

The Victim and Compensation: the Dutch approach



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What is this about?



Compensation of the victim in the criminal procedure in the Netherlands.

EU Directive



Have Member States an obligation to make it possible for victims to claim their damages in the criminal proceeding?

EU Directive



Article 16 Directive:

Member States shall ensure that,

in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time,

except where national law provides for such a decision to be made in other legal proceedings.

DG Justice Guidance Document



The DG Justice Guidance Document mentions (p. 37):

Adhesion procedure: the victim joins the criminal procedure as a civil claimant.

Compensation order: penal sanction to pay compensation.

DG Justice Guidance Document



DG Justice Guidance Document, the adhesion procedure or compensation order are beneficial for victims:

- **to speed up proceedings**
- **victim does not bear the burden of proof (?)**
- **no court fees**

Dutch law



Dutch criminal law:

- **adhesion procedure**
and
- **compensation measure (± compensation order)**

Dutch law



Adhesion procedure (civil claim) (1995):

- The civil claim is filed by the victim
- Making use a form (no lawyer required)
- Not necessary to go to the hearing
- The claim must be simple (complete clarity)
- Partial (simple) claim possible
- The court is obliged to make a decision
- **But: the damages awarded must be collected by the victim himself.**

Dutch law



Compensation measure (1995):

- (Also) Governed by rules of private law.
- Can be imposed for the same amount as damages awarded (only a simple claim).
- Enforcement by the state. (An obligation to pay the state a sum of money for the benefit of the victim. The state pays the amount received immediately to the victim.)
- Custodial sentence for non-payment. (Does not relieve offender from paying compensation).

Dutch law



Enforcement by the state = prosecution office →

The CJIB = agency that collects different kinds of fines and measures.

Collects more than 80% of the compensation measures within 3 years.

Dutch law



Problems:

- **Many claims: (partially) too complicated → (partially) inadmissible → referred to the civil court.**
- **Victim still had to wait a long time for his money.**

Victim Support



To reduce the problem that many claims are inadmissible in the criminal procedure:

- 1. Victim support NL assists victims (2005) →
proper substantiation of the claim (ca. 15.000 in 2014)**
 - a. Letter accompanying the form refers to Victim Support NL**
 - b. Screening of the other forms by a legal officer of Victim Support NL (outreaching)**

- 2. Lawyer free of cost (2006). Criminal procedure and civil procedure (severe violent crime).**

Recent developments



Law that improved the position of the victim (2011):

- **“Simple” claim became: claim should not be a “disproportionate burden” on the criminal procedure.**
- **Payment in advance by the state when the judgement is final (only violent crimes; 2016 other crimes, but max € 5.000).**
- **State compensation possible before criminal procedure (only severe violent crimes; no full compensation)**

Recent developments



1. Many claims (still): inadmissible → a disproportionate burden on the criminal procedure.
 - Victim Support NL started project in 2013: legal assistance at trial (representation).
 - More referral to lawyers.
2. A provision for the seizure of assets is introduced (2014) in criminal law, for the to compensation of the victims.
3. Future: separate claim-hearing for difficult cases?

Resume



Procedure

- Possible state compensation at an early stage
- Adhesion procedure/Compensation measure + Payment in “advance”
- Seizure of assets for the compensation.

Support

- Support by Victim Support NL or lawyer →
 - outreaching
 - substantiation of the claim
 - representation in court