

# SUMMARY AND CONCLUSIONS

## 7.1 Background to this research

Crime can have serious consequences for victims. Many victims suffer damages as a result of crime. There are several possibilities for the victim to get compensated for damages, through an insurance company for example or by initiating a civil case against the offender. There are also possibilities within criminal law for the victim to obtain compensation from the offender. This can be realised through the damages settlement by the police or the Public Prosecution Service, by offering damages as a condition for dismissal of a case, by a damages compensation deal, by making compensation a condition for a suspended sentence or a condition for remission of a sentence, by allowing the victim to join the criminal proceeding as the injured party, and through the compensation regulation.

The possibility of compensating the victim's damages, and the position in general of victims in criminal proceedings, is top priority for the government. A new bill aims to further reinforce the position of the victim in criminal proceedings and an advance payment regulation for victims of sexual and violent crimes must ensure that these victims are definitely awarded damages and with no delays. Moreover the aim, within the scope of the quality improvement plan "Focus on victims" is to improve the victim's possibilities for getting compensation from the suspect, so that more victims get compensated for damages. In order to effectively improve the position of victims it is of the utmost importance to know where the obstructions lie in the present *practice*. That is why we are showing in this research, commissioned by the Ministry for Justice, the manner in which the suspect within criminal law compensates the victim. Our main attention is focused on the damages settlement given by the police or Public Prosecution Service and the joining of the victim in criminal proceedings as the injured party. Furthermore the obstructions to receiving compensation are described or what the conditions are that contribute to the chances of compensation.

## 7.2 Method of research

Several research methods have been used to research damages settlement practices and the joining of criminal proceedings as the injured party. Questionnaires were sent to victim co-ordinators at the police and the Public Prosecution Service to get an overall picture of the practice. Data concerning the prosecution and settlement of cases that involved compensation for damages to the victim originate from the Public Prosecution Service's data. In order to expand further on the practice six district courts were selected, partly on the basis of the answers to the questionnaires and partly on the basis of data from the Public Prosecution Service: Almelo, Breda, Haarlem, Leeuwarden, Rotterdam and Utrecht. Case files were researched at these district courts, and

interviews were held with judges, public prosecutors, victim co-ordinators from the Public Prosecution Service, claims advisors, claims officers at the Dutch Victim Support Agency and victims. Finally data on the collection of payments from the compensation regulation were requested from the Central Fine Collection Agency.

### **7.3 Damages settlement at the police and the Public Prosecution Service**

The task of mediating in damages settlements has been given to the police force and the Public Prosecution Service by means of the Victim Care Instructions 2004. Damages settlements are not organised in the same way in every police region or every district court. Sometimes the reporting officers at the police do all the damages settlements, and sometimes they only do cases that can be directly resolved. A specialised claims officer at the police or the Public Prosecution Service does the remaining cases. The damages settlement task of the police is centralised by appointing a claims officer from the police at the Public Prosecutor's Office. The advantage of this is that a specialist does the damages settlement. The disadvantage is that damages settlements are not a hot topic for the ordinary reporting officers, with the result that they will often not pick-up on chances to quickly sort out compensation. There is a difference in the division of tasks between the claims officer at the police force and at the Public Prosecution Service from district court to district court. Also the conditions set for damages settlement are different in every police region or district court. The question as to whether a case qualifies for damages settlement or not is dependent on the type of crime, the amount of damages and the distinguishing features of the offender such as age, addiction problems or systematically offending. These 'additional conditions' set by the police or the Public Prosecution Service on the damages settlement ensures that many victims make no effort to undertake a settlement for damages with the suspect. In a lot of district courts, for example, there is no mediation if the suspect is going to be summoned to court in any event. Furthermore damages settlements are frequently forgotten about if the suspect is prosecuted by accelerated criminal law. If the police do mediate the damages settlement can be turned into a police dismissal: if the suspect compensates the victim's damages the case is not sent to the Public Prosecutor. In the case of more serious offences the police have nothing to offer the suspect because it is not the police but the Public Prosecution Service who take the prosecution decisions. If a damages settlement takes place at the Public Prosecution Service then that is often in the form of a deal with compensation as a condition (art 74 lid 2 sub e Sr). According to the Measuring Method Victim Care indicator, the Public Prosecution Service regulated compensation for more than 5600 victims in 2006. The amount of compensations regulated by the police is not clear because it is not well documented.

The reason that the chances of receiving compensation through damages settlement is smaller has to do, in the first place, with the attitude of the reporting officers at the police. Damages settlements are often not forthcoming because the reporting officers are not aware of it. A second failure factor with damages settlement is that the police cannot give a 'reward' in cases of serious crimes, because these cases do not qualify for

police dismissal and the police have no say in the prosecution decisions made by the Public Prosecution Service. Thirdly many victims do not qualify, in reality, for a damages settlement because the police and the Public Prosecution Service add additional conditions besides those out of the Victim Care Instructions 2004. Fourthly damages settlement is often forgotten about if the suspect is tried using accelerated law or super-accelerated law. Finally the police and the Public Prosecution Service usually abandon the idea of a damages settlement when the victim is a big company. The reason given for this is that for shoplifting offences the damages are often minor, because the stolen goods are returned when the thief is caught. Besides this companies are often insured against shoplifting. They also often have their own legal department that occupies itself with recovering the damages. If the company is really small, for example a sole trader, then the police and the Public Prosecution Service are more willing to initiate a damages settlement.

There are also factors that contribute positively to damages settlement. These factors are mainly the opposites to the failure factors: if the victim claims simple material damages that are well founded, and the damages have arisen because of an offence that qualifies for a deal then the chances of a damages settlement are high.

Further, a damages settlement can have successful consequences: the victim can get compensation quite easily from the suspect, and can also get the money *quickly*, because the terms of payment are relatively short in connection with further prosecution decisions. Secondly a successful damages settlement ensures a reduction in trial capacity: suspects who compensate the damages in the framework of a conditional dismissal or a deal, do not have to appear before the judge anymore. If the suspect is summoned to court, then a successful compensation regulation ensures that the victim does not have to join the criminal proceedings as an injured party. This also means a reduction in trial capacity and in the work related to the victim joining the criminal proceedings as an injured party by the Public Prosecution Service, or The Dutch Victim Support Agency and the claims advisor. Finally a damages settlement can also work to the advantage of the suspect. For minor cases he can compensate the damages (compensation as a condition for a deal or a dismissal) and in this way can prevent a court appearance where he has to account for himself in front of a judge. If he is summoned to appear in court then he has the chance to show his good side: a suspect who has compensated the victim is handled with a certain leniency by the Public Prosecution Service with regard to the prosecution decision and the sentence demanded and the judge with regard to sentencing.

#### **7.4 Joining criminal proceedings as the injured party**

Damages settlements brought about by the police or the Public Prosecution Service are not the only possibility for the victim to get compensation from the offender. If the suspect is prosecuted for the crime that caused the victim damages, then the victim can claim for compensation by joining the criminal proceedings as an injured party.

However, it is necessary that the victim is a **directly concerned person**. The victim can join the criminal proceedings as an injured party by filling-in and returning a joinder form that gets sent to him by the Public Prosecution Service. In some district courts the form is sent immediately to the victim when the case arrives at the Public Prosecution Service. The advantage of this is that the form can be used for any damages settlement that might occur and that the Public Prosecution Service can take account of the injured party when drawing-up the charges and that the victim has enough time to fill-in the form. A disadvantage is that the joinder form is also filled-in by victims of crimes that do not end up going to court and the date of the hearing is not yet known. Other district courts send the joinder form only after the charges have been drawn-up. The advantage of this is that only victims whose crime is brought to court get the joinder form. The disadvantage is that account cannot be taken of the injured party when the charges are being drawn-up and that there is less time for the victim to return the joinder form. Also when the suspect is prosecuted via accelerated law there is often insufficient time to fill-in the joinder form and return it on time.

Victims often seem to have problems filling-in the joinder form. They often do not know that certain items qualify for compensation (like travel costs, telephone costs), or they fill-in items that do not qualify for compensation because the damages are not direct. The calculation of the compensation amount is also frequently wrong. Sometimes the compensation amount is not mentioned at all, and victims fill-in that the damages cannot be compensated 'financially'. Many victims also do not know that it is not allowed to claim 'new for old'. Besides this the victim often doesn't know what proof is necessary to substantiate the claim sufficiently, or the victim does not have the receipt of the damaged coat anymore for example. They can contact the Dutch Victim Support Agency for help with filling-in the form, but many victims do not know this, and certainly not at the start.

Nine out of ten joinder forms are not filled-in properly according to the interviewed claims advisors. Also if the joinder form is filled-in with the help of the Dutch Victim Support Agency the claims advisor is still often of the opinion that the joinder form has to be corrected. That can be changes or additions to the form, but also substantiating the claims often requires improvements. The claims advisor does minor changes where possible himself. The victim has to do any big changes. The joinder form is then returned to the victim so that the joinder form can be changed, with the possible help of the Dutch Victim Support Agency. The claims advisor does not always check the joinder form when they arrive too late, because there is often not enough time anymore to change the joinder form. Moreover the claims advisor does not always have enough time to check the joinder form.

It frequently occurs that the joinder form arrives at the very last moment to the judge, the public prosecutor and the suspect's lawyer. The reason for this can be that the joinder form was returned too late to the victim, but it can also happen that the returned joinder form was floating around the Public Prosecution Service office.

During the trial the Public Prosecutor pays attention in his indictment to the impact of the crime on the victim, including the damages. The Public Prosecutor does not always support the claim of the injured party during the discussion. If he thinks that the claim is too complicated, or if some other reason it cannot be awarded, he requests the judge to dismiss the claim of the injured party.

During the handling of the claim the judge decides if the claim can be awarded. A dismissal or a declaration of inadmissibility is not 'negative' by definition, but can also be 'legally correct', for example if the injured party makes unrealistic claims like costs for sunglasses that were not worn during the attack, costs for a babysitter for twelve year old children because they are scared to stay at home after a burglary, costs for a cancelled holiday of a family member, or the costs made by the boss for absenteeism brought about by the crime. It can also be that the victim's damages no longer exist because these have already been compensated by the insurance company.

The judge can award the claim if the suspect is convicted for the crime and the suspect is liable because of an unlawful action. Besides this the damages have to be direct and the claim has to be simple in nature. If the claim cannot be awarded the injured party is almost always dismissed. Dismissal of the claim, in conformity with the **LOVS** recommendations, hardly ever happens, so that the injured party still has the possibility to present the claim to the civil judge. If a claim cannot be fully granted then many judges look to see if part of the claim can be granted, or to what extent for example an amount can be granted for emotional damages, so that the victim is not left behind empty handed. The claims of injured parties who 'overdo it' are often completely dismissed.

The claim can often not be awarded because the joinder form is not filled-in properly. Besides this there are some joinder forms that are formally filled-in correctly but the claim is not substantiated very well. The injured party has not attached any invoice for example. The judge has then the possibility to estimate the amount of damages. The willingness of the judge to do this is dependent on his knowledge and experience with civil law, where estimating amounts for damages is a more common practice. One of the judges interviewed had this to say about it: *"I have the idea that there are regularly different judgments made for similar claims."*

If the injured party makes complicated claims, like loss of profit for a company, loss of income, claims damages for the loss of the content of a stolen laptop, or if it is not sure whether the insurance company is going to pay, then the injured party is often dismissed, because the claim is not simple in nature. The one judge is more formal than the other regarding the claim: some judges dismiss a legal person immediately, for example, if there is no certificate from the Chamber of Commerce attached to the joinder form. Other judges are more flexible with this.

The simplicity of the claim is partly dependent on the plea that the suspect makes. The claim is often considered too complicated if the suspect disputes the claim. The plea is therefore very dependent on the evidence that the injured party has used to substantiate his claim. However, not every plea by the suspect leads to a dismissal. If the

suspect does not make any objection some judges are of the opinion that the claim can be granted, unless it is clearly unreasonable. Other judges attach less importance to the absence of an objection, because the suspect may want to show his best side in court. These judges are less subdued in the treatment of the injured party's claim.

Irrespective of the suspect's objection it remains unclear what items qualify for compensation. The Dutch Victim Support Agency advises victims to supply receipts if they have them, for example, for travel costs to the hospital, travel costs for going to the Agency for help with filling-in the joinder form, or compensation for the holiday hours used in reporting the crime and regulating insurance and the claim. However judges usually do not go along with these damages. This, however, is also dependent on the civil law background of the judge.

If the judge awards the injured party's claim or part of it he also imposes, in principle, the damages compensation regulation. The damages amount is then collected by the Central Fine Collection Agency (CFCA). In general the damages compensation regulation is not imposed if the injured party is a large company, or a municipality for example.

If there is more than one suspect, and the claim of the injured party is awarded, then the offenders are jointly liable for the damages. Also the damages compensation regulation is mostly jointly awarded. The associated replacement of detention is not related to the total amount of damages by every judge. They decide that the amount of detention replacement is granted proportionally to the convicted.

The judge's motivation on the injured party's claim is often marginal: the injured party is dismissed because the damages are not the direct result of the proven crime, or because the claim was not simple in nature. The fault in the claim is often unclear to the injured party, the claims advisor and the Dutch Victim Support Agency.

### **7.5 Overview in figures of the criminal cases during the period 1996-2005, in which damages compensation played a role for the victim**

Several possibilities have been described above on how the victim can get compensation as the injured party, but how often does this happen? Because the Public Prosecutor's data is not primarily focused on registering the victim's compensation it is not possible to say exactly how many injured parties are awarded claims. However, it is possible to research per criminal case or offence whether the victim's compensation played a role in the case or not. It appears, from research, that the victim received compensation in an increasing number of cases during the period 1996-2005.

In the first place this is due to the fact that during the period 1996-2005 a compensation deal was increasingly offered to the suspect, from almost 2,000 proposals in 1996 to almost 4,400 in 2006. 78% of these deal-offers were accepted by the suspect, adequately resolving the case and with the victim getting compensation.

Secondly the judge has, throughout the years, increasingly awarded compensation to the injured party: from more than 1,500 in 1996 to more than 13,250 in 2005. According to the Public Prosecution Service the compensation regulation is increasingly being applied.

In 1996 there were almost 2,700 compensation regulations granted, in 2005 14,000. It is remarkable that the compensation regulation is often awarded 'loose' in the Public Prosecution Service's data, without complete or partial granting of the injured party's claim. This has probably to do with the way in which the decisions of the judge are registered in COMPAS: if the compensation regulation is imposed this is registered in COMPAS, but there is no registration of judgements that have to do with an injured party's claim.

### 7.6 Success and failure factors based on case file research

Throughout the years there has been a continual increase in awarding compensation to the injured party. We already wrote in chapter four on the points where the injured party's claim goes well and doesn't go well, based on the questionnaires and interviews. The effect of many of these factors cannot be researched because they cannot be deduced from the case files. Examples of these are the judge's background, the objections raised by the suspect and the level of the victim's own guilt. The extent to which other factors can influence the judge's decision on the injured party's claim can be researched in the case files. To this end 375 criminal case files have been studied in which there was an injured party claim involved. The influence of different trial, offender, victim and claim data on the judge's decision have been analysed by means of a multivariable regression analysis. In a multivariable regression analysis the influence of one factor is measured taking all the other mutual connecting factors into consideration. In the analysis there is a distinction made between natural persons and legal persons as an injured party. A lot of factors appear to have no influence on the decision of the judge. Table 7.1 shows the characteristics that are significant for influencing the decision of the judge on awarding claims, the amount awarded or the extent to which the claim is awarded.

**Tabel 7.1: Characteristics that are connected with the judge's decision on the awarding the injured party's claim**

Judge's decision	Injured party	
	Natural person	Legal person
'Something' awarded	Immaterial damage Number of injured parties	Court district
Average amount awarded	Amount of the claim	Court district Amount of the claim
Extent to which a claim is awarded	Type of crime Authorised person Origin of victim Amount of the claim	Court district Amount of the claim Number of injured parties

Contrary to what was expected a lot of the factors researched do *not* seem to have an influence on the judge's decision concerning the injured party's claim. Claims that are properly substantiated with invoices, doctors' statements or other pieces of evidence are not awarded more than claims that are not substantiated with documents of proof. The police court judge does not handle the injured party's claim any differently than a panel of court judges. The presence of the injured party at the court hearing, or the use of a statement written by the victim, do not improve the chances of award. If there is more than one suspect then the claim is awarded in the same manner as when there is one suspect. It does not matter for the chances of a claim being awarded or to the extent to

which it is awarded whether the injured party is a retail trader or another legal entity, like an energy company for example.

How do the differences in judgements come about then? Factors that can be of influence on the judge's decision, but cannot be researched in the case file research, are possibly factors like those written about in chapter 4 based on the questionnaires and interviews. Examples of these are the extent to which the judge has knowledge and experience with civil law, the extent of the victim's guilt, or the content of the suspect's plea that is made against the claim.

Another possible explanation for the findings of the research, that many of the factors researched do not significantly tie-in with the decision of the judge on the injured party's claim, is that judges do take account of these factors, but all of them in their 'own' manner, with the result that there is no general pattern to be deciphered.

## 7.7 Conclusion

Compensation is very important for a victim if a victim has suffered damages through a crime. Because the government supports this there is also the possibility for the victim to get compensation from the offender within criminal proceedings.

From this research it appears that there is ambiguity between the police and the Public Prosecution Service for settling damages. The settling of damages is organised differently everywhere and in the various police regions and district public prosecutor's offices the conditions, on top of the conditions in the **Aanwijzing Slachtofferzorg 2004 (the Victim Support Instructions 2004)**, that are put on the settling of damages vary a lot. For this reason a lot of victims do not undertake any attempt at settling damages.

There is also ambiguity with claims by the injured party. In some court districts the claims are handled more formally than in other court districts. Also the court districts vary in the amount of replacement detention given if the compensation regulation is imposed jointly on more than one offender. Besides this it appears that judges vary on how they think about items that qualify for compensation, the amount for damages, the absence of proof documentation and the suspect's objections.

This diversity was also evident from the case file research: only a few factors show a connection with the judge's decision on the awarding of a claim.

On some levels there is a strong similarity in the practice of claims made by the injured party. In the first place that is lack of time. The amount of time that victims get to return joinder forms is sometimes very short, the Dutch Victim Support Agency often only start to work on the form at the last moment, the claims advisor has stacks of joinder forms lying on his desk, with the result that sometimes the checking has to wait a long time. If the joinder form has to be corrected by the victim, on the advice of the claims advisor, this costs more time again because the joinder form has to be returned to the victim. It can also happen that a returned joinder form floats around the Public Prosecution office for a while. All this leads to the joinder form arriving very often too

late to the judge, the public prosecutor and the suspect's lawyer. It is not uncommon for them to get the joinder form only a day before the trial, or on the morning of the trial.

A second factor that repeats itself in all the court districts is the lack of feedback. The Dutch Victim Support Agency workers often do not know the results of the case in which they helped the victim with the claim. The claims advisor advises no end without exactly knowing what judges do with their advice. Besides this feedback seldom occurs amongst judges themselves, with the result that they do not know from each other how a certain claim can be judged. The lack of feedback across the board on the claims process only serves to increase the amount of ambiguity.

Finally the collection through the damages compensation regulation is a stumbling block for the victim. Granting the claim does not always mean that the injured party gets his money. The injured party must contact the offender himself with the request to pay him the damages, or he has to employ a bailiff to do this for him. If the judge has also granted the compensation regulation then the Central Fine Collection Agency do the collecting. Because the Central Fine Collection Agency can make a payment regulation with the offender it can take a long time before the victim gets his money. If the suspect has absolutely nothing to offer then the victim will probably never get his money. The new proposed bill where a regulation for advance payment will be introduced can bring about a change to this situation. This advance payment regulation will only apply to victims of sex or violent crimes. Many victims who have suffered damages through crime will therefore never get compensated.