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# **Variants of Advance payment scheme**

## **Separate procedure for handling compensation claims by injured parties**

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*Financial consequences for the State of the Advance payment scheme  
(Voorschotregeling)*



22812

**Summary**

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# S Summary

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## S.1 Objective and approach of the research

### **background**

The proposed new Criminal Procedure Code (*Wetboek van Strafvordering*) provides the possibility of distinguishing complex claims for compensation by victims of violent or sexual crimes from the main case and dealing with them in a separate criminal procedure. This would entail establishing a separate compensation court. Currently, such complex claims are declared inadmissible by the criminal courts. The victim can then turn to the civil courts, where they encounter more obstacles to being awarded and then collecting compensation than in criminal proceedings. The intention behind the proposed separate procedure under criminal law is to strengthen the victim's position.

In 2021, Cebeon researched the possible additional costs to the State of applying the existing Advance payment scheme when introducing the separate procedure for the handling of claims, including complex claims, by victims of violent and sexual crimes.

During the course of that research, the commission investigating the compensation system for victims of criminal offences (Donner commission) issued an opinion. Its opinions include altering both the scope of the separate procedure, and the criteria applied by the Advance payment scheme. Furthermore, the commission recommends broadening the scope of the Violent Offences Compensation Fund (*Schadefonds Geweldsmisdrijven*) by introducing a special category of compensation for very high personal damages. Changes to regulations further to these opinions will in turn affect the level of risk to the State in regard to both the initial, current handling of claims in a criminal case, and the estimated effects of the proposed separate procedure as outlined in the previous Cebeon research.

In this research, the *effects of the separate procedure on the extra risk to the State have been estimated*, taking account of the Ministry of Justice and Security's interpretations (variants) of the Donner commission's aforementioned opinions as prepared for the research.

### **research question**

The core research question is:

Considering the different variants of the Advance payment scheme, what are the consequences of the Donner commission's opinions on the separate procedure for handling compensation claims by injured parties and the introduction of a separate compensation court, in terms of the compensation court's caseload and of anticipated costs?

Four research questions have been derived from this question:

1. What is the compensation court's anticipated potential caseload (number of cases and financial implications)?  
Specifically, this is the portion of claims by injured parties declared inadmissible *which might be referred* to that court if the Donner commission's opinion with regard to the *scope* of the separate procedure is applied.
2. What is the anticipated effect on the potential caseload (number of claims and financial implications) of introducing a special category for 'exceptionally high personal damages' within the Violent Offences Compensation Fund?
3. What estimated portion of the claimed compensation *can be awarded* by the compensation court?

4. What is the anticipated *risk to the State* in the current situation (zero variant) and in three other variants of a revised Advance payment scheme, described below?

#### ***research approach***

As regards the data to be analysed and the research method, the research builds on the previous research into a Separate procedure for handling compensation claims by injured parties (Cebeon 2021). From a sample of 500 court rulings (between 2017-2019), data on compensation claims by injured parties added to criminal proceedings were analysed. The sample outcomes were worked up into national figures based on the national figures of the Netherlands Public Prosecution Service (*Openbaar Ministerie, OM*) that are managed by the WODC. To perform the calculations, assumptions were made in order to predict a future scenario that is not yet known (if the separate handling of complex claims becomes possible). For example, it was assumed that the number of claims added to and assessed in criminal proceedings is the same as during the years covered by the research, and that the existing Advance payment scheme applies.

In this research, the same sample and method were used and new analyses were performed in order to estimate the effects of the Donner commission's opinions. Some more up-to-date data and insights were also used. In addition, experts were consulted about how changes to the Advance payment scheme and adding an extra category within the Compensation Fund might affect victims' decisions with regard to adding claims, which could impact the caseload of a separate compensation court.

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## **S.2 Variants of Advance payment scheme and exceptional category within Compensation Fund**

#### ***variants of Advance payment scheme***

For the research, the Ministry of Justice and Security provided three variants of the Advance payment scheme. These are illustrated in figure S. 1 with **the amount of the compensation measure in blue** and **the maximum advanced payment in red**.

**Figure S.1: Variants of Advance payment scheme for research purposes**

Guaranteed advanced payment	Victims of other crimes (not SVSC)	Victims of serious violent and sexual crimes (SVSC)
<b>Current (Variant 0)</b>	<p>&lt; € 5,000: full amount &gt; € 5,000: € 5,000</p> <p>Damages € 5,000 ► max advanced payment € 5,000</p>	<p>Full amount, no max</p> <p>Max advanced payment 100%</p>
<b>Variant 1</b>	<p>&lt; € 5,500: full amount &gt; € 5,500: € 5,500 plus 70% of the excess, up to a maximum of € 50,000</p> <p>Damages € 69,000 ► max advanced payment € 50,000</p>	
<b>Variant 2</b>	<p>70% of total amount, max € 7,000</p> <p>Damages € 10,000 euros ► max advanced payment € 7,000</p>	<p>70% of total amount, no max</p> <p>Max advanced payment 70%</p>
<b>Variant 3</b>	<p>70% of total amount, max € 7,000</p> <p>Damages € 10,000 euros ► max advanced payment € 7,000</p>	<p>70% of total amount, max € 150,000</p> <p>Damages 214,000 ► max advanced payment € 150,000</p>

As can be seen in Figure S.1, variant 1 does not distinguish between victims of serious violent and sexual crimes versus victims of other crimes; in variants 2 and 3, however, a distinction IS made, by applying a lower ceiling for victims of other crimes.

The effects of a separate procedure for handling complex claims in a compensation court were estimated for each of the three variants of the Advance payment scheme under consideration, and compared with the effect under the current Advance payment scheme (shown as variant 0).

***exceptional category within the Violent Offences Compensation Fund***

For the purposes of our research, the Ministry provided the following scenario for the opinion to add an extra, high category to the Violent Offences Compensation Fund (‘exceptional category’):

- A **threshold amount** of **300,000** euros applies for obvious personal injury;
- The maximum **compensation** from the Compensation Fund is **150,000** euros.

This means that, if there is obvious physical injury of 300,000 euros or more, the victim receives compensation of 150,000 from the Compensation Fund.

Given how few compensation awards exceeding 300,000 euros are made at present to victims of violence (fewer than 10 per year), it is anticipated that few cases will be eligible for the exceptional category. This means that an exceptional category would *potentially* deter only a small number of victims of violence from adding a claim to criminal proceedings, chiefly if variant 1 of the Advance payment scheme is chosen (i.e. with a maximum advanced payment of 50,000 euros).

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### S.3 Estimated caseload of a separate compensation court

#### ***potential caseload of a separate compensation court***

The estimated caseload of a separate compensation court depends on the interpretation of the claims declared inadmissible by judges. Four definitions of a way to distinguish between genuinely inadmissible claims and claims improperly judged inadmissible were studied. These are:

- I. only claims deemed wholly inadmissible for obvious reasons
- II. only claims deemed wholly inadmissible for obvious or doubtful reasons
- III. all claims deemed wholly or partially inadmissible for obvious reasons
- IV. all claims deemed wholly or partially inadmissible for obvious or doubtful reasons.

Applying these four caseload definitions results in an estimated caseload handled by a separate compensation court involving total annual compensation of at least 89 million euros up to a maximum of 207 million euros. Of this, the majority is attributable to victims of other crimes (from 69% in variant IV to 93% in variant I). It seems that much of the estimated caseload consists of a small number of high-value claims handled

The caseload of claims at the compensation court has been estimated overall at 9,000 per year, comprised roughly equally of victims of serious violent and sexual crimes and victims of other crimes.

#### ***influence of policy on advanced payments and Compensation Fund on victims' decision-making behaviour***

During the research, we also studied how *making changes to the Advance payment scheme* and adding another high 'exceptional category' within the Violent Offences Compensation Fund might influence victims' decisions on whether or not to add claims. Our consultations with experts revealed that:

- there is a lack of information about the reasons why three quarters of victims currently do not add a claim to criminal proceedings. This could provide an insight into the decisions they are likely to make with regard to the separate procedure, as well as serving as point of reference for lowering any thresholds for adding claims to criminal proceedings;
- the decisions made by individual victims cannot be predicted on the basis of 'objective parameters,' such as amount of claim, maximum anticipated award, or type of crime. Various factors are at play for the individuals involved such as, on the one hand, perceived seriousness, the need for recognition and reparation, the importance of the offender paying, the desire or need to obtain the biggest possible sum of money and, on the other, willingness to embark upon an additional course of proceedings, the effort that entails, suffering the associated additional emotional stress and, potentially, running additional financial risks, depending on what form the separate procedure will take;
- in all three variants, the Advance payment scheme is limited for victims of violent and sexual crimes, making it likely that fewer of them will add a claim, or a complex one at least, to criminal proceedings, or that a separate compensation court will handle fewer cases. The exceptional category within the Compensation Fund makes this even more likely where very high-value claims are concerned;
- by and large, the three variants of the Advance payment scheme are more generous (higher ceiling than under the current Advance payment scheme) for victims of other crimes, so we do not anticipate fewer of these victims in the caseload of a separate compensation court.

This means that all three variants are expected to reduce the caseload handled by a compensation court involving claims, particularly complex ones, by victims of serious violent and sexual crimes. However, there are no parameters with which to quantify this reduction. It must also be borne in mind that allowing the option of a separate procedure per se will also influence the number of claims, and the sums involved. The estimates presented in this report relate to *all eligible* cases, based on the estimated caseload in the

period 2017-2019. Thus the calculations do not include effects of victims deciding for or against adding a claim or taking it to a compensation court.

therefore the ‘maximum’ caseload (estimated on the basis of the assumptions, i.e. disregarding victims’ decisions to refrain from adding a claim or taking it to a compensation court if they are entitled to do so.

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## S.4 Estimated awards by a compensation court

Percentages of successful claims have been used to estimate the sums that would be awarded by a compensation court, based on historical data. The estimated total amount awarded is between around 45 million euros per year and around 105 million euros per year, depending on size of caseload.

The vast majority of these amounts will be awarded to victims of other crimes, ranging from 69% for the most generous caseload definition (IV) to 92% for the least generous (I). Measured in euros, a separate procedure for handling claims in a compensation court is therefore expected to result in more compensation in total being awarded to victims of other crimes than to victims of serious violent and sexual crimes.

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## S.5 Estimated risk to the State of a separate compensation court

Based on the Advance payment scheme, the State already pays at least some of the compensation amount to the victim in advance, whilst attempts to collect the sum from the offender are ongoing. The amount which, ultimately, cannot be recovered is borne by the State (up to a maximum of the advanced payment made) and by the victim, i.e. if the advanced payment is lower than the outstanding claim on the offender. In that case, the victim does not receive the full compensation.

### ***total risk to the State***

The extra risk to the State as a consequence of compensation awards made by the separate compensation court has been estimated for each variant of the Advance payment scheme under consideration, with different variants (I to IV) of the compensation court’s caseload.

On the basis of the assumptions and data used in the research, the extra risk to the State as a consequence of awards being made by the compensation court has been estimated.

Per the *current Advance payment scheme* (zero variant), this estimated extra risk to the State is between 4 million euros and 30 million euros, depending on the caseload definition (the bigger the caseload, the higher the risk).

For the *variants* of the Advance payment scheme, the risk to the State has been estimated at between **4 million euros** and **34 million euros**, depending on the variant of the Advance payment scheme and of the caseload.

The *highest* risk is presented by *variant 1* of the Advance payment scheme, i.e. an estimate of between **9 million euros** and **34 million euros**, depending on the caseload definition.

The *lowest* risk is presented by *variant 3* of the Advance payment scheme, i.e. an estimate of between **4 million euros** and **19 million euros**.

### ***serious violent and sexual crimes versus other crimes***

The total amounts of the risk to the State for each variant of the Advance payment scheme mask differences in the extent to which these are determined by estimated payments to victims of serious violent and sexual crimes or of other crimes.

Under the *current Advance payment scheme* (zero variant), the vast majority of the State contribution is expected to go to victims of serious violent and sexual crimes, i.e. about 60% to about 90%, and 10% to 40% to victims of other crimes.

In *variant 1*, the vast majority of the State contribution is expected to go to victims of other crimes, i.e. about 80% to 90%, and 10% to 20% to victims of serious violent and sexual crimes.

*Variants 2 and 3* sit in-between this, with an estimated state contribution of about 50% to 70% (variant 3) to 80% (variant 2) to damages suffered by victims of serious violent and sexual crimes, and 20% to 50% to victims of other crimes.

### ***impact on injured parties***

Victims will not receive the portion of the compensation that is not paid either by an offender or as an advance payment from the State. To enable us to estimate the risk to the State, we also estimated the amount that victims would receive.

In total, with variant 1 victims receive an estimated 50% or thereabouts of the compensation awarded by the compensation court. For variant 2, this has been estimated at about 42% and for variant 3 at about 35%. However, these mask differences between the groups of victims of serious violent and sexual crimes and victims of other crimes.

In *variant 1*, according to the estimates victims of each type of crime receive around 50% of the compensation in total.

In *variants 2 and 3*, according to the estimates victims of other crimes receive around 20% of the compensation in total and victims of serious violent and sexual crimes about 80% (in variant 2) or about 60% (in variant 3).

In the *zero variant* (the current advanced payment scheme) (interpretation 0), this would be 100% of the compensation sum for victims of serious violent and sexual crimes and an estimated 20% of the compensation sum for victims of other crimes.