

## Summary

### **Civil litigation as a means for Dutch crime victims to get damage compensation Usage, problems, and solutions**

#### **Introduction**

This research concerns the position of victims (both natural persons and companies) who have suffered financial damages as a result of crime. Crime-related damages are substantial in the Netherlands. Research indicates that about 3.5 million natural persons and 200,000 legal persons are confronted with 5.7 million crimes and 2.5 million crimes, respectively. These crimes result in an estimated 15,8 billion Euros of damage. Only a small amount (about 7%) of this damage is compensated in some way.

One of the aims of victim policy of the Dutch government is to promote and to ensure financial compensation to victims for their sustained damage. Since the 1970s, the victim policy has primarily been focused on improving the options for compensation within the criminal justice system, which as a result has been reformed considerably. Recently, however, the perspective has shifted to civil litigation as a potential means to get compensation for crime victims. An estimated 17,000 victims (natural persons) qualify for civil litigation at the district court. Yet, little is known about the role of civil litigation for victims of a crime as an option for damage compensation. The current research is the first to examine the role of civil litigation. It entails an empirical study of victim's usage of civil litigation and describes the empirical characteristics of the civil proceedings. The question concerns both the role of civil litigation in relation to the total number of victims and its significance in relation to the other compensation systems used by victims. The importance of civil litigation is assessed by examining case files from seventeen out of the nineteen district courts and by comparing compensation via the civil procedure with other ways of recovering damages. Problems and solutions related to civil litigation have been explored by interviewing professionals (six judges, five solicitors and two legal academics).

#### **Damage compensation options**

There are a number of options for damage recovery by crime victims. The first option for a victim is to claim damages through an insurance company. Two different routes exist: a claim filed with one's own or the offender's insurance company. If a victim would file a claim with his or her health insurance company, the policy is likely to cover costs in relation to personal injury damages. However, an important limitation is that it does not allow for the recovery of emotional damages. The extent to which insurance policies effectively cover crime-related damages is unknown. The second route in relation to insurance is that a victim files a claim with the liability insurance policy of the offender. In most cases, however, this is unsuccessful because insurance contracts usually exclude coverage for crime-related damages.

Secondly, victims of severe violence and sexual abuse may file an application with the Violent Offences Compensation Fund. The amount this state fund may award to

a victim is maximised at 22,700 Euros for emotional damages and 45,000 Euros for financial damages (e.g. expenses). The system is based on a set of standardised compensation amounts which cover only a part of the damages. In 2010, the fund awarded compensations in 4,344 cases, whereas 1,785 applications were dismissed because the applicable conditions were not met. Compared to an estimated 20,000 to 30,000 annual victims of serious violent crimes or abuse, the 4,344 compensation awards concern a small part of the entire group of victims. For victims of other types of crime no such possibility exists, except for specific types of severe traffic offences, like drunk driving.

Thirdly, a victim may claim compensation directly from the offender within the criminal justice system. A number of options exists, ranging from settlement by the police, by the Public Prosecution Service (PPS), and ultimately a criminal court order in relation to damages. The police may mediate between the offender and the victim to get compensation paid to the victim. It is not known how often this is successful. The PPS has a number of legal tools to stimulate the offender to pay damages to the victim. In 2010, the PPS proposed voluntary damage compensation in 3,700 cases, 2,054 of which were accepted by the offender. In these cases compensation was effectively paid to the victim. To put these numbers into perspective: the PPS dealt with about 41,000 cases that qualified for settlement by the prosecutor. Finally, in 2010, criminal courts dealt with an estimated 54,000 crimes involving a victim. In 17,000 of these cases, the criminal court ordered a perpetrator to compensate the victim. The criminal court issued a specific court order in 11,000 of these cases, the so-called damage compensation order. The advantage of this specific order is that the state (the Central Fine Collection Agency) is responsible for the collection of the compensation, whereas otherwise the victim is responsible. Of these 11,000 cases, an estimated 9,000 resulted in a successful collection by the Central Fine Collection Agency. In about 4,700 cases, a victim's claim to damages was declared inadmissible or rejected by the criminal court. These victims thus have actively tried to get their damage compensated, yet have not succeeded within the criminal justice system. They may file a civil lawsuit at the civil courts.

### **Civil litigation**

The central issue of this research concerns civil litigation as a means for crime victims to get compensated by the offender. The research focused on the year 2010 and pertained to cases dealt with by the civil court division dealing with claims with a minimum of 5,000 Euros. Our results indicate that of all civil court cases closed in 2010, about 483 were started by crime victims seeking financial compensation from the offender (See Table 1). Third party claims are not included in this number. Interestingly, only 27% of the claimants were natural persons, whereas the majority of the claimants (73%) were legal entities. The predominant type of relationship between the parties was that of suppliers and customers. Probably, these are mostly energy companies litigating for losses as a result of electricity theft (needed for home cannabis farms). Eighty-six per cent of the cases were started for the recovery of property damage, whereas 13% of the cases concerned damage as a result of a violent crime. Most of the defendants were known to the claimant. Some claims were settled without a court order (23%), other claims were fully granted (44%), partially granted (24%) or dismissed (9%). A partial rejection is usually because some of the claimed damage could not be proved.

**Table 1 Civil Litigation of Crime Victims against Offenders Closed in 2010**

	Number of Cases	% <sup>a</sup>
Total	483	
Information missing	83	
Information available	400	
<i>Crime type</i>		
Property crime	343	86
Violent or sexual crime	50	13
Other crime	7	2
<i>Legal status of claimant</i>		
Legal entity	292	73
Natural person	108	27
<i>Relationship with the offender</i>		
Supplier - customer	184	46
Employer - employee	48	12
Other contractual relationship	48	12
Relatives, friends, neighbours	41	10
Unknown offender	65	16
Type of relationship unknown	15	4
<i>Case result</i>		
Settlement of the parties	93	23
Plaintiff's claim fully awarded	176	44
Plaintiff's claim partially awarded	94	24
Plaintiff's claim not awarded	37	9
<i>Case type</i>		
Contradictory judgment	277	69
Judgment by default	123	31

<sup>a</sup> The percentage was calculated using the 400 cases for which information was available (400 cases = 100%).

## Conclusion

In 2010, an estimated 483 civil lawsuits have been dealt with in the district courts in which a crime victim claimed damage compensation from the offender. Nearly three quarters of these lawsuits concerned legal entities. The remainder concerned natural persons. Given the estimated 17.000 natural persons who qualified for civil litigation at the district court, the 108 natural persons that were observed to use this option is a rather small number. Other options have been used substantially more often, in particular the damage compensation order (11,000 times) and grants from the Violent Offences Compensation Fund (4,344 times). The number of victims receiving money under an insurance policy was probably high. Figures were not available, however.

We identified several problems in relation to civil litigation. First, victims of unknown offenders will not be able to file a civil lawsuit. A rough estimation indicates that the offender is unknown in 67% to 75% of all criminal acts. In case of serious violent or sexual crimes, victims with an unknown offender may apply for an award from the Violent Offences Fund. Secondly, high costs and the long duration of a civil procedure were identified as problems by the interviewed experts, as well as problems with legal aid and access to justice, the burden of proof, and the emotional burden.

Typically, the collection of the awarded damages may be problematic as well. The high number of default cases (31%) is an indicator for enforcement problems. This is an important difference between civil litigation and other compensation options. When a criminal court issues a damage compensation order, the state agency, not the victim, is responsible for collection and realises an 80% success rate. The problems indicated by the professionals are of an exploratory nature; whether, and to what extent, victims do experience these factors as a problem is yet to be researched. Suggested improvements by the interviewed professionals include practical solutions, a better use of the compensation options in the criminal justice system, the extension of the coverage of insurances, and changes to the civil law system in a number of respects (e.g., free legal aid and state enforcement of civil court orders for crime victims).

We further conclude that future research could focus on obtaining recent and detailed data on the amount and type of damages suffered by different categories of victims as a result of crimes; a particular focus might be the diversity between victims and type of crimes. Furthermore, the significance of insurance is still a black box. More insight into the actual functioning of the compensation options within the criminal justice system is also needed. Another line for future research is the role of civil litigation in the small claims division of the civil courts, since the competence of these courts changed in the course of 2011 to claims with a maximum of 25,000 Euros. In 60% of the analysed cases from 2010, the claim falls below the threshold of 25,000 Euros. Finally, we tentatively conclude that the importance of civil litigation is rather limited; the factors identified by professionals as potential problems for crime victims might play a role in this respect.