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Generic Damages Awards in Criminal Proceedings and Evidentiary Requirements

Evidentiary Requirements under Article 539 of the Italian Code of Criminal Procedure Between Attempted Offences and Protection of the Aggrieved Party in Light of Judgment no. 10570/2026

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Current Legal Framework as of 10 November 2026: The Italian Supreme Court of Cassation redefines the boundaries of a generic damages award sought by a third-party guarantor in cases of attempted criminal offences, ruling out automatic presumptions in the absence of summary proof of actual pecuniary loss.

ABSTRACT

This contribution examines the substantive and procedural requirements governing a **generic damages award** under Article 539 of the Italian Code of Criminal Procedure, analysing the evidentiary distinctions between the direct victim of the offence and a merely aggrieved party in cases of attempted crimes. Viewed through the lens of the latest ruling of the Italian Supreme Court of Cassation, Criminal Division, the analysis demonstrates that a compensatory claim brought by a third-party guarantor requires summary proof of the ***an debeatur***, thereby overcoming the view that the mere abstract injurious potential of the conduct automatically suffices. The study also investigates the procedural repercussions arising from an appeal limited solely to civil effects under Article 573 of the Code of Criminal Procedure, the civil standard of proof based on the **preponderance of probabilities**, and the binding preclusive force that criminal ***res judicata*** exerts upon subsequent civil proceedings for the quantification of damages.

Key Takeaways

- **Rejection of automatic presumptions of harm:** In attempted criminal offences, the presumption of damage typical of completed offences does not operate, requiring the criminal court to ascertain, at least on a summary basis, the historical existence of the *an debeatur* before issuing a generic damages award.
- **Distinction between direct victim and aggrieved party:** Whereas the direct victim of the offence benefits from presumptions inferable from the infringement of the protected legal interest, a third-party guarantor bears a specific burden of pleading and proving the pecuniary loss or moral suffering actually sustained.
- **Evidentiary standard upon appellate remand:** An appeal lodged solely for civil effects requires the appellate or remand court to apply the civil standard of proof of "more probable than not", detaching the assessment from the criminal standard of guilt beyond any reasonable doubt.
- **Binding *res judicata* effect on liability:** Once final, a generic damages declaration irrevocably binds the civil court as to the entitlement to compensation, precluding defences based on the limitation period (*prescrizione*) and converting the original short term into the ten-year period under Article 2953 of the Italian Civil Code.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Criminal Law & Civil Liability from Crime

LEADING DECISION
Italian Supreme Court of Cassation, Criminal Division, Judgment of 19 March 2026, no. 10570 — A generic damages award under Artic

Legal Principle / Editorial Headnote

For the purposes of a generic damages award under Article 539 of the Italian Code of Criminal Procedure, the abstract injurious potential of the unlawful conduct does not suffice: where the offence remains at the stage of an attempt and the claim is brought by an indirectly aggrieved party, summary proof of the an debeatur is required.

01. FACTUAL BACKGROUND AND PROCEDURAL PREREQUISITES OF THE CIVIL ACTION

1.1 — Attempted Fraud and the Civil Party Intervention of the Insurer

The procedural rules governing a **generic damages award** within criminal proceedings intersect with delicate balances between compensatory protection for the aggrieved party and the procedural safeguards afforded to the defendant. The mechanism set out in **Article 539 of the Italian Code of Criminal Procedure** traditionally enables the trial court to issue a declaration on basic entitlement to damages (*an debeatur*) while referring the subsequent monetary quantification (*quantum debeatur*) to the civil court. When, however, the criminal offence stops at the threshold of a punishable attempt under **Article 56 of the Italian Criminal Code** and the compensatory claim is pursued not by the direct victim of the offence, but rather by a third party holding a purely contractual relationship of indemnity or insurance coverage, the logical coherence of that procedural mechanism demands rigorous evidentiary scrutiny.

The dispute brought before the Italian Supreme Court of Cassation, Criminal Division, originated from an indictment for **aggravated attempted fraud** under Articles 56, 640, and 61(7) of the Italian Criminal Code, brought against an

individual who, acting through legal counsel, had submitted a substantial claim for damages quantified at approximately EUR 860,000 against ENEL S.p.A.[1] The claimant alleged catastrophic personal injuries purportedly caused by the collapse of a section of a utility pole owned by the electricity distribution company. Evidentiary investigations conducted during the preliminary phase refuted that factual reconstruction, revealing instead that the accident stemmed from entirely unrelated dynamics and therefore amounted to a deliberate falsehood aimed at securing an unlawful pecuniary gain to which the claimant had no entitlement, with corresponding detriment to the opposing party.

During the first-instance trial before the Single-Judge Criminal Court of Lecce, the corporate entity targeted by the compensatory demand elected neither to file a criminal complaint nor to join the proceedings as a civil party, choosing instead solely to notify its **liability insurer**, AXA Corporate Solutions Assurance, pursuant to the general liability insurance policy covering corporate operational risks. It was the insurer itself that formally intervened in the criminal trial by filing an application to join as a **civil party** (*costituzione di parte civile*) under Article 74 of the Code of Criminal Procedure, asserting that it had been adversely affected by the defendant's deceptive and opportunistic conduct, even though the defendant had never addressed any direct demand to the insurance company, which had remained wholly extraneous to the initial out-of-court correspondence.

At the conclusion of the first-instance evidentiary hearing, the Criminal Court delivered a **judgment of acquittal** on the broadest exculpatory ground, holding that the alleged criminal act did not exist. Although that outcome appeared to bring the matter to a definitive close, the acquittal was challenged by the insurance company, which exercised the appellate remedies available under domestic procedural law in order to contest the criminal court's findings and secure an enforceable title for its compensatory claim.

1.2 — Criminal Acquittal and Appellate Proceedings Limited to Civil Effects

The finality of the first-instance criminal adjudication came into tension with the civil party's decision to lodge an **appeal limited solely to civil effects** pursuant to **Article 573 of the Italian Code of Criminal Procedure**, within a procedural setting marked by the acquiescence of the Public Prosecutor, who had refrained from appealing the defendant's acquittal. This gave rise to the intricate procedural dialectic surrounding prosecutorial appeal limits and the finality of criminal judgments, inasmuch as the absence of a public appeal irrevocably consolidated the acquittal on the punitive plane while leaving *sub iudice* exclusively those heads of the judgment concerning the civil action for reparation.

Counsel for the defendant raised a preliminary objection contesting both substantive **standing to sue (*legitimatio ad causam*)** and appellate interest on the part of the insurance company. The defence contended that the insurer, acting merely as a contractual indemnifier, neither held the status of direct victim of the criminal offence nor had disbursed any monetary indemnity, given that the conduct had remained an uncompleted attempt devoid of any actual pecuniary diminution. Furthermore, because the trial order admitting the civil party had never been revoked or excluded under Article 80 of the Code of Criminal Procedure, the question arose whether legal interest in appealing had to be measured against substantive ownership of the asserted right or merely against the unilateral allegations set out in the instrument of civil party intervention.

The Court of Appeal of Lecce radically reversed the first-instance judgment, establishing the defendant's liability solely for civil purposes and issuing a **generic damages award** in favour of the insurance company, while referring the parties to separate civil proceedings for the quantification of damages. In reaching that conclusion, the appellate judges held that procedural regularity in joining as a civil party conferred appellate standing *ex se* and that the fraudulent conduct entailed sufficient injurious capacity to warrant a generic declaration, without, however, specifying the concrete nature of the harm suffered by the guarantor in the complete absence of monetary payouts.

That reasoning exposed a sharp friction between formal standing to appeal and the substantive burden of proof: whereas **procedural standing** rests on the legal right asserted in the originating pleading, judicial recognition of the ***an debeatur*** requires tangible verification of an actual legal injury. The appeal in cassation lodged by the defendant squarely targeted this interpretive crux, alleging a breach of Articles 539 and 573 of the Code of Criminal Procedure for having conflated abstract offensive potential with proof of actual pecuniary harm.

02. GENERIC DAMAGES AWARDS IN CRIMINAL PROCEEDINGS

2.1 — Burden of Proving the An Debeatur Between Direct Victim and Aggrieved Party

The procedural architecture laid down in **Article 539(1) of the Italian Code of Criminal Procedure** makes any compensatory ruling conditional upon a finding of the defendant's liability, authorising a bifurcation between the adjudication on the existence of the right to compensation and its subsequent monetary quantification. Under a long-standing line of case law of the Supreme Court of Cassation, establishing a generic injurious potential inherent in the unlawful conduct was deemed sufficient to support a generic damages award, on the premise that any inquiry into the concrete existence of compensable harm could be deferred in its entirety to the civil court.[2] That reading tended to assimilate indiscriminately the distinct legal positions that converge under the procedural umbrella of **civil party intervention**.

The nomophylactic reconsideration carried out by the Italian Supreme Court of Cassation mandates a strict conceptual distinction between the **direct victim of the offence** (*persona offesa dal reato*), as holder of the primary legal interest protected by the criminal provision, and a merely **civilly aggrieved party** (*danneggiato civilistico*), whose patrimonial sphere is affected only indirectly or by reflection. Whereas for the direct victim the existence of event-related harm may readily be presumed from the consummation of the injurious offence, no analogous automatic presumption applies where the claim for restitution or reparation is brought by an indemnifying guarantor. In such circumstances, the contractual duty to hold the insured harmless neither transfers *ipso iure* the status of direct victim nor relieves the claimant from pleading and proving the concrete pecuniary loss actually sustained.

> A generic damages award in criminal proceedings cannot degenerate into an abstract fiction of harm where the intervening civil party is a third-party guarantor facing an offence that remained at the stage of a mere attempt.

It follows that the **burden of proof** regarding the ***an debeatur*** operates on differentiated terms: while the direct victim may rely on presumptions inferable from the material commission of the crime, a third-party insurer must substantiate with precision the factual basis of its compensatory claim. The statutory option to refer quantification to the civil court pertains exclusively to the ***quantum debeatur***, presupposing that the historical certainty of a compensable injury has already been positively established within the criminal proceedings, thereby preventing the civil action embedded in the criminal trial from degenerating into a purely exploratory fishing expedition.

2.2 — Injurious Potential in Attempted Criminal Offences

The application of evidentiary principles governing the *an debeatur* becomes even more stringent where the offence charged against the defendant stopped at the stage of an **attempted crime under Article 56 of the Italian Criminal Code**. In that configuration, the conduct failed to reach statutory consummation: no unlawful gain was pocketed by the perpetrator and no direct patrimonial diminution (*deminutio patrimonii*) was suffered by the targeted victim. Earlier,

more permissive case law maintained that the purely declaratory nature of a generic damages award dispensed with proof of actual harm, treating the potential causal suitability of the conduct to generate loss as sufficient.[3]

Nevertheless, the judgment under review resolutely refutes the sufficiency of **abstract injurious potential** wherever any economic disbursement is entirely lacking. In the case of attempted fraud to the detriment of the insured company, the liability insurer had paid out no sum whatsoever to the purported accident victim, nor had the latter instituted direct legal proceedings against the insurer. Issuing a generic damages award in the absence of concrete pecuniary harm or documented expenditure incurred for anti-fraud investigations amounts to violating the causal link required between unlawful act and compensable injury pursuant to **Article 185 of the Italian Criminal Code**.

Analytical Dimension	Traditional Case-Law Approach	Nomophylactic Standard (2026)
Evidentiary Requirement	Abstract potential Sufficiency of the mere injurious potential of the unlawful conduct without inquiry into concrete harm.	Summary proof of *an* Requirement to demonstrate the historical existence of the *an debeatur* for an indirectly aggrieved party in attempted offences.
Status of the Civil Party	Assimilation between the direct victim holding the protected legal interest and a third-party civil claimant.	Clear differentiation: presumption of injurious event solely for the direct victim; strict evidentiary burden for the contractual guarantor.
Scope of Civil Referral	Cumulative referral encompassing both the verification of actual damage and its monetary quantification.	Exclusive reservation to the civil court of the quantitative assessment of the *quantum debeatur* alone.

The quashing of the appellate judgment ordered by the Supreme Court of Cassation specifically penalises the complete absence of reasoning on this point: a criminal court issuing a generic damages award cannot merely find that the elements of deceptive conduct were met, but must identify the legal and factual grounds attesting to the emergence of an **actual economic detriment**. Otherwise, a ruling under Article 539 of the Code of Criminal Procedure would turn into a punitive sanction devoid of compensatory foundation, distorting the proper function of civil redress within criminal proceedings.

2.3 — The Civil Standard of Proof Based on “More Probable Than Not”

A doctrinal issue of primary importance concerns the evidentiary regime governing the appellate court's decision whenever an appeal against a judgment of acquittal is pursued exclusively by the civil party. In such a scenario, the Public Prosecutor's decision not to appeal causes the criminal head of the judgment to pass into *res judicata*, permanently barring any finding of punitive criminal liability against the acquitted defendant.

That procedural bifurcation triggers a structural shift in the applicable standard of adjudication: the criminal standard of guilt **beyond any reasonable doubt** under Article 533 of the Code of Criminal Procedure, designed to safeguard the

constitutional presumption of innocence, gives way to the civil standard of the **preponderance of evidence** or **"more probable than not"**. In re-evaluating oral testimony and documentary evidence solely for civil purposes, the Court of Appeal weighs competing evidentiary elements according to prevailing probability, and may find the unlawful sequence of events established on the basis of presumptive indicators and conflicting statements.

In the case at hand, the territorial Court of Appeal had lawfully rejected the defendant's account by giving weight to the statements made to medical personnel immediately upon emergency treatment, which were deemed far more credible than the self-serving version subsequently advanced in the formal compensation demand. Even so, applying the "more probable than not" standard to establish the unlawful act does not exempt the court from verifying the actual existence of harm: the greater evidentiary flexibility of civil adjudication governs material and legal causation, yet does not license dispensing altogether with proof of the **threshold existence (*an*) of the injury** alleged by the civil party.

03. COORDINATION WITH CIVIL RES JUDICATA AND PRACTICAL IMPLICATIONS

3.1 — Binding Res Judicata Effect on Entitlement and Limitation Periods

The systemic reach of a generic damages award issued in criminal proceedings assumes decisive significance within the broader architecture of inter-jurisdictional relations. Once irrevocable, the adjudication on the *an debeatur* deploys a formidable **binding external *res judicata* effect** in the subsequent civil proceedings instituted for the monetary quantification of damages, precluding the defendant from reopening either the existence of the compensatory claim or the causal nexus.[4]

By virtue of the principle of finality of judicial determinations, an irrevocable criminal ruling on basic liability necessarily implies a prior finding that no extinguishing defences barred the asserted right. As confirmed by the Italian Supreme Court of Cassation, Civil Division, a final generic damages award prevents the civil court seised of the *quantum* from entertaining defences based on the **limitation period (*prescrizione*)** that ought to have been timely raised and adjudicated within the underlying criminal trial. Furthermore, once the generic damages award passes into *res judicata*, the original short tort limitation period is converted into the **ten-year limitation period** governing the *actio iudicati* pursuant to **Article 2953 of the Italian Civil Code**.

Precisely this expansive and irreversible force of criminal *res judicata* justifies the strict nomophylactic rigour adopted in Judgment no. 10570/2026. Allowing a generic damages award without summary proof of the *an debeatur* would transfer an insurmountable preclusive title into civil court, barring the defendant from contesting the congenital absence of harm and compelling the civil judge to quantify a patrimonial diminution that never historically occurred. Quashing the judgment with remand to the **civil appellate court** under Article 622 of the Code of Criminal Procedure serves to remedy that reasoning defect (*vulnus*) before an undue preclusive bar can crystallise.

3.2 — Litigation Strategy for the Civil Party and the Civilly Liable Person

From a strictly operational standpoint, the ruling compels legal practitioners to rethink litigation strategies on the side of both the civil claimant and counsel representing the defendant or the civilly liable party (*responsabile civile*). Discharging the **burden of proof** can no longer rely on merely reproducing the wording of the criminal indictment: counsel assisting a civil party who is not the direct victim of the offence — notably an insurance company or corporate guarantor — must specifically plead and substantiate the heads of emerging loss from the very moment of joining the criminal trial.

In particular, unlike the **direct victim of the crime**, who may invoke presumptions regarding moral suffering or infringement of the protected legal interest, a third-party guarantor cannot rely on mere injurious potential. It is

indispensable to produce documentary evidence of out-of-pocket expenses incurred for extrajudicial technical expert reports, defensive investigation costs, or specific internal organisational burdens directly caused by the fraudulent scheme. Conversely, purely assertive pleading exposes a civil appeal to a concrete risk of cassation review or dismissal on the merits of the compensatory claim.

From the perspective of counsel defending the accused and the civilly liable party, the judgment provides a robust safeguard for raising timely objections against the lack of proof of the *an debeatur*. Defence counsel should urge the criminal court to scrutinise the structural posture of the offence critically, emphasizing that in **attempted offences** the absence of patrimonial depletion precludes automatic compensatory orders. By drawing a rigorous factual and legal distinction between hypothetical risk of loss and verified injury, the defence can avert a generic damages award under Article 539 of the Code of Criminal Procedure, sparing the defendant both the binding preclusive effects of civil *res judicata* and the ten-year extension of the limitation period.

04. CONCLUSIONS AND NOMOPHYLACTIC PERSPECTIVES

Judgment no. 10570/2026 marks a clarifying milestone in the evolution of Italian criminal procedure, reaffirming the strictly causal and compensatory nature of a civil action pursued within criminal proceedings. The ancillary role of the civil party cannot be turned into an instrument of improper punitive duplication: a **generic damages award** invariably presupposes a tangible causal link between the criminal wrong and the pecuniary loss or moral suffering sustained by the aggrieved claimant.

This Supreme Court ruling has the merit of harmonising criminal procedural rules with the overarching principles of extra-contractual tort liability under Article 2043 of the Italian Civil Code. Acknowledging procedural standing to sue on the part of a third-party guarantor does not equate to automatically granting a substantive right to reparation: establishing the ***an debeatur*** always requires a summary evidentiary verification that leaves no ambiguity as to the reality of the harm, especially where the criminal conduct remained confined within the boundaries of an attempt.

Ultimately, the Italian Supreme Court of Cassation restores a sound equilibrium between procedural economy and effective adversarial scrutiny: referral to the civil appellate court having jurisdiction by value provides the natural forum for ascertaining whether the fraudulent scheme actually inflicted compensable damage. Failing such proof, the third party's compensatory action must be dismissed, thereby preserving the systemic coherence of the legal order and preventing an unconsummated offence devoid of actual harm from generating an unwarranted procedural windfall.

References & Authorities Cited

Statutory Provisions

- Article 539 of the Italian Code of Criminal Procedure — Generic damages award and provisional payment order
- Article 538 of the Italian Code of Criminal Procedure — Adjudication on restitution and compensation for damage
- Article 573 of the Italian Code of Criminal Procedure — Appeals limited solely to civil interests

- Article 185 of the Italian Criminal Code — Restitution and compensation for damage arising from a criminal offence
- Article 56 of the Italian Criminal Code — Attempted criminal offence and suitable acts unambiguously directed toward commission
- Article 2953 of the Italian Civil Code — Effects of final judgments of condemnation on short limitation periods (*actio iudicati*)

Case Law Cited

1. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 19 March 2026, no. 10570** — A generic damages award under Article 539 of the Code of Criminal Procedure in favour of a third-party guarantor in cases of attempted offences requires summary proof of the *an debeatur* and cannot rest upon a mere presumption of harm. Outcome: quashed in part and remanded to the civil appellate court having jurisdiction by value. Para.: Reasons for the Decision, §§ 2–4.
2. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 27 September 2019, no. 39734** — A generic damages award presupposes establishing the potential injurious capacity of the harmful event and its causal link with the prejudice alleged by the victim's next of kin. Outcome: dismissed. Para.: Reasons for the Decision, § 3.
3. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 5 June 2018, no. 24981** — A generic damages ruling is purely declaratory and grounded in the potential injurious capacity of the unlawful act, whereas a provisional payment order is anticipatory and precautionary in nature and lacks *res judicata* effect. Outcome: declared inadmissible. Para.: Reasons for the Decision, § 2.
4. **Italian Supreme Court of Cassation, Civil Division, Order of 29 May 2026, no. 16819** — External *res judicata* arising from a generic damages award issued by a criminal court precludes raising defences based on the limitation period in subsequent civil proceedings on the *quantum* and converts the applicable limitation period into the ten-year term under Article 2953 of the Italian Civil Code. Outcome: declared procedurally inadmissible. Para.: Reasons for the Decision, §§ 1–2.

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