckej konferencie s medzinárodnou účasťou konajúcej sa dňa 21.–22. 6. 2023 organizovanej Katedrou trestného práva Právnickej fakulty Univerzity Pavla Jozefa Šafárika v Košiciach* [KOŠICE CRIMINAL LAW DAYS 2023, 7th edition. Protection of Property Rights Through Criminal Law Norms: Proceedings of Scientific Papers from the National Interdisciplinary Scientific Conference with International Participation Held on 21–22 June 2023, Organised by the Department of Criminal Law of the Faculty of Law, Pavol Jozef Šafárik University in Košice]. Košice: Pavol Jozef Šafárik University in Košice, ŠafárikPress Publishing House, 2023, p. 79.

3 KURILOVSKÁ, L. – KORDÍK, M. Zaistenie vecí a majetku [Seizure of Items and Property]. *Právny obzor* [Legal Horizon]. 2020, Vol. 103, No. 1, p. 30.

for the purpose of drawing broader conclusions. The aforementioned analytical method is used to analyse the subject matter (the proportionality test in the context of securing the injured party's claim), both in part and in its entirety. In terms of the fundamental characteristics of the institution of securing the injured party's claim and identifying the most significant and fundamental connections in its development, the descriptive method is also applied. Its use, however, is determined by the objective of establishing a conceptual foundation serving as an appropriate starting point for further analysis. In addition, particularly in relation to monitoring legislative developments, both the historical-legal method and the comparative method are employed.

2. GENERAL CHARACTERISTICS OF SECURING THE INJURED PARTY'S CLAIM

The securing of the injured party's claim has traditionally been a standard feature of earlier criminal procedural frameworks[4] in force since the end of the legal dualism of the First Republic following the adoption of the Code of Criminal Procedure No. 87/1950 Sb.[5] It has consistently been associated with interference in the accused's property rights, which remains acceptable even in a democratic society, albeit in varying forms, scopes, and across different branches of law.[6] Under current legislation, this typically concerns the fundamental right to own property under Article 20(1) of the Constitution of the Slovak Republic and Article 11(1) of the Charter of Fundamental Rights and Freedoms, as well as the right to the peaceful enjoyment of possessions within the meaning of Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.[7] At the same

4 See, for example, FICO, M. *Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovej Československej republiky* [The Foundations of Criminal Liability in the Process of Unifying the Criminal Law of the Interwar Czechoslovak Republic]. Košice: Pavol Jozef Šafárik University in Košice, ŠafárikPress Publishing House, 2020, p. 5 et seq.

5 See in more detail JELÍNEK, E. – KEMLINK, V. – KUNC, J. – PŘENOSIL, G. – PŘICHYSTAL, V. – TOLAR, J. *Trestný poriadok a predpisy s ním súvisiace* [The Code of Criminal Procedure and Related Regulations]. Bratislava: Slovak Publishing House of Political Literature, 1958, pp. 76–78; and ROLENC, O. in: RŮŽEK, A. et al. *Trestný poriadok: komentár* [The Code of Criminal Procedure: Commentary]. Bratislava: Obzor, 1977, pp. 149–153.

6 In general, it may be stated that the fundamental right to own property is a right that may be restricted (subject to conditions) within the limits of proportionality. The case law of supranational human rights bodies, typically the European Court of Human Rights, is also based on these concepts. However, the forms of interference with the right to property vary, which in turn determines the rules for their assessment. See further TRELLOVÁ, L. in: ĽALÍK, T. et al. *Ochrana základných práv* [Protection of Fundamental Rights]. Bratislava: Wolters Kluwer, 2026, pp. 256 and 259.

7 The subject matter of property rights, as guaranteed by Article 20 of the Constitution of the Slovak Republic, is not limited to movable and immovable property; indeed, other rights of a proprietary nature may also be classified under this concept. See DROBNÁ, K. Právo vlastniť a pokojne užívať majetok aj v kontexte jedenásťročného sporu žalobcov [The Right to Own and Peacefully Enjoy Property, Also in the Context of the Plaintiffs' Eleven-Year Dispute]. *Acta Universitatis Carolinae Iuridica*. 2024, Vol. LXX, No. 3, p. 159. The Slovak legal system lacks a generally applicable legal definition of the term "property", which is thus subject to legal interpretation by law enforcement authorities and legal theory. For example, the

time, however, this measure does not constitute an irreversible interference with rights. The injured party's claim itself is determined only at a later stage of the proceedings, typically within civil proceedings attached to criminal proceedings, in separate civil proceedings, or, where appropriate, before another competent authority.[8] However, the financial securing of the claim, at the level of prevention, ensures that the decision on the obligation to compensate for the damage will not ultimately be merely an "unenforceable wish" with no beneficial effect on the injured party, but that it will also have a real, damage-reducing significance. This undoubtedly emphasises the compensatory role of criminal liability in its reparative aspect. As T. Balogh notes, although it is not a tool used very frequently in practice,[9] the securing of the injured party's claim is an effective mechanism aiding in the compensation of damage arising in causal connection with a criminal offence, and thereby also in the mitigation of the harmful consequences of the criminal offence.[10]

The jurisdiction to secure the injured party's claim is set out in Section 50(4) of the Code of Criminal Procedure and varies depending on the stage of the criminal proceedings. Such securing is legally permissible at both the earlier and later stages of the proceedings. In court proceedings, the decision to secure the claim rests exclusively with the court and is exercised on the basis of judicial discretion. The exercise of this power is therefore conditional upon a motion, which may be submitted by the prosecutor or the injured party's (victim). In pre-trial proceedings, the decision-making power is vested in the prosecutor, who may proceed in a similar manner upon a motion by the injured party. Where the seizure is initiated by the injured party, it is primarily their responsibility to present arguments justifying the interference with the accused's property rights. In practice, motions submitted by the injured party may be rejected where the competent authority finds them insufficiently substantiated. However, in accordance with the concept of preliminary proceedings and the supervisory role of the public prosecutor's office over the legality of the entire preliminary proceedings, the public prosecutor may also act *ex officio* in the preliminary proceedings, i.e. without a motion. In Slovak preparatory proceedings, the prosecutor is the entity that plays a decisive role during criminal proceedings ("master of the proceedings" – *dominus litis*). Therefore, if the prosecutor, in the preliminary proceedings, has concerns that securing the injured party's claim is necessary to protect the injured party's interests even without a motion (particularly where there is a risk of delay), they may proceed to secure the claim even without a motion. The injured party must be notified of the securing of their claim, with

Constitutional Court of the Slovak Republic, in its resolution in the case No. II. ÚS 31/04 of 17 December 2004, ruled that the concept of property encompasses things, rights and claims.

8 See, for example, PÚRY, F. – RICHTER, M. Problematické aspekty rozhodování o náhradě škody v tzv. adhezním řízení [Problematic Aspects of Deciding on Compensation for Damage in So-Called Adhesion Proceedings]. *Acta Universitatis Carolinae Iuridica*. 2023, Vol. LXIX, No. 3, p. 62 et seq.

9 Similarly, ŠANTA, J. Zaistenie nároku poškodeného v prípravnom konaní podľa § 50 Trestného poriadku [Securing the Victim's Claim in Pre-Trial Proceedings Under Section 50 of the Code of Criminal Procedure]. In: ZÁHORA, J. (ed.). *Prípravné konanie – možnosti a perspektívy* [Pre-Trial Proceedings – Possibilities and Prospects]. Prague: Leges, 2016, p. 207.

10 BALOGH, T. in: STRÉMY, T. – ŠAMKO, P. – KURILOVSKÁ, L. et al. *Trestný poriadok: praktický komentár* [Code of Criminal Procedure: Practical Commentary]. Prague: Wolters Kluwer ČR, 2024, p. 146.

an indication of the reasons for which the securing may be revoked [Section 50(6) of the Code of Criminal Procedure].

The assets subject to securing are defined in Section 50(1) of the Code of Criminal Procedure. A claim may be secured up to the probable amount of damage against the accused's property, including their property rights in legal entities in which they have a financial interest, property rights of related legal entities where the offence was committed on their behalf or for their benefit, and other property rights of the accused. Despite this relatively broad scope, only claims capable of being asserted within criminal proceedings may be secured, as the purpose of the measure is to ensure their future satisfaction. Accordingly, property exempt from enforcement under civil law, as well as protected claims such as wages, maintenance, and social security benefits, are excluded from securing. Further details are governed by the Enforcement Code.

In addition, the Code of Criminal Procedure regulates the procedural aspects of the revocation or restriction of the securing of the injured party's claim. During the proceedings, the accused may, at regular intervals, seek revocation or restriction of the securing pursuant to Section 95(8) of the Code of Criminal Procedure. Furthermore, the competent authorities are under an *ex officio* obligation to review whether the grounds for securing the claim have ceased to exist [Section 51(1)(a) of the Code of Criminal Procedure] or whether the scope of the securing requires restriction.[11] The grounds for revoking the securing of a claim are set out in Section 51 of the Code of Criminal Procedure. The securing shall be revoked if: (i) the grounds for it have ceased to exist; (ii) the criminal proceedings have been lawfully discontinued or have resulted in a final acquittal; or (iii) two months have elapsed from the date on which the judgment of conviction became final, or from the date on which the decision referring the case to another authority became final. With regard to the restriction of the securing of assets, it cannot be excluded that, as the proceedings progress and evidence is taken, the scope of the securing as originally determined may prove excessive. At the same time, however, the grounds for securing the claim may continue to exist in a more limited, factually substantiated form. In such circumstances, the securing must be appropriately restricted. Finally, where it is established that the securing has affected property belonging to a person other than the accused, or to a legal entity connected to the accused within the meaning of Section 50(1) of the Code of Criminal Procedure, such property must be released from securing to the relevant extent.

3. LEGAL COMPARATION WITH CHOSEN COUNTRIES

The institution of securing the injured party's claim for compensation for damage constitutes a relatively widespread procedural mechanism not only within the Central European legal space. Notwithstanding the conceptual framework of criminal proceedings, in which the injured party does not occupy a particularly prominent

[11] See the decision of the Constitutional Court of the Slovak Republic in the case No. III. ÚS 662/2023 of 21 December 2023.

position with regard to questions of guilt, the injured party is nevertheless vested with an effective legal instrument ensuring that their claim for damages will ultimately be satisfied, as such claim may already be secured during the pre-trial phase of criminal proceedings. Such a legal framework is undoubtedly to be welcomed, as it contributes to achieving the purpose of criminal proceedings, within which the injured party also participates as a procedural subject.

For the purposes of this contribution, it is essential to compare the Slovak legal framework with selected legal systems of neighbouring states.

The Czech legal regulation, contained in Act No. 141/1961 Sb., the Code of Criminal Procedure[12] (hereinafter also referred to as the "Czech Code of Criminal Procedure"), likewise provides for the securing of the injured party's claim for damages in Sections 47 et seq.

The Czech legislation adopts a broader approach to the securing of the injured party's claim, extending not only to compensation for damage but expressly also to non-pecuniary harm and unjust enrichment. Moreover, the Czech procedural code explicitly addresses the principle of proportionality by providing that a claim may be secured only up to the probable amount of the damage, non-pecuniary harm, or unjust enrichment. In comparison with the Slovak legal framework, this approach may be assessed in a distinctly positive manner.

A further difference lies in the scope of assets that may be subject to securing. While Slovak law allows for securing not only of the accused's property but also of the property of third parties, the Czech legal framework permits securing only with respect to the property of the accused.

Similarly to Slovak law, the decision to secure a claim may be taken by a court or, in pre-trial proceedings, by a public prosecutor, including *ex officio* where the protection of the injured party so requires and there is a risk of delay.

It may be positively assessed that Czech criminal procedural law provides the accused with the possibility to seek the revocation of the securing measure if the accused, or a third party acting with their consent, deposits with the court a sum corresponding to the probable amount of the damage, non-pecuniary harm, or unjust enrichment. It should be noted that Slovak law does not explicitly provide for such a mechanism, which may be regarded as a shortcoming. Nevertheless, it cannot be excluded in practice that, upon a motion by the accused, the prosecutor may revoke the securing in relation to a certain part of the property while simultaneously securing other assets so as to ensure that the injured party's claim remains adequately protected.

The Czech legal framework, similarly, to the Slovak one, also regulates the possibilities for seeking revocation of the securing measure and provides for a system of remedies in this area, albeit with certain differences. Overall, the Czech regulation appears more elaborate, detailed, and precise.

The possibility of securing the injured party's claim for damages is also provided for under the Polish Code of Criminal Procedure (Kodeks postępowania karnego),[13]

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[12] Act No. 141/1961 Sb., Code of Criminal Procedure, as amended.

[13] Act of 6 June 1997, Code of Criminal Procedure, as amended.

specifically in Articles 291 et seq. within the chapter "Property Security Measures" (hereinafter also referred to as the "Polish Code of Criminal Procedure"). However, Polish law does not contain a specific provision exclusively dedicated to securing the injured party's claim for damages. Instead, the regulation of securing measures applies more broadly, not only to compensation for damage but also to other pecuniary sanctions, such as fines or forfeiture of property, where there is a justified concern that, without such securing, the enforcement of the decision would be impossible or significantly impeded. A decision on securing may be taken by a court or, in pre-trial proceedings, by a prosecutor, including *ex officio* and without a motion by the injured party.

In terms of the scope of assets subject to securing, the Polish regulation is closer to the Slovak model than to the Czech one, as it allows for the securing not only of the accused's property but also of property belonging to third parties. Polish law, similar to Slovak and Czech law, also regulates the possibilities for seeking revocation of securing measures and provides for a system of remedies, albeit with certain differences. A notable feature is the possibility of imposing compulsory administration over an undertaking forming part of the secured property, such administration being carried out by an administrator authorised to conduct restructuring proceedings.

A comparison of Slovak and Polish law suggests that, although Slovak legislation contains specific provisions on securing the injured party's claim for damages, it does not appear to be more sophisticated or effective.

The Hungarian Code of Criminal Procedure[14] (Act XC of 2017) also provides for mechanisms aimed at securing the injured party's claim; however, these are not conceived as a distinct and explicit institution, as is the case in Slovak and Czech law. Rather, similar to the Polish approach, they are subsumed under general security measures, pursuant to which the property of the accused may be secured for the purposes of the future enforcement of a decision on damages.[15] A decision on securing may be taken by a court or, in pre-trial proceedings, by a public prosecutor, including *ex officio* and without a motion by the injured party.

A comparative analysis of the selected legal frameworks of four Central European states leads to the conclusion that not all legal systems recognise the securing of the injured party's claim as a distinct procedural institution. Slovak and Czech law, through their specific systematic structuring, emphasise the importance of this mechanism. By contrast, Polish and Hungarian criminal procedural law incorporate the securing of the injured party's claim within broader categories of security measures, such as those aimed at enforcing pecuniary penalties or protective measures, without the need for a separate legal framework.

Not all legal systems permit the securing of property belonging not only to the accused but also to third parties.

A distinctive feature of Czech law is the possibility of seeking the revocation of securing in relation to specific property by depositing with the court a sum

[14] Act XC of 2017, Code of Criminal Procedure, as amended.

[15] NAGY, A. Civil Claim in Hungary. In: ROMŽA – ŠTRKOLEC – VINEROVÁ (eds.), *c. d.*, pp. 594–602.

corresponding to the anticipated amount of the claim for damages. Czech law also provides for a broader scope of securing, explicitly encompassing not only compensation for damage and non-pecuniary harm but also unjust enrichment. Particular appreciation should be given to the explicit incorporation of the principle of proportionality into the statutory text, which is absent from Slovak legislation and will be addressed in subsequent parts of this article. By applying the comparative method, it may be concluded that, among the legal frameworks examined, the Czech regulation appears to be the most effective.

4. GENERAL ISSUES REGARDING THE CONCEPT OF PROPORTIONALITY

The proportionality test is now routinely applied to ensure a fair balance between competing interests in cases involving interference with fundamental rights and freedoms. In general, the requirement of proportionality functions as a safeguard ensuring that public authorities protect fundamental rights to the greatest extent possible, even where their restriction is necessary in the public interest or arises from a conflict with another fundamental right.[16] In the post-November period of legal development, the aforementioned principle began to be gradually applied in the case law of constitutional courts in the states of Central and Eastern Europe, including the Slovak Republic. This development forms part of the broader requirement of constitutionality, the safeguarding of which, consistent with the principle of subsidiarity in constitutional adjudication cannot rest solely with the Constitutional Court of the Slovak Republic. As the Constitutional Court of the Slovak Republic has repeatedly emphasised, it is the ordinary courts and other public authorities that, within the scope of their respective competences, fulfil the role not only of guardians of legality but also of primary guardians of constitutionality.[17] For the foregoing reasons, it is imperative that the requirement of proportionality in the context of interferences with fundamental rights be correctly and, indeed, primarily applied by law enforcement

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[16] ONDŘEJEK, P. Proporcionalita v ústavním právu České republiky – doktrinární zkoumání a judikatorní vývoj [Proportionality in the Constitutional Law of the Czech Republic – A Doctrinal Examination and Development of Case Law]. In: TÓTHOVÁ, M. – ŠOLTYS, D. (eds.). *Právo a ideál dobra a spravodlivosti: pocta Pavlovi Holländerovi k 70. narodeninám: zborník vedeckých prác* [Law and the Ideal of Goodness and Justice: A Tribute to Pavel Holländer on His 70th Birthday: Collection of Academic Papers]. Košice: Pavol Jozef Šafárik University in Košice, ŠafárikPress Publishing House, 2023, pp. 151–152.

[17] For example, the decisions of the Constitutional Court of the Slovak Republic in the case No. IV. ÚS 40/2020 of 4 February 2020; case No. IV. ÚS 489/2020 of 13 October 2020; and case No. II. ÚS 391/2024 of 3 September 2024. The Constitutional Court of the Slovak Republic noted, even at an early stage of its activity, that the relationship between constitutionality and legality is hierarchical. Legality is derived from the principles of constitutionality and must be in accordance with them. Constitutionality thus forms the core of legality (for example, the decision of the Constitutional Court of the Slovak Republic in the case No. II. ÚS 13/01 of 14 February 2001). This legal opinion has since become generally accepted in the case law of the Constitutional Court of the Slovak Republic, and the Constitutional Court of the Slovak Republic consistently adheres to it in its current decision-making (for example, the decision of the Constitutional Court of the Slovak Republic in the case No. IV. ÚS 311/2025 of 23 June 2025).

authorities and the ordinary courts. In a system founded upon the subsidiarity of constitutional adjudication, these bodies bear the primary responsibility for ensuring that any restriction of fundamental rights complies with the criteria of legality, legitimacy, and proportionality, thereby preventing the need for subsequent corrective intervention by constitutional courts.

While the doctrinal discourse on the forms, manifestations, transformations, and modalities of applying the proportionality test has developed extensively over time, a comprehensive engagement with these issues falls beyond the scope of the present article. For the purposes of this analysis, it is therefore sufficient to proceed from the established understanding of the proportionality test as a structured methodological tool for assessing the permissibility of interferences with fundamental rights.[18] The Constitutional Court of the Slovak Republic proceeds, in principle, from the assumption that an interference with constitutional rights and freedoms is permissible if the restriction has been established in accordance with the Constitution of the Slovak Republic by law, or on the basis of a law.[19] This concerns the requirement of a constitutional or statutory basis for an interference measure, which methodologically precedes the proportionality test and whose fulfilment does not, as a rule, give rise to significant difficulties in practice. However, beyond the requirement of legality, it is also necessary to assess whether the restriction of fundamental rights satisfies the requirement of proportionality. For this purpose, the proportionality test in the broader sense is applied, comprising several sequential steps. According to the case law of the Supreme Court of the Slovak Republic, this assessment requires an examination of the relationships between various elements associated with rationality and justice. As a legal principle, proportionality thus constitutes a structured analytical framework composed of a series of sequentially posed questions, designed to determine whether a legal measure interferes with fundamental rights and freedoms to an extent exceeding what is necessary.[20]

The proportionality test operates as a structured three-step analysis comprising suitability, necessity, and proportionality in the strict sense, as developed in constitutional doctrine and case law. Suitability (*Geeignetheit*) requires a rational connection between the measure and the objective pursued. Necessity (*Erforderlichkeit*) examines whether the objective can be achieved by less intrusive means. Proportionality in the strict sense (*Angemessenheit*) finally assesses whether the interference imposes a disproportionate burden on the affected individual. Proper application of all three steps is indispensable, as any deficiency at a single stage renders the interference constitutionally unjustifiable.[21]

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[18] These issues have been addressed in a relatively recent and very detailed manner by T. Ľalík in ĽALÍK, T. *Obmedzovanie ľudských práv a test proporcionality: teória a prax* [Restrictions on Human Rights and the Proportionality Test: Theory and Practice]. Bratislava: Wolters Kluwer, 2023.

[19] See Article 13(1) and (2) of the Constitution of the Slovak Republic and the decision of the Constitutional Court of the Slovak Republic in the case No. IV. ÚS 221/2023 of 15 May 2024.

[20] Decision of the Supreme Court of the Slovak Republic in the case No. 5Cdo/92/2024 of 25 June 2025.

[21] See the decision of the Constitutional Court of the Slovak Republic in the case No. Pl. ÚS 3/09 of 26 January 2011.

5. SECURING THE INJURED PARTY'S CLAIM IN LIGHT OF THE APPLICATION OF THE PROPORTIONALITY TEST

Having established the relevance of the proportionality test, the first requirement is the existence of a proper legal basis. Under Section 50(2) of the Code of Criminal Procedure, the securing of the injured party's claim must be effected by a decision subject to complaint.

In practice, however, securing has at times been carried out by order, based on the analogous application of provisions governing the seizure of funds under Section 95. This approach is problematic, as Section 95 explicitly provides for securing by order, which is not subject to the same procedural safeguards. Such inconsistency has significant constitutional implications, particularly due to the absence of an effective remedy against an order. Accordingly, any securing carried out by order must be remedied by issuing a proper decision, while the original order must be revoked in order to preserve legal certainty. The decision securing the injured party's claim must explicitly refer to Section 50(1) of the Code of Criminal Procedure, including the relevant subparagraph.

Its issuance is conditional upon several prerequisites: charges must have been brought under Section 206, as securing is not permissible at the stage of proceedings conducted merely "in the matter" under Section 199; the injured party must have duly asserted a claim for damages within the statutory time limit; and the accused must possess assets falling within the legally defined scope of property subject to securing. Furthermore, the decision must comply with Section 50(2) of the Code of Criminal Procedure and precisely identify the secured property; a generic reference to "all property" is insufficient. The description must be clear, specific, and tailored to the nature of the asset (e.g., bank accounts or immovable property). The measure may extend to subsequently acquired assets where justified. The accused must also be instructed on the prohibition of disposal and on their obligations concerning third-party rights. A separate decision imposing a prohibition on disposal is required, particularly in cases of *ex officio* securing under Section 50(4). Such requirements are essential to ensure legal certainty and foreseeability of the interference, without which the measure cannot withstand constitutional scrutiny.

The requirement of proportionality between securing the injured party's claim and protecting the accused's property rights is not explicitly codified in Sections 50–52 of the Code of Criminal Procedure. It is, however, implicitly reflected in several provisions, particularly the limitation to the probable amount of damage, the condition that the nature of the offence justifies the measure, the possibility of *ex officio* securing in cases of urgency, and the obligation to restrict the measure where it proves excessive.

Despite this fragmentary regulation, proportionality must be regarded as an inherent constitutional requirement stemming from the concept of the substantive rule of law. Its absence at the statutory level cannot justify its omission in application. As J. Rangl aptly observes, without balancing or at least taking due account of competing values, the rule of law in its substantive sense cannot be meaningfully realised. It is precisely within a substantive conception of the rule of law that such values must be balanced, not only in the sphere of law-making but also in the application of the law.[22]

In sum, the proportionality test must be applied in the context of securing the injured party's claim. While this measure serves as an effective instrument for the protection of the injured party's rights, it simultaneously constitutes a significant interference with the accused's proprietary sphere. Its application therefore requires a careful balancing of two competing interests: the effective protection of the injured party's claim and the safeguarding of the accused's fundamental rights, in particular the right to property. Failure to strike this balance may result either in insufficient protection of the injured party or in a disproportionate interference with the accused's rights. In both cases, the underlying deficiency lies in the improper application of the principle of proportionality, which may ultimately attain a constitutional dimension, as reflected in the case law of the Constitutional Court of the Slovak Republic. In the practical application of the proportionality test, the first step is the suitability test, which requires assessing whether the interference with the accused's property is capable of securing the injured party's claim. This presupposes at least a preliminary demonstration of damage, supported by factual findings, its provisional quantification, and a causal link to the alleged conduct.

A mere formal assertion of a claim is insufficient; it must be substantiated by relevant evidence (e.g., expert opinions or financial documentation). Otherwise, the measure fails to meet the constitutional requirement of proper reasoning inherent in the suitability test. At the same time, the burden of substantiating the existence and scope of the claim cannot be replaced by presumptions favouring interference with property rights, as this would invert the logic of the proportionality test and undermine its protective function. Where the extent of damage is subsequently revised, the scope of the securing must be limited accordingly in the interest of proportionality.[23]

The second step in the proportionality test is to determine *the necessity* of issuing the seizure order. Constitutional guarantees of the right to own property require that any interference with it be not only lawful and appropriate, but also necessary. This requirement is arguably the least clear in the Code of Criminal Procedure *de lege lata* and is explicitly linked only to a relatively vague and narrowly defined provision which allows the prosecutor to secure the injured party's claim in the preparatory proceedings even without a motion, if *there is a risk of delay (ex mora)*. However, the risk of delay does not constitute an explicit condition for securing a claim; accordingly, this factor is not applicable either in court proceedings or in pre-trial proceedings where the securing of the injured party's claim is effected upon a motion. On the other hand, the requirement of necessity as a condition for interference with property rights is implicitly embedded in the fundamental principles of criminal proceedings. These principles

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22 For further details, see RANGL, J. Test proporcionality vo vnútroštátnom a nadnárodnom práve [The Proportionality Test in Domestic and Supranational Law]. In: BECKOVÁ, D. – GIERTL, A. (eds.). *Miesto, úloha a význam vnútroštátneho práva pri zabezpečovaní plnenia záväzkov vyplývajúcich z medzinárodného práva a európskeho práva* [The Place, Role and Significance of Domestic Law in Ensuring the Fulfilment of Obligations Arising from International Law and European Law]. Košice: Pavol Jozef Šafárik University in Košice, 2018, pp. 16–17.

23 ŠANTA, *c. d.*, p. 206.

permit interference with the rights of individuals most notably the accused's right to property only to the extent necessary to achieve the purpose of the criminal proceedings [Section 2(2) of the Code of Criminal Procedure]. In the present context, this principle constitutes a guiding maxim which, even from a doctrinal perspective, must govern all institutions of criminal procedure, including the mechanism of securing the injured party's claim.[24]

In the context of the necessity component, it must be noted that, with effect from 1 January 2021,[25] the legislature removed the condition for the seizure of property in the form of a reasonable fear that the satisfaction of the injured party's claim would be *"thwarted or impeded"* from Section 50(1) of the Code of Criminal Procedure. The explanatory memorandum justified this amendment rather superficially by stating that, in practice, it is "relatively" difficult to prove that this condition has been met, adding that the condition in question is replaced by the condition that seizure may only be carried out *"if the nature of the offence so requires"*. Although the nature of the offence is undoubtedly linked to the proportionality of the interference with the accused's property and, to a certain extent, also limits it, in reality this is a distinct, less informative category, which relates to the offence already committed and not to subsequent, dubious conduct of the accused aimed at obstructing or hindering the satisfaction of any claim by the injured party. A lack of evidence, or the unsatisfactory investigative work of law enforcement authorities regarding the obstruction or hindrance of the satisfaction of a claim cannot be replaced by legislative interventions that lower evidential standards and thus essentially mitigate – or adjust – the requirements imposed on property interventions.

Where intervention is necessary, in the context of the Code of Criminal Procedure effective from 1 January 2021, a fundamental question also arises as to what the primary purpose of an invasive property measure should be in terms of its material necessity, if there is not even the slightest indication of a risk to the satisfaction of the injured party's claim. In practice, situations often arise where the claims of injured parties are secured against the assets of the accused for many years, even though the accused do not transfer or conceal their assets in the slightest (not even before charges are brought).[26] At the same time, the accused often participate properly in the proceedings;

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24 ČOPKO, P. Uplatnenie zásady primeranosti a zdržanlivosti pri úkonoch zaistenia vecí [Application of the Principles of Proportionality and Restraint in the Seizure of Property]. In: ROMŽA – ŠTRKOLEC – VINEROVÁ (eds.), *c. d.*, p. 466.

25 Amendment to the Code of Criminal Procedure implemented by Act No. 312/2020 Sb. on the enforcement of decisions on the seizure of property and the administration of seized property and amending and supplementing certain acts.

26 In the opinion of the Constitutional Court of the Slovak Republic, specific circumstances of the case may indicate an attempt to obstruct or hinder the victim's claim, and this may also involve conduct prior to the bringing of charges (the commencement of criminal proceedings). This then undermines any argument by the accused regarding the lack of grounds for securing the claim, which seeks to take into account only their conduct after charges have been brought. See the decision of the Constitutional Court of the Slovak Republic in the case No. III. ÚS 662/2023 of 21 December 2023 (point 17). In other words, the injured party's claim may be secured only after charges have been brought, but the grounds for the procedure in question may also be derived *ex post* from the accused's improper conduct prior to the bringing of charges.

in other words, they do not obstruct the course of the criminal proceedings through obstructive behaviour or any other undesirable conduct. Notwithstanding this, the injured party's claim is frequently secured without a proper proportionality assessment being carried out, particularly in situations where the accused's sufficient solvency is demonstrated (for example, on the basis of their documented financial situation). In such cases, the measure is applied almost automatically, even in the absence of any specific circumstances giving rise to a reasonable concern that the future enforcement of the injured party's claim would be jeopardised – assuming that such a claim will ultimately arise at all. Such an approach must be consistently rejected in the practice of criminal justice authorities. Where the necessity of securing the claim is not demonstrated, the essential precondition for interference is absent, and the resulting measure constitutes an unjustified interference with the fundamental right to property, lacking a sufficient constitutional basis. The validity of this conclusion is further supported by doctrinal developments following 1 January 2021. These developments reflect a well-founded concern that, despite the formal removal of the statutory requirement of a reasonable fear that the satisfaction of the injured party's claim would be thwarted or impeded, this element continues to operate as a *de facto* prerequisite for the lawful application of measures securing the injured party's claim.[27] Finally, if the aforementioned element of proportionality (necessity) is to be expressed more generally as *"the risk of delay"* (an indispensable condition for securing the injured party's claim without a motion by the prosecutor in the preparatory proceedings – Section 50(4) of the Code of Criminal Procedure) also be interpreted from 1 January 2021 precisely in the sense of the prosecutor's knowledge of assets drained, being drained, or planned to be drained as a result of criminal proceedings,[28] then a certain discriminatory double standard arises: It is, at the very least, questionable why, in preparatory proceedings concerning the *ex officio* securing of an injured party's claim, there must continue to be a risk of the satisfaction of such a claim being thwarted or impeded as a result of the accused's improper conduct, whereas in other cases such a concern need not exist. The proposed construction has no rational basis, particularly in light of the explanatory memorandum to the amendment to the Code of Criminal Procedure No. 312/2020, which justified the categorical removal of the proportionality requirement – in the sense of the risk of the accused frustrating or hindering the satisfaction of the injured party's claim – from Section 50(1) of the Code of Criminal Procedure on the grounds of the burden of proof. There is apparently no reasonable or necessary answer, for example, to the following question: If the injured party's claim is secured in the pre-trial proceedings upon application, is proving the risk of frustration or hindrance to that claim "burdensome in terms of evidence", but if the securing is carried out by the public prosecutor *ex officio*, is it – a priori – simpler in terms of evidence?

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[27] P. Polák states (2025) that *"the appropriateness of securing a claim for damages comes into consideration when the accused disposes of their property in such a way as to prevent or hinder the satisfaction of the injured party from that property (e.g., by concealing, selling or donating their property, etc.)"* – POLÁK, P. in: IVOR, J. – POLÁK, P. – ZÁHORA, J. *Trestné právo procesné I: všeobecná časť* [Criminal Procedure Law I: General Part]. 3rd ed. Bratislava: Wolters Kluwer, 2025, p. 299.

[28] BALOGH, *c. d.*, p. 147.

Finally, the third step in balancing the conflicting interests of the injured party and the accused is *proportionality in the narrower sense*. Within this component, it is necessary to assess whether the interference with the accused's fundamental right to own property constitutes a disproportionate burden in relation to the pursuit of the primarily public objective of prosecuting criminal offences. In this context, this is positively linked, in particular, to the effectiveness of the investigative process. Proportionality in the narrower sense takes on particular significance in protracted criminal proceedings, where the justification for the damage and its extent should be strengthened in comparison with the initial stages of the criminal proceedings. One must not forget the fundamental principle of criminal proceedings laid down in Section 2(6) of the Code of Criminal Procedure, according to which cases in which property has been seized must also be dealt with as a matter of priority and expeditiously, without unnecessary delay. Proportionality in the narrower sense may not be met, for example, where the accused's ability to carry out business activities is disproportionately restricted as a result of the prolonged seizure of property (often lasting several years). However, this aspect cannot be applied mechanically, but must take into account all the specific details of the case. It is necessary, for example, to consider whether the accused is attempting to frustrate the injured party's claim, or has in some way culpably contributed to the prolongation of the criminal proceedings (if so, for what reasons and in what sequence of events), whether the criminal proceedings are factually and legally complex, involving (sophisticated) economic criminal activity, or possibly multiple accused persons, and so on.

Conversely, proportionality in the narrower sense is not linked to the necessity of facts indicating that the property seized for the purpose of securing the injured party's claim must constitute an instrument or proceeds of criminal activity. Such considerations have also arisen in discussions, particularly with defence counsel. Their methodological basis lies primarily in an attempt at a systematic interpretation taking into account the internal links between the provisions of the Code of Criminal Procedure. The requirement that the seized assets constitute a probable instrument or proceeds of criminal activity is, in fact, presupposed in Section 95(1)1 of the Code of Criminal Procedure in connection with the more generally conceived institution of the seizure of funds, on the basis that this provision must also be applied to the seizure of the injured party's claim (the legal principle of analogy contained in Section 50(2) of the Code of Criminal Procedure). However, this approach is incorrect, because although the securing of the injured party's claim may, on a secondary level, also result in, for example, the confiscation of proceeds from criminal activity of an economic nature (as indicated in the introduction to this article), the primary purpose of this institution is to satisfy the injured party's claim arising from damage caused by a criminal offence. Moreover, the damage may be effectively compensated even from funds which, in the specific case, were not even likely proceeds or instruments of the criminal activity that resulted in the damage. The seizure of property without such a direct link to criminal activity will therefore not in itself constitute an unreasonable burden on the accused. From the perspective of legal-theoretical insights into the structure of the legal system, it must be emphasised that the "reasonable" application of certain provisions referred to in another provision – in this case, the provision of Section 95(1) of the Code of Criminal Procedure cited in Section 50(2) of the Code of Criminal Procedure – cannot mean a mechanical application. Such a literal application would amount to an application that fails to take into account the particularities and specific features of the relevant legal institution (similar factual circumstances) requiring "only" an appropriate application.[29] In other words, we are speaking of an analogy *intra legem* foreseen in advance by the legislature, where the word "appropriately" in Section 50(2) of the Code of Criminal Procedure does not mean the derivation of the same, but only certain legal consequences in comparison with the securing of funds under Section 95(1) of the Code of Criminal Procedure.[30] The noted disparity (deviation) will lie in the fact that, from the perspective of the consequences of applying the seizure of the injured party's claim, it will also be possible to seize property where there is no concern that it constitutes the proceeds or an instrument of criminal activity.

6. CONCLUSION

It may be summarised that the securing of the injured party's claim for compensation for damage caused by a criminal offence constitutes a traditional instrument of criminal procedure, the primary purpose of which is to ensure the effective enforceability of the injured party's claim, the satisfaction of which might otherwise be frustrated in the course of criminal proceedings, particularly following the bringing of charges against a specific person. Within the framework of contemporary criminal policy in democratic states governed by the rule of law, this measure significantly strengthens the position of the victim while also contributing to the mitigation of the harmful consequences of criminal activity, especially in cases of economic and financial crime.

On the other hand, it cannot be overlooked that securing the injured party's claim involves an interference with the accused's fundamental right to own property, which may also have knock-on effects on other fundamental rights, such as the fundamental right to use the seized property for business purposes. Therefore, the application of the proposed institution must be subject to strict constitutional criteria, specifically objectified in terms of legality and proportionality. The key tool for balancing conflicting interests is the principle of proportionality, which is traditionally applied in three steps: through tests of suitability, necessity, and proportionality in the strict sense. Law enforcement authorities and courts are obliged to examine not only the likelihood of the existence

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29 TOMAŠ, L. Zaistenie výkonu trestu prepadnutia majetku optikou rozhodovacej praxe Ústavného súdu Slovenskej republiky [Enforcement of the Penalty of Forfeiture of Property Through the Lens of the Case Law of the Constitutional Court of the Slovak Republic]. In: ROMŽA – ŠTRKOLEC – VINEROVÁ (eds.), *c. d.*, p. 578.

30 For a general overview, see ŽÁK KRZYŽANKOVÁ, K. K dotváření práva cestou analogie aneb jak zvýšit legitimitu a prosystémovost analogické argumentace v právu [On the Development of Law Through Analogy, or How to Enhance the Legitimacy and Pro-Systemic Nature of Analogical Reasoning in Law]. *Acta Universitatis Carolinae Iuridica*. 2021, Vol. LXVII, No. 1, pp. 39–40; and HARVÁNEK, J. in: HARVÁNEK, J. et al. *Teorie práva* [Theory of Law]. Plzeň: Aleš Čeněk, 2013, pp. 297 and 299.

(occurrence) and extent of the damage, but also the genuine need for intervention in the accused's property rights, including the question of whether the objective pursued cannot be achieved by other means.

Legislative and enforcement practice reveals a number of problematic aspects, in particular the insufficient reasoning behind seizure decisions, the choice of inappropriate decision-making procedures resulting in the risk that the seizure cannot be reviewed within the criminal justice system, a formalistic approach to assessing the conditions for seizure, and a weakening of the requirement to demonstrate the risk of frustration or hindrance to the satisfaction of a claim. There is no doubt that, although a decision on the seizure of property rejecting the accused's complaint need not take into account every single detail of their argument, it must, in line with the first-instance seizure order, justify the proposed protective measure sufficiently convincingly.[31] The issue of the scope and duration of the seizure also requires particular attention, as a long-term and disproportionately broad seizure may constitute a disproportionate burden, for example in relation to the accused's business operations. This may result in significant economic damage or even the complete economic ruin of the business entity. In this context, it is therefore essential to emphasise that proportionality must be examined not only when ordering the seizure, but also throughout its subsequent course, including the possibility of its restriction or revocation.

It may be concluded that the securing of the injured party's claim is not only a lawful but also a legitimate and, in many cases, highly effective instrument of criminal proceedings. Its effectiveness and constitutional conformity, however, depend on a careful and individualised assessment of the specific circumstances of each case. Only through the consistent application of the principle of proportionality and a sensitive balancing of the rights of the injured party and the accused can this instrument fulfil its function without giving rise to unjustified interference with fundamental rights, thereby contributing to the realisation of the requirements inherent in a substantive rule of law.

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[31] See, for example, the decision of the Constitutional Court of the Slovak Republic, in the case No. III. ÚS 662/2023 of 21 December 2023 (in particular paragraph 16).