

Compensatie en verhaal van schade door strafbare feiten

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Summary

Which sources of compensation cover the damage suffered by crime victims? To what extent do the financial compensation of crime damage and redress from the offender actually take place? And to what extent are public costs involved? Those questions have been explored in this study. With regard to the four main sources of compensation – private insurance, social security, the Violent Offences Compensation Fund (*Schadefonds Geweldsmisdrijven*), redress from the offender – the legal bases have been mapped out: who is entitled to compensation and at what level? By which means can claims be enforced? How is the source of compensation financed? Subsequently, it is investigated what can be said about the amount of compensation and redress, and about the public costs involved in this. These questions are posed against the background of the increasing policy attention that has been devoted to compensation for victims of criminal offences in recent years.

From a moral and legal point of view, the basic principle is that the offender pays for what he/she has done. In practice, however, other compensation sources (also) play a major role. On the one hand, because in many cases the offender remains unknown – previous research indicates that this is the case in 67% to 75% of all criminal offences – and, on the other, because, even when the offender is identified, other sources of compensation are usually resorted to before redress is initiated. Institutions that have provided compensation to crime victims, like private and social insurers, often have a right of recourse against the offender. To that extent, the offender is the *end point* in the chain of claims.

It has turned out that only a limited insight can be gained into the amounts of compensation and redress that are being realized. Not all criminal offences are brought to light and, partly because of this, there is a lack of insight into the total damage that this causes to citizens, companies and the government. The total number and size of claims that victims have against offenders is unknown, and neither can it be determined to what extent other compensation sources (insurance, social security) cover this damage. However, it is possible to gain an insight into certain amounts that are being realized, albeit to a limited extent, depending on the degree of specificity of the compensation source. In other words: when compensation sources are not specifically aimed at recovery by victims of criminal offences, it is generally difficult to determine which amounts can be actually attributed to the compensation of damage caused by criminal offences. Then, one can only reason that certain heads of damage that are often caused by certain criminal offences are actually covered by these compensation sources, and it can generally be estimated whether this concerns substantial or negligible volumes.

For example, some social security schemes cover the costs of healthcare and the loss of income, but it is irrelevant whether the need for this has been caused by a criminal offence. To a greater or lesser extent, private *first-party* insurances also provide *de facto* compensation for damage caused by criminal offences, depending on the type of risk insured. It is estimated that a large part of the damage caused by criminal offences is compensated by private and social insurers. For example, in almost all cases in which a criminal offence has resulted in personal injury, health insurance plays a role. When serious injuries affect the ability to work, social security schemes (the continued payment of wages by the employer, disability benefits, etc.) and private income insurances are often also activated. But also for other types of damage, it can be imagined that there is substantial insurance coverage after criminal offences, such as

damage caused by arson and burglary (home and contents insurance policies) and car theft (motor insurance). It is important to keep in mind that damage is generally only covered by first-party insurance insofar as the victim has provided him/herself with insurance cover in advance (requiring him/her to be financially able to do so).

Two compensation sources specifically refer to a criminal offence as a 'condition' for compensation: compensation from the Violent Offences Compensation Fund, and redress from the offender insofar as this takes place through criminal proceedings. Here, it can be said that the total volume of compensation relates by definition to damage caused by criminal offences. Moreover, these are the compensation sources in which the government specifically invests, and for which the public costs can (therefore) be traced relatively easily.

The Violent Offences Compensation Fund offers compensation of up to €35,000 to victims with serious injuries as a result of a violent crime and to their relatives, as well as to the surviving relatives of victims of a violent crime or culpable death. The compensation is funded from general resources and, due to its subsidiary nature, can be offset against benefits from other compensation sources. In 2017, the Compensation Fund paid out €20.5 million, and €686,979 was received from the Central Fine Collection Agency (*Centraal Justitieel Incassobureau, CJIB*). The implementation costs of the Compensation Fund amounted to €6,671,813 in 2017. The amounts have been fairly constant over the years, although an increase in the number of applicants can be observed in the last two years.

If a compensation order (*schadevergoedingsmaatregel*) is imposed, the State takes over its collection through the CJIB, and the victim's compensation is advanced insofar as the convicted person does not pay this within eight months. Only natural persons are entitled to this advance payment. In the case of sexual and violent crimes the payment covers the entire amount awarded; in other cases the advance payment is limited to €5,000. Because of this advance payment scheme (*voorschotregeling*), monetary flows are centralized via the CJIB. As a result, the amounts of concrete compensation and sums of recovery can be traced. Compensation through criminal proceedings requires not only a 'solved' case, but also admissibility in the criminal proceedings: insofar as the handling of the claim would place a disproportionate burden on the criminal proceedings, it is declared inadmissible. This means that data from the CJIB only provides an insight into the volumes of compensation and redress with regard to cases in which 1) the offender has been convicted, and 2) the claim for damages has been declared admissible.

In 2017, the government paid out €7,421,512 (3,531 payments) under the advance payment scheme for sexual and violent crimes and €4,090,034 (4,756 benefits) for other criminal offences. For sexual and violent crimes, 2,795 compensation orders were collected in full and 93 in part in 2017 – which raised a total of €2,955,948 – before payment was made under the advance payment scheme. For other criminal offences, this concerned 2,194 fully and 89 partially collected compensation orders before an advance payment was made; this concerned a total amount of €1,138,116 collected from offenders. The amount paid out by the government under the advance payment scheme has shown an upward trend in recent years. Evaluation research covering the years 2011-2013 showed that the State's risk of no recourse is significant: the greater the amount advanced, the greater the percentage that remains unpaid by the offender. Note that the advance payment scheme for sexual and violent crimes is in fact unlimited: in that category, any compensation that can be awarded within the

admissibility limits of the criminal proceedings is ultimately covered by the government. In this context, the government also incurs costs for the implementation of the compensation order (CJIB implementation costs) and for the support provided to victims in the criminal justice chain (Victim Support Netherlands (*Slachtofferhulp Nederland*)) and support from the Public Prosecution Service (*Openbaar Ministerie*), but it is not clear to what extent those investments can be specifically attributed to the victim's financial compensation. When it comes to financing legal aid, it can be said that in 2017 an amount of €1,291,970 was paid to finance legal aid for victims of serious violent and sexual crimes; for the category of other victims ("complex" claims by an injured party in the criminal proceedings) this amounted to €1,036,223.

To what extent compensation takes place through recourse against the offender outside the compensation order (and thus outside the criminal proceedings) is difficult to say. It is estimated that in many cases the offender remains unknown (namely in 67-75% of offences), meaning that a civil law claim for damages cannot actually be instigated. Even if an offender is known, actual redress is very uncertain (outside the criminal procedure route outlined above), because the offender must have sufficient financial means to actually compensate the damage. With regard to a part of criminal offences, the role of liability insurance is limited by the usual exclusion of intent under liability insurance. Previous research has shown that because of this, victims rarely commence civil proceedings against the offender. Nevertheless, some companies (retailers, petrol stations, public transport companies, insurers, etc.) do succeed in obtaining financial compensation from offenders committing common crimes who are regularly 'arrested', because they cooperate with a company that specializes in such small crime claims. Such a company has estimated, for example, that it has recovered nearly €2 million from apprehended shoplifters and about €500,000 from petrol thieves and insurance fraudsters.

The situation is different with regard to offences in which damage is caused by a motor vehicle: the motor liability insurer cannot rely on grounds for exclusion such as intent. Insofar as the motor liability insurer (thereby) compensates the victim's loss while liability was not covered by the insurance due to intent, the insurer has a right of recourse against the offender (the insured party). The Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*), financed by motor liability insurers, acts as a safety net for situations involving an unknown or uninsured offender. It can be deduced from the reporting by the Guarantee Fund that in 2017 a total of €62,458,000 was paid out, and for the same year the fund collected €5,997,000 from actions for recourse. It is not known, however, what percentage of these compensation and redress amounts can be attributable to criminal offences.

Exploratory interviews for the present study indicate that private and public parties that are entitled to recourse (social security providers, insurers, employers) generally refrain from actual recourse against the offender of a criminal offence, if indeed he/she is identified at all, because the costs do not outweigh the benefits. For them, the problem of the often insolvent offender is, of course, no different. The importance of a relative calm in the relationship between the offender and the victim also appears to play a role in the consideration of the party entitled to recourse.

The strongest 'concurrence' of compensation sources seems to occur in crimes that lead to (serious) personal injury. This damage can lead to 'generic' claims under private and social insurance; the greatest coverage is probably offered by health insurance and in the form of income protection (the continued payment of wages, social security). As far as the latter category is concerned, the victim's source of income (salaried, self-employed, unemployed) can make a significant difference. In addition, there is a claim for ('specific') compensation from the Compensation Fund. If an offender is known, the victim can attempt to claim his/her (remaining) damages from this offender; the amount allocated in criminal proceedings is then fully covered by the advance payment scheme. With regard to this category, public costs are incurred in various ways: on the one hand, through general investments in social security (for 'everyone'); on the other hand, through the Violent Offences Compensation Fund (for all victims of violent and sexual crimes), the advance payment scheme (in cases in which an offender has been convicted and does not pay (in full) and in the form of legal aid.

When it comes to damage to property (homes, buildings, business machinery and equipment, cars, valuables), private first-party insurance plays an important role. Unlike personal injury as a result of violent and sexual crimes, this is a category of damage that can also be suffered by companies and (local) government. A significant part of the damage caused by criminal acts such as burglary, theft and arson are borne by private insurers, but only if and insofar as the property of the victim is insured against these risks. Moreover, this may involve large amounts that can far exceed the importance of a personal injury case (think of arson, which results in business premises and its machinery and equipment being destroyed). If the offender is known, the victim can try to recover this damage from him/her; the amount awarded in criminal proceedings to compensate such damage is covered by the advance payment arrangement up to an amount of €5,000.

Damage that can be labelled as 'purely financial' is probably covered by insurance to a (much) lesser extent. For example, both private parties and public institutions can suffer damage as a result of fraud: salient forms are fraud with means of payment (skimming or phishing, credit and debit card fraud) and insurance fraud (when taking out insurance or claiming damages) or tax fraud (evasion, money laundering) and social fraud (improper use of social security schemes) respectively. Also think of 'cybercrime': now that part of social life takes place online, crime also seems to be moving in that direction. In contrast to a decrease in cases of burglary or violence, there appears to be an increase in digital crime (sales fraud, hacking, cyber threats, identity fraud, etc.), making the rise of cyber insurance a relevant development. But, as stated above, insurance coverage only exists to the extent that the victim has adequately insured him/herself in advance. If the offender is identified, the victim can theoretically recover the damage from him/her in full; damages allocated in criminal proceedings are covered by the advance payment arrangement up to an amount of €5,000.