

Insolvency & Restructuring - Austria

No determination of insolvency claims in criminal proceedings

Contributed by [Graf & Pitkowitz Rechtsanwälte GmbH](#)

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Austrian law on criminal procedure provides that victims of crimes may join criminal proceedings in order to recover damages from these crimes in the context of these proceedings. This makes it easier for victims of crimes to assert claims towards offenders and avoid expensive civil lawsuits. However, it has hitherto been unclear whether injured persons could also join criminal proceedings as private parties if the offender has filed for insolvency.

In a recent decision⁽¹⁾ the Supreme Court ruled that creditors may join criminal proceedings as private parties to assert claims against the insolvent offender only if the claims:

- result from the prosecuted criminal action;
- arose after insolvency proceedings were opened; and
- are not affected by the effects of the insolvency proceedings.

If claims for damages arose before insolvency proceedings were opened in respect of the debtor, the claims cannot be asserted in the criminal proceedings by way of joining the proceedings as a private party; instead, the creditor must lodge its claim with the insolvency court and the court will examine the claim. The insolvency court is solely responsible for deciding on the existence of insolvency claims.

An injured party may not join criminal proceedings as a private party against the insolvent injurer, as it can only seek the determination of an insolvency claim. An injured party may join criminal proceedings as a private party only if the private law claims asserted by the victim can be lawfully decided on the merits despite the fact that insolvency proceedings are pending against the injurer. Such claims must be unaffected by the results of the insolvency proceedings, and are hence exclusively claims for damages that have arisen after the opening of insolvency proceedings as a result of offences committed after the opening of insolvency proceedings.

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Endnotes

(1) Supreme Court June 7 2011, Case 12 OS 59/11 k.

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