

# **Compensation of victims of trafficking under international and Dutch law**

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## I Right to an effective remedy under international law

Under international human rights law States have an obligation to provide victims of human rights violations with adequate and appropriate remedies and to protect them from further harm.<sup>1</sup> The provision of adequate remedies serves multiple purposes. It offers the victim payment or reparation for injury, loss or harm and is an essential element of access to justice. It helps to empower the victim, contributes to their recovery and reduces the risk of re-trafficking. At the same time it serves as punishment and deterrence of traffickers.<sup>2</sup>

The right to a remedy is a human rights norm widely recognized in the major international and regional human rights instruments. The International Covenant on Civil and Political Rights (ICCPR), for example, requires States Parties to ensure “*that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy*” (Art. 2(3)). A similar provision is found in Art. 13 of the European Convention on Human Rights (ECHR). In this respect it is important to note that trafficking is recognised by the ECtHR to fall within the scope of Art. 4 ECHR, the prohibition on forced labour and slavery, without the need to determine whether it should be qualified as slavery, servitude or forced labour (*Rantsev vs Russia and Cyprus*, 7 January 2010, Appl. Nr. 25965/04).

As stated in Guideline 9 of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking:

*“Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.”*

Key international instruments on the right to an adequate remedy are the 2005 *Basic Principles and Guidelines on Remedy and Reparation*<sup>3</sup>, and the 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.<sup>4</sup> Both are resolutions and not legally binding instruments, yet they are politically binding.

### Elements of the right to an effective remedy

The right to an effective remedy contains both substantive elements and procedural rights needed to be able to access remedies.<sup>5</sup> According to the *Basic Principles and Guidelines on Remedy and Reparation*, adequate reparations include:

- ❖ restitution
- ❖ rehabilitation
- ❖ compensation
- ❖ satisfaction
- ❖ guarantees of non-repetition.

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<sup>1</sup> *Commentary Recommended Principles and Guidelines on Human Rights and Human Trafficking*, United Nations Human Rights, Office of the High Commissioner for Human Rights, 2010, pp. 141-151; Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011 (A/HRC/17/35), p. 4-5.

<sup>2</sup> Joint UN agencies, *Prevent Combat Protect Human Trafficking, Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, 2011, p. 86.

<sup>3</sup> UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law*, adopted by the General Assembly 21 March 2006, A/RES/60147.

<sup>4</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN General Assembly, 29 November 1985, available at: [www2.ohchr.org/english/law/victims.htm](http://www2.ohchr.org/english/law/victims.htm).

<sup>5</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011 (A/HRC/17/35), p. 5.

## **Restitution**

Restitution aims at restoring the situation that existed before the violation. Measures may include release from detention (whether such detention is imposed by the traffickers, the State or another entity<sup>6</sup>), return of property, such as identity and travel documents and other personal belongings, safe and voluntary repatriation to one's place of residence (where applicable and if it is in the interest of the trafficked person), recognition of legal identity and citizenship, and assistance and support to facilitate social integration.

## **Recovery (rehabilitation)<sup>7</sup>**

Rehabilitation recognizes the need to ensure that persons who have suffered a violation of their human rights have their status and position restored in the eyes of the law and community. It includes medical and psychological care, as well as legal and social services. By definition trafficking involves physical, sexual or psychological violence, coercion, threats and intimidation which may have severe physical and psychological health consequences for trafficked persons.<sup>8</sup>

## **Compensation**

Compensation is payable for economically assessable damage to the extent that such damage cannot be made good by restitution. Compensation can cover a wide range of injury, loss or damage caused by the offender and may include payment for or towards:

- ❖ Costs of medical, physical, psychological or psychiatric treatment required by the victim;
- ❖ Costs of physical and occupational therapy or rehabilitation required by the victim;
- ❖ Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- ❖ Lost income and due wages according to national law and regulations regarding wages/ the money the victim earned for the trafficker;
- ❖ Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
- ❖ Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her;
- ❖ Any other costs or losses incurred by the victim as a direct result of the crime.

## **Satisfaction & guarantees of non-repetition**

Satisfaction can be addressed by ensuring that the violations of the victim's rights are properly acknowledged and that 'justice is done'. Guarantees of non-repetition are a particular important component of the right to a remedy in the case of trafficking, owing to the danger and harm caused by re-trafficking. This includes the obligation of States to take all necessary measures to protect the victim from future trafficking, as well as the effective prosecution and sanctioning of the traffickers.

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<sup>6</sup> See for the issue of unlawful detention of trafficked persons in State or private run shelters or rehabilitation centres: Anne Gallagher & Elaine Pearson, *Detention of Trafficked Persons in shelters. A legal and policy analysis*, 2008

<sup>7</sup> As the Special Rapporteur on Trafficking in Human Beings notes in her 2011 report, the term recovery should be preferred to rehabilitation as to avoid re-victimization of trafficked persons by labelling them as persons in need of 'rehabilitation'.

<sup>8</sup> See e.g. *Stolen Smiles. The physical and psychological health consequences of women and adolescents trafficked into Europe*, Cathy Zimmerman e.a., the London School of Hygiene and Tropical Medicine, 2006.

## Procedural rights

Procedural rights in order to be able to access remedies are critical pre-conditions in realizing the substantive right to reparations for trafficked persons.<sup>9</sup> These include:

- ❖ Access to information about available remedies in a language the victim understands;
- ❖ The right to legal assistance, including to pursue compensation;
- ❖ The right to remain in the country during legal proceedings, including those for claiming compensation;
- ❖ Protection against unlawful interference with the victim's privacy and safety from intimidation and retaliation before, during and after proceedings;
- ❖ The right to play a meaningful role in legal proceedings, to being heard and to act;
- ❖ In the case of children: the appointment of a guardian.
- ❖ Medical, psychological, social, administrative and any other assistance that they may require in order to exercise the right to an effective remedy in a meaningful manner.

Special consideration is needed for trafficked children, having regard to "the particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation", as well as their lack of full legal standing.<sup>10</sup>

## Mechanisms

The two basic mechanisms for compensation are:

- ❖ Offender funded: criminal proceedings, labour tribunals, civil action
- ❖ State funded or subsidised compensation schemes: victim funds independent of criminal case and identification of an offender.

## Obstacles

In practice there are various obstacles barring victims' access to compensation. These include among others:<sup>11</sup>

- ❖ Failure to identify trafficked persons
- ❖ Lack of awareness and/or knowledge among relevant actors (police, prosecutors, judges, lawyers, service providers, NGOs, trade unions)
- ❖ Lack of access to information, adequate assistance and legal representation of trafficked persons
- ❖ The requirement to have a regular immigration status
- ❖ The requirement to be physically present in the jurisdiction
- ❖ The requirement that the offender must be identified and convicted of the crime
- ❖ Lack of financial investigations targeting the flows of

### International standards:

- Trafficked persons are provided with information on available remedies and with access to legal assistance (Traf Prot. art 6; UN HCHR Guidelines principle 9 & guideline 4.8; CoE CAT art. 15; EU Directive 2011/36/EU art. 12)
- There is a legislative and practical possibility for trafficked persons to obtain compensation for damages suffered (UN TOC art. 14.2 & 25; Traf Prot. art. 6.6; ICRMW art. 25.3; ILO no. 97 & 143; UN HCHR Guidelines principle 17; CoE CAT art. 15; EU Dir on Compensation;)
- Trafficked persons are enabled to present their views and concerns at appropriate stages of the criminal proceedings (UNTOC art. 25; Traf Prot. Art. 6)
- There is a provision for payment of compensation from the State where such compensation cannot be obtained from the trafficker (UN HCHR Guidelines no. 4.4; CoE CAT art. 15)
- Wages due should be paid, whether a worker is documented or undocumented (ICESCR art. 6 & 7; ICRMW art. 6 & 25; ILO C. 95 on the Protection of Wages; ILO C. 143 concerning Migrations in Abusive Conditions and the promotion of Equality of Opportunity and Treatment of Migrant Workers, art. 9; ILO Rec. No.151).
- Trafficked persons are not automatically deported and have a right to remain in the country pending the completion of legal proceedings, including proceedings for compensation (UN HCHR Guidelines no. 4.7)

<sup>9</sup> 2011 Report Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011 (A/HRC/17/35), p. 11-15.

<sup>10</sup> 2011 Report Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011 (A/HRC/17/35), p. 15.

<sup>11</sup> See e.g. the 2011 Report of the Special Rapporteur on trafficking in persons, especially women and children, p.10.

- proceeds from trafficking; difficulties in the effective tracing and seizure of criminal assets
- ❖ Lack of international cooperation in returning confiscated assets
- ❖ Confiscated assets go to the State and are not used to compensate victims
- ❖ State compensation funds are often limited and may exclude groups on moral grounds (such as illegal migrants or sex workers)
- ❖ Duration of the trial
- ❖ Inadequate witness protection programmes to guarantee the safety and security of trafficked persons and their family members.
- ❖ Fear, intimidation, language barriers, feelings of humiliation and/or insecurity about immigration status of the trafficked person
- ❖ Specifically in relation to victims of trafficking for prostitution: the risk that proceedings may expose them to re-victimization in the form of psychological harm, stigma and communal and family ostracism
- ❖ Specifically in relation to children: lack of systems of social work and guardianship to ensure that the grant and expenditure of any compensation money is monitored and used in the best interest of the child.

## Legally binding instruments

Both the UN Convention on Transnational Organised Crime (UN TOC) and the Trafficking Protocol oblige State Parties to establish appropriate procedures to provide access to compensation and restitution for victims of trafficking. This may include the use of confiscated proceeds of crime or property to compensate victims. The CoE Convention on Action Against Trafficking in Human Beings addresses the right to compensation of trafficking victims including ancillary procedural rights, such as the right to legal assistance and free legal aid.

### Organized Crime Convention, article 14 & 25

- Art. 14(2): Requires States Parties to give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party for compensation of (or return to) victims.
- Art. 25(2): Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention.
- Art. 25(3): Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

The term restitution is not defined and has multiple meanings, including compensation. One can therefore assume that restitution in this context covers full damages for all types of losses, including unpaid wages.

### Trafficking Protocol, article 6

- Art. 6(2): Each State Party shall ensure that information on relevant court and administrative proceedings is provided to victims of trafficking in persons.
- Art. 6(6): Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

The Interpretative Notes to the Protocol indicate that this should apply both in the destination country and the country of origin of the victim.

### Council of Europe Convention on Action against Trafficking in Human Beings, article 15

- Art. 15(3): Each State Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
- Art. 15(4): Each State Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims, in accordance with the conditions under its internal law, for

instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Art. 23 [monetary sanctions].

According to the Explanatory Memorandum compensation may cover material injury (such as the costs of medical treatment) and non-material damage (the suffering experienced). In deciding the compensation arrangements the Explanatory Memorandum refers to the principles contained in the *European Convention on the Compensation of Violent Crimes* (ETS no. 116), which limits the requirement that States pay compensation to cases of “serious bodily injury or impairment of health directly attributable to an intentional crime of violence” (art. 2 (1)).

Art. 15 (1) en 15 (2) oblige States Parties to ensure that victims have access, as from their very first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language they understand and to provide for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law. In relation to the latter, the Explanatory Memorandum refers to the ECtHR, which held that in certain circumstances there is a right to free legal assistance under art. 6 (1) ECHR (*Airey v. Ireland*, 9 October 1979). Effective access to a court may necessitate free legal assistance if someone is not in a position to present her or his case properly and satisfactorily without the assistance of a lawyer (*Golder v. UK*, 21 February 1975).

## II Right to compensation under EU Law

The right to compensation of victims in general and victims of trafficking in particular is addressed in various EU instruments. These rights include:<sup>12</sup>

- ❖ The right to access to existing compensation schemes for victims of violent intentional crimes
- ❖ The right to obtain a decision on compensation by the perpetrator in the course of criminal proceedings within a reasonable time, except where national law provides for such decision to be made in other legal proceedings
- ❖ The right to the return of their own property (unless urgently needed for the criminal proceedings) which has been recovered or seized during criminal proceedings, without delay.

Moreover, Member States should promote measures to encourage perpetrators to provide adequate compensation to victims in the course of criminal proceedings.

In cross-border situations, victims are entitled

- ❖ to apply in their Member State of habitual residence for compensation in the Member State where the crime was committed
- ❖ to essential information on the possibilities to claim compensation. This includes information and guidance on how the application should be completed, what supporting documentation may be required and on requests for supplementary information
- ❖ to receive, as soon as possible, information on the contact persons or department responsible for handling their compensation claim, an acknowledgement of the receipt of the application, (if possible) an indication of the time by which a decision on their application will be made and on the decision taken.

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<sup>12</sup> European Commission, Home Affairs (2013), *The EU Rights of Victims of Trafficking in Human Beings*, p. 8 and 20. The paper is available in various languages. See: [http://ec.europa.eu/anti-trafficking/EU+Policy/EU\\_rights\\_victims](http://ec.europa.eu/anti-trafficking/EU+Policy/EU_rights_victims).

**Directive 36/2011/EU, article 12 & 17**

- Art. 12(2): Member States shall ensure that victims of trafficking in human beings have access without delay to legal counseling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counseling and legal representation shall be free of charge where the victim does not have sufficient financial resources.
- Art. 17: Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

**Directive 2012/29/EU, article 16**

- Art. 16(1): 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.
- Art. 16(2): Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

**Council Framework Decision 2001/220/JHA, article 9**

- Art. 9(1): Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.
- Art. 9(3): Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

Access to compensation in cross-border situations**Directive 2004/80/EC, article 1, 4, 5 & 7**

- Art. 1: Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.
- Art. 4: Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.
- Art. 5(1): The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).
- Art. 5(2): The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.
- Art. 5(3): The assisting authority shall not make any assessment of the application.
- Art. 7: Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:
  - (a) the contact person or the department responsible for handling the matter;
  - (b) an acknowledgement of receipt of the application;
  - (c) if possible, an indication of the approximate time by which a decision on the application will be made.



## II Compensation of victims of trafficking in the Netherlands

The first section provides an overview of the different mechanisms for claiming compensation in the Netherlands, the kind of damages that can be claimed, the advantages and disadvantages of the different mechanisms and their mode of execution.

The second section discusses compensation as part of the criminal process in more detail, in particular the possibility to impose on the offender the obligation to pay compensation as part of the criminal sentence through a so-called Criminal Compensation Order (CCO). The paper closes with a number of examples of criminal cases in which the victim was awarded compensation as part of the criminal sentence.

### Section 1

#### Mechanisms for claiming compensation

There are three major ways for the victim/injured party to claim compensation.

- A. Through criminal court proceedings
- B. Through civil proceedings
- C. Through the Criminal Injuries Compensation Fund.

Apart from these three mechanisms, the *Act on Migrant Labour*<sup>13</sup> allows the awarding of lost earnings to irregular migrant workers through a formula based on the minimum salary and the legal assumption that the worker concerned has worked for six months. However, as far as known to the author this provision has not been used in practice yet. It will therefore not be further discussed in this paper.

#### Kind of damages that can be compensated

##### General or moral damages

General damages may include physical and psychological damages caused by the crime of trafficking.

A problem that may arise in regard to psychological damages is that in some cases there was already psychological damage before the victim got trafficked. Research has shown that persons who were victims of rape or child abuse or who come from deprived families or families in which there was (domestic) violence, are especially vulnerable to become victim of human trafficking, so not all psychological problems a victim suffers may have been caused by the trafficking.

Especially in the case of trafficking for prostitution, one may also think of compensation for the stigmatization a victim might suffer as a result of the trafficking, either by their community or their family. In some cases this may even lead to social exclusion or the victim being ostracized.

Another type of general damages may be damages caused by not being able to continue an education or by having quit a job to take up the offer of the trafficker.

##### Specific or material damages

There is a wide range of costs a victim has made or is still making as a result of the trafficking.

This may include costs for legal aid, shelter or (safe) accommodation and medical or psychological care, but also of the costs the victim must make to remove a tattoo placed under coercion.

One may also think of money the victim had to pay to the trafficker(s) or his/her accomplices for, e.g., travel costs, housing, food, clothing etc. Some traffickers demand the victim to pay a high sum of money for housing, costs of living, etc.

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<sup>13</sup> Wet arbeid vreemdelingen (Wav).

A key form of compensation is compensation for the money the victim earned and was forced to surrender to the perpetrator or, in the case of exploitation in other work than prostitution, wages that were due but not paid. It is established case law that money that a suspect has appropriated or that has been surrendered to him must, in principle, be considered as material loss.<sup>14</sup>

## Compensation through criminal court proceedings

The victim/injured party may join a claim for compensation as a civil action to the criminal proceedings. When the claim is awarded, the court can impose the compensation order as part of the criminal sentence, hereafter called Criminal Compensation Order (CCO)<sup>15</sup>, sanctioned by a certain period of substitute detention if the offender fails to pay. The latter is intended as a means for pressurising the offender to pay. Condition is that the treatment of the civil claim “does not pose a disproportionate burden on the criminal process”.

The Criminal Compensation Order (CCO) implies that the State is responsible for the collection of the damages awarded by the court on behalf of the victim/injured party. If the offender does not pay, the claim will be transferred to a bailiff in order to seize corresponding assets of the offender. If it appears that the offender has insufficient assets to cover the claim, the prosecutor will execute the order for substitute imprisonment. This requires no new court case. The execution of substitute detention, however, does not relieve the offender from his/her obligation to pay the compensation ordered. Substitute detention can only be imposed one time.

Since the entry into force of the *Act on Strengthening the Position of Victims of Crime*<sup>16</sup> in January 2011, victims of violent crimes and sexual offences, including trafficking in human beings, can seek an advance payment from the State if

- ❖ the offender was convicted and ordered to pay damages to the victim as part of the criminal sentence, and
- ❖ he/she fails to pay these damages for a period of eight months after the sentence has become final.

This shifts the onus of enforcing the compensation order from the victim to the State.

Since 1 January 2014, the State can seize the assets of the suspect during criminal investigations to prevent the suspect from hiding his assets before compensation is settled.

Victims of serious crimes, including trafficking in human beings and sexual offences, are entitled to free legal aid from a lawyer of their choice (assumed that the lawyer concerned takes cases which fall under the system of State subsidised legal aid).

Victims of trafficking can also join a civil claim to the criminal proceedings for lost earnings, i.c. the money they were forced to earn for the trafficker, provided that the calculation of the claim is not complicated.

After an initial period in which hardly ever a claim for compensation of a victim of trafficking was awarded, over the last few years lawyers have been quite successful in claiming compensation for the money victims of trafficking into the sex industry earned for their traffickers by calculating the number of days the victim worked and the amount of money she earned per day. As explained by Annet Koopsen, a Dutch lawyer:

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<sup>14</sup> National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings, Case Law on Trafficking in Human Beings 2009-2012. An analysis*. The Hague: BNRM, p. 141.

<sup>15</sup> “Schadevergoedingsmaatregel”.

<sup>16</sup> Wet versterking positie slachtoffers.

*“If you want to claim compensation for the money the trafficker took from the victim and it is hard to prove how much money she earned per day and how much she was forced to hand over to the trafficker, I make a calculation that avoids any discussion. For instance, if my client tells me that she earned about € 500,- to € 1000,- a day, I ask the court to grant her compensation for € 100,- a day, 5 days a week and 4 weeks per month, that is € 2000,- per month. If I plead with a calculation like this, there won't be any dispute whether she was allowed to keep any money for herself, whether she had to buy food, clothes, rent, etc, since the amount of money that she was forced to hand over to the trafficker was so much more that this calculation is really a minimum estimate. The courts have accepted this and the highest amount that has been granted to one of my clients up till now has been € 100.000,-. This was in criminal proceedings.”<sup>17</sup>*

This quote stems from 2011. Since then the Court has awarded compensation for amounts from € 100,- up to € 500,- per day on a regular basis, whereas the highest amount of compensation awarded so far is € 800.000,-. Amounts of up to € 500,- apply especially to cases in which it is plausible that the victim concerned was forced to earn extreme amounts of money, for instance by working double shifts.

### **Advantages & disadvantages**

Advantages: The offender has to pay the compensation if awarded; the burden of evidence lies with the public prosecutor; it is mostly quicker than civil proceedings; there is a possibility that the court will grant a longer prison sentence if the offender doesn't pay; the State will try to collect the money from the offender; since 1 January 2011 the State will pay if they cannot collect from the offender; legal aid is free.

Disadvantages: There is only little time during the criminal court proceedings to deal with the claim; the claim should not be too complicated; it is hard to get compensation for all damages suffered; if the case is not proven there is no right to compensation.

## **Compensation through civil proceedings**

A second way is to try to get compensation through civil proceedings. If it is not possible to claim all damages through the criminal case or the claim for compensation is not fully awarded in the criminal case, the victim can claim the remaining part through civil proceedings. The burden of evidence lies with the victim, but facts that are proven in the criminal case will also be accepted as evidence in the civil case.

However, civil proceedings are expensive as the victim has to pay the costs of a lawyer, *leges*, etc. her or himself and moreover risks having to pay also the costs of the defendant if she/he loses the case. In addition, civil proceedings may take a very long time.

### **Advantages & disadvantages**

Advantages: The offender has to pay if the compensation is awarded; the procedure is only about the compensation; there is enough time to discuss in length the damages, both general and specific damages caused by the trafficking; there is a possibility to hear experts (for instance doctors); compensation can be claimed even if the offender was acquitted.

Disadvantages: The proceedings can take a very long time, sometimes years; the victim has to start a procedure her/himself against the offender; the victim has to pay the lawyer and the court; if the victim loses the case she/he might have to pay for the costs of the entire procedure, including the costs for the lawyer of the offender; most of the times the victim can only do it after the criminal trial so that she/ he does not have to prove the guilt of the perpetrator.

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<sup>17</sup> This quote comes from 2011. By now also higher amounts of compensation have been awarded.

## Compensation through the Criminal Injuries Compensation Fund<sup>18</sup>

The Criminal Injuries Compensation Fund provides a financial allowance (benefit) for victims of violent crimes that have caused serious psychological or physical damage. In this way it recognizes the injustice done. Examples are theft with violence, robbery, threat with a gun, rape, domestic violence, stalking or child abuse. Trafficking in human beings falls under the crimes for which the Fund may provide compensation. The Fund is an independent part of the Ministry of Security and Justice.

If the damages are not compensated in another way, the Fund can provide compensation through a lump sum of maximum € 10.000,- for immaterial damages and € 25.000,- for material damages.

It is not condition for a benefit from the Fund that the offender is prosecuted or sentenced. However, if the case is dismissed or the suspect is acquitted it is difficult to get compensation from the Fund as in that case the Fund may decide that the victimhood of the applicant is not plausible.

Apart from the victim, also relatives can qualify for a benefit if the victim died as a result of the crime, for example for the costs of therapy or as immaterial compensation. Also witnesses of a crime in which a relative or loved one got seriously injured or died can qualify for a benefit.

To submit an application the victim has to fill in an application form, accompanied with evidence like police reports, medical reports, receipts of costs made, etc. The organisation Victim Support Netherlands<sup>19</sup> can provide assistance in completing the form.

The application must be submitted within 3 years after the crime took place, unless there are serious reasons why the victim could not submit her/his claim within that period.

Sometimes the Fund will need to do a further investigation, for example by contacting police, medical experts, etc. On an average the Fund will decide within 4 months. In case of a positive decision payment will take place within 3 weeks. If after the payment, the victim receives compensation from, for example the offender or an insurance company, she or he has to report this to the Fund.

If the victim does not agree with the decision of the Fund, she or he (or his or her lawyer) can appeal within 6 weeks at the Commission Criminal Injuries Compensation Fund. Normally the victim will be heard by the Commission in a special hearing. A decision is taken within 6 weeks after the hearing. If the victim does not agree with the decision of the Commission, he or she can lodge an appeal at the Court of first instance.

The Fund works with a list of injuries which has been developed in cooperation with its medical advisers. The list provides an indication of the amount of compensation in relation to the type of immaterial damage, whereby it makes a distinction between physical and psychological injuries.

The list consists of 8 categories which are attached to increasing sums of compensation. Based on the nature and seriousness of the injury the Fund will determine which category applies. The more serious the injury, the higher the compensation sum will be. The final sum will depend on the specificities of the case.

Overview of the categories and the attached amounts of compensation:<sup>20</sup>

- category 1 € 1.000,-
- category 2 € 1.750,-
- category 3 € 2.500,-
- category 4 € 3.500,-

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<sup>18</sup> Schadefonds slachtoffers geweldsmisdrijven.

<sup>19</sup> Victim Support Netherlands (Slachtofferhulp Nederland) provides legal, practical and emotional support free of charge.

<sup>20</sup> <https://schadefonds.nl/over-schadefonds/informatie/de-letsellijst>, accessed 10 April 2014.

- category 5 € 4.500,-
- category 6 € 6.000,-
- category 7 € 8.000,-
- category 8 € 10.000,-

In regard to psychological injury trafficking will fall under category 4-7, depending on the nature and seriousness of the trafficking. For example, trafficking involving sexual exploitation and sexual penetration under aggravating circumstances will fall under category 6, as well as trafficking involving the removal of one or more organs.

Advantages: A victim can get compensation even if the perpetrator cannot be identified, is not prosecuted or is acquitted by the criminal court.

Disadvantages: The offender doesn't have to pay; not all damages are compensated; the Fund does not provide compensation in case of trafficking for other purposes than prostitution if no (threat with) violence has been used as this does not fall under their definition of violent crimes; when compensation is refused by the Compensation Fund, this might be another psychological blow for the victim.

## Section II

### Compensation through criminal proceedings

#### General

The person who suffered direct damages as a result of the crime can join the criminal case as injured party and submit a civil claim for compensation to the criminal proceedings (art. 51a-51f jo art. 361 CPC), provided that the civil claim does not pose a disproportionate burden on the criminal process. This can be done before or during the court case. The civil claim is governed by the material rules of civil law under tort (art. 362 CPC). The Court can impose the obligation to pay compensation as part of the criminal sentence in the form of a Criminal Compensation Order. It can do so on the request of the injured party, on the request of the prosecutor<sup>21</sup> and *ex officio*. A CCO implies that the enforcement of the compensation order shifts from the victim to the State, *in casu* the Central Judicial Collection Agency (CJIB).

The compensation claim concerns in the first place the criminal facts as laid down in the indictment, but also applies to facts that are added *ad informandum* and which are stated in the summons (art. 361 para 2 CPC). This means that victims can also file a civil claim if their case is added to the indictment *ad informandum*.<sup>22</sup> Also private and public legal entities may intervene as injured party. The victim can authorise someone to file the claim and to represent him or her in the further proceedings. If the injured party is a minor or placed under guardianship, he or she needs a legal representative to act for him or her (art. 51f para 4 CPC). If the victim has died as a consequence of the criminal act, in some cases his or her relatives can join the criminal case as injured party (art. 51f para 2 CPC).

Apart from material and immaterial damages the victim/injured party can also claim statutory interest on the amount of damages. If the claim is awarded, the statutory interest on the amount awarded will be allocated from the date of occurrence of the damages. This can add up to a significant amount.

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<sup>21</sup> The Prosecutor can request to impose a CCO *ex officio* also when the injured party did not submit a claim. See also the Instruction Victim Care (Aanwijzing Slachtofferzorg) §2.4.2, *Stcrt.* 2010, 20476.

<sup>22</sup> Instruction Victim Care (Aanwijzing Slachtofferzorg), §2.4.2, *Stcrt.* 2010, 20476.

It is possible to only claim part of the damages (art. 51f para 3 CPC). The damage that is not claimed in the criminal proceedings can then be claimed in a civil procedure. Reasons to split the claim include:

- ❖ The extent of the claim is not yet clear, f.e. because the final situation has not yet been reached
- ❖ Because of the complex character of the claim it will not be possible to make the entire damages plausible during the criminal proceedings. In that case, only that part of the damages may be claimed for the establishment of which a limited investigation during trial is sufficient.

### **Free legal aid**

Victims of sexual and violent crimes, including trafficking in human beings, are entitled to free legal aid from a lawyer of their choice (provided that the lawyer concerned takes cases which are reimbursed through the system of State subsidised legal aid). Pursuant to article 44 para. 4 of the *Act on Legal Aid* the victim is not obliged to pay an own contribution for the provision of legal aid as in other cases of subsidised legal aid. This means that the full legal aid is reimbursed to the lawyer by the State according to a fixed rate.

Article 44 paragraph 4 of the *Law on Legal Aid* reads:

*"Regardless of his or her financial capacity, legal aid to a victim of a sexual offence or violent crime, respectively a surviving relative of a victim of such a crime if the victim as a result of that crime is deceased, is without costs, if the case is prosecuted and the victim, respectively the surviving relative, is eligible for benefits in accordance with Article 3 of the Act on the Criminal Injuries Compensation Fund. "*

This article does not apply to victims of trafficking for other purposes than prostitution if no (threats of) violence has been used. However, in case of joining a civil claim the injured party/victim is not obliged to pay an own contribution. The same applies if a victim of trafficking applies for subsidised legal aid during the reflection period.

### **Submission of the claim**

The victim/injured party can submit a civil claim for compensation by filling in a special "joining form"<sup>23</sup>, in which all damages suffered need to be listed including evidence like receipts, etc. As soon as the victim indicates that she or he wants to claim compensation, the form will be send to her or him by the Prosecutors Office.

It can be important to submit the form (with a preliminary claim) in an early stage of the proceedings as the requested damage may be taken into account in the manner in which the criminal case will be settled. If no damages are claimed the prosecutor may settle the case through a transaction or even dismiss the case (depending of course on the nature and seriousness of the crime). If the victim has submitted a claim for compensation the prosecutor will take this into account in his decision whether or not to prosecute. In most cases this will imply that the case will only be settled through a transaction or dismissal if the damages are compensated. If the defendant does not want to cooperate in settling the damages, this will generally mean that the prosecutor will summon him or her.

A copy of the joining form will be sent by the prosecution to the defendant (art. 51g para 3 CPC). The personal data of the victim as filled in on the form will thus become known to the defendant. It is possible to choose domicile, f.e. at the office of the lawyer, so the address of the victim is not disclosed through the joining form.

If there is a trial, the claim may be submitted in writing till the moment of the court session. Until that time, an already submitted claim may also be amended or supplemented. Next to the

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<sup>23</sup> "Voegingsformulier".

submission of the claim through a joining form it is possible to submit the claim at the hearing itself. This can be done in writing or orally and must be done before the prosecutor states his indictment in court (Art. 51g para 3 CPC). In any case the defendant must have sufficient opportunity to prepare a response to the claim to prepare, otherwise it might constitute a violation of the right to a fair trial Article 6 ECHR). This method therefore does not lend itself well to more extensive claims.

### **Admissibility of the claim**

For the claim to be admissible the offender must be sentenced to a punishment or criminal measure (e.g. placement in a psychiatric hospital) or be declared guilty without the imposition of a penalty (art. 361 para 2 under a CPC ). If the accused is acquitted or discharged of prosecution the injured party is in principle not admissible.

In addition, the injured party must have suffered direct damage<sup>24</sup> as a result of the proven facts (art. 362, para 2 b CPC ). This limits the circle of beneficiaries and excludes, for example, an insurance company joining a civil claim for the damages it reimbursed to a victim.

The indictment must contain the description of the acts that caused the damage. It is not required that the indictment demonstrates that there is damage and if so, precisely which damage. On the basis of the indictment the court must examine whether the proven facts caused the damage claimed.

The compensation claim is also admissible if the criminal fact is added *ad informandum*, on the condition that the facts concerned are already stated in the summons (art. 361 para 2 CPC).

### **No disproportionate burden on the criminal process**

If treatment of the claim of the injured party in the opinion of the Court poses a disproportionate burden to the criminal proceedings, it may provide that the claim in whole or in part is inadmissible (Art. 361 para 3 CPC).

If the Court cannot determine the exact damages, it is, however, entitled to make an estimate According to art. 6:97 Civil Code, the Court “estimates the damage in the manner that is most in accordance with the nature of the damages. If the extent cannot be determined accurately, it will be estimated.”

According to the Parliamentary Notes (2007-2008) the criterion “disproportionate burden” (which replaced the earlier criterion that the claim had to be “simple in nature”) aims to ensure that the court decides as much as possible on the substance of the claim. The mere fact that a claim is disputed, is not immediately substantiated by sufficient evidence or that, for example, a witness or expert needs to be heard, or that the amount claimed is higher than average, should be no reason to declare the claim inadmissible on that ground. That the extent of the damage – including immaterial damage – may need to be determined by estimation is not considered a major drawback given the great benefits for the victim.

### **Decision of the court**

The court must take a decision about the civil claim together with its judgement in the criminal case (unless the injured party has previously been declared inadmissible). According to art. 361 para 1 CPC the court has to decide in regard to the claim of the injured party on:

- ❖ the admissibility of the injured party
- ❖ the merits of the claim
- ❖ the distribution of the expenses incurred in regard to the proceedings by the injured party and the defendant (or his or her guardian in case the suspect is younger than 14 years old). If the defendant is sentenced to pay compensation to the victim/injured party, in general he or she will be ordered to pay the costs the injured party made in relation to the proceedings.

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<sup>24</sup> Direct damage means that someone must have been affected in an interest that is protected by the penal provision concerned.

The court can declare the claim of the injured party in full or partly inadmissible. The court can thus split the claim in a part that lends itself to be dealt with in the criminal case and a part that does not, because it poses a disproportionate burden on the criminal proceedings. The decision on the awarded part of the claim becomes final at the moment the judgement in the criminal case becomes final.

To the extent that the claim is declared inadmissible, the victim can seek remedy through a civil action. As to the admissible part of the claim, the court can decide to award it in full or in part. This means that the following decisions in regard to the compensation claim are possible:

- ❖ fully inadmissible
- ❖ partially inadmissible, award of the remaining part
- ❖ partially inadmissible, rejection of the remaining part
- ❖ partially inadmissible, partial award and partial rejection of the claim
- ❖ full award or rejection of the claim

### **Costs of the proceedings**

In its judgment the court must also decide on the distribution of expenses incurred by the injured party and the defendant in regard to the proceedings and the future costs of the execution of the verdict (art. 361 para 6 CPC and art. 592a CPC). The costs of the injured party include the costs of legal aid (if applicable) and the costs to attend the hearing (travel and accommodation cost, costs of missing working time).

If the (major part of the) claim of the victim/injured party is awarded, the court will assign the costs of the injured party to the defendant. If the (major part of the) claim of the injured party is rejected and/or declared inadmissible, in principle the injured party has to bear the costs of the defendant. However, in this case the court will generally set the costs on zero.<sup>25</sup>

### **Criminal Compensation Order**

The Court can impose the compensation order in the form of a criminal measure<sup>26</sup> (art. 36f CC). A Criminal Compensation Order (CCO) implies that the Court convicts the offender to pay the awarded amount of damages to the State for the benefit of the victim. The Court will, moreover, couple a certain period of substitute detention to the compensation order as a sanction in case the offender fails to pay (art. 24c CC).

#### **A Criminal Compensation Order**

- ❖ can only be imposed in as far the offender is liable for the damages according to civil law
- ❖ only applies to those parties who are entitled to join a civil claim to the criminal case (if the victim has died as a consequence of the criminal act, in certain cases also his/her relatives can claim compensation (art. 51f para 2 CPC).
- ❖ only applies to direct damages (which excludes the costs of the proceedings: see above).

Although the decision on the amount of damages awarded and the decision on imposing a criminal compensation order are two separate decisions, in practice the Court will impose the criminal compensation order for the same amount as it awards the damages. In the verdict it will be stated that payment of the awarded compensation to the victim will relief the offender from payment to the State and *vice versa*.

In the case of multiple suspects, the suspects are usually held jointly liable for the damages suffered. The CCO will then be imposed on each individual suspect for the total amount of damages (instead of imposing on each individual suspect a proportional part).

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<sup>25</sup> The Supreme Court has also ruled that the fact that a claim for compensation is declared inadmissible or is rejected does not necessarily imply that the injured party should bear the costs of joining a civil claim to the criminal proceedings (HR 23 November 2010, *L/N* BM9405).

<sup>26</sup> Schadevergoedingsmaatregel (Criminal Compensation Order).



### **Imposition of a Criminal Compensation Order *ex officio***

The Court can impose a criminal compensation order *ex officio*, that is, without the requirement of a claim by the injured party and whether or not following a request of the prosecutor. In general, of course, the Court will not impose a criminal compensation order (CCO) without it being apparent that the victim wishes for compensation of damages. However, this means that the court can still impose a CCO if the request for compensation of the injured party is not admissible for formal reasons, e.g. because he or she has failed to sign the joining form, or, in the event of appeal, because he or she failed to submit a civil claim in first instance.

The financial capacity of the suspect, in principle, does not play a role in determining the amount of compensation. Also when there is already a judgement of the civil court, the criminal court may still impose a CCO.

### **Execution**

A major advantage of the Criminal Compensation Order is that the State is responsible to collect the money on behalf of the victim/injured party. The Central Judicial Collection Agency (CJIB)<sup>27</sup> will do so commissioned by the prosecutor.

In order to execute the criminal compensation order, the CJIB (Central Judicial Collection Agency) will send a payment notice to the offender. Under certain conditions it is possible for the offender to ask for payment in multiple terms. If in response to the notices the offender does not pay and no arrangement for payment is made, the CJIB will transfer the claim to a bailiff in order to seize corresponding assets of the offender.

If it appears that the offender has insufficient assets to cover the claim, the CJIB can execute the substitute detention order. This requires no new court case: the prosecutor can order this immediately. The execution of the measure of substitute detention, however, does not relieve the offender from the obligation to pay the compensation ordered (art. 36f lid 7 CC). Substitute detention can only be imposed once.

It should, however, be noted that, according to the Prosecution Office, it is very difficult to execute substitute detention in case of foreign perpetrators who fail to pay. According to the Prosecution this hardly happens.

Since 1 January 2014, the State can seize the assets of the suspect during criminal investigations to prevent the suspect from hiding his assets before compensation is settled.

### **Advance payment**

Since the entry into force of the *Act on Strengthening the Position of Victims of Crime*<sup>28</sup> in December 2010, victims of violent crimes and sexual offences<sup>29</sup>, including trafficking in human beings, can seek an advance payment from the State if

- ❖ the offender was convicted and ordered to pay damages to the victim as part of the criminal sentence, and
- ❖ he/she fails to pay these damages for a period of eight months after the sentence has become final.

This means that if a CCO has been imposed the State will pay the (remaining) amount to the victim if the offender has not or not fully met his/her obligation to pay within eight months after the verdict has become final. There is no maximum set to the advance payment.<sup>30</sup> The arrangement does not apply to legal persons (Art. 36f para 6 CC). The responsibility for execution lies with the CJIB.

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<sup>27</sup> Centraal Justitiele Incasso Bureau (CJIB)

<sup>28</sup> Wet versterking positie slachtoffers.

<sup>29</sup> Rrt. 5 lid 2 jo. art. 1 lid 2 Uitvoeringsbesluit.

<sup>30</sup> Besluit van 24 juli 2010, houdende de vaststelling van het Uitvoeringsbesluit voorschot schadevergoedingsmaatregel, *Stb.* 2010, 311.

If the victim in the first eight months received part of the compensation sum through the CJIB or the offender, or has been (partly) compensated by the Criminal Injuries Compensation Fund, this will be taken into account in the execution of the advance payment.

## Examples of cases

### Zwolle Lelystad District Court, 10 December 2010<sup>31</sup>

LJN: BO7662.

The victim in this case submitted a claim for € 100,000 for material loss and € 5,000 for emotional injury. Explaining the claim of material loss, she argued that during the period in prostitution for which charges had been brought, she had earned € 300 to € 700 a day. She had to surrender all of her earnings to the suspect. She based the calculation on a sum of € 100 a day in surrendered income; this amount was multiplied by 50 months (five years, with an average of two months that she had not worked each year), making a total of € 100,000. Her counsel stressed at the hearing that, to avoid any discussion at that time, a very conservative estimate had been made. The PPS argued that the claim should be awarded in full and that an order to pay compensation should be attached to it. The court found that the investigation at the hearing had adequately shown that the aggrieved party had suffered damage as a direct result of the acts of the suspect that been declared proven. The court found it plausible that the amount of € 100 or every day worked was a minimum, referring in that context to judgements of the Amsterdam Court of Appeal and Arnhem Court of Appeal, in which a sum of € 100 every day worked was also adopted. As mentioned above, the court awarded the entire claim and issued a compensation order for the total sum of 105,000.

### Haarlem District Court, 21 July 2011<sup>32</sup>

LJN: BR2862 (Maas)

In this case two victims were awarded € 200,000 in compensation for material loss. The court based this on the victims' statements that they earned € 500 to € 1000 a day, and then adopted a sum of € 500 for safety's sake. The court also calculated on the basis of the period of exploitation that there probably had also been days when they did not work and/or were on holiday and fixed the number of days worked at 300 a year. Over three years, therefore, they had earned € 450,000 (3 x 300 x € 500). No costs were deducted, but the court found that half of the money was surrendered to the suspect, and it then rounded off the amount downwards to € 200,000 in loss of income.

### Appellate Court Arnhem-Leeuwarden, 28 June 2013

ECLI:NL:GHARL:2013:4608

Case nr.: KS 24-001704-12

Re: trafficking and exploitation of one woman during almost 7 years

Sentence: conviction for trafficking (prostitution) and forgery to imprisonment for a term of six years.

Acquittal in respect of money laundering.

Available at: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHARL:2013:4608>

#### Summary of the case

*The suspect had a relation with the victim and forced her to work for him as prostitute by stating that he had gambling debts and that if she loved him she would do this for him. He arranged various working places for her, bought her condoms and clothes that she had to wear during work, kept her under guard while she worked or had her controlled and/or stayed in the vicinity of her working place, forced her to give him (most of) her earnings, drew up rules to which the victim had to stick, placed a camera in her working room, forced her to continue working against medical advice and during her monthly periods, repeatedly beat her with a stick or belt, burned her with an iron and cigarettes on*

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<sup>31</sup> Taken from: National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings, Case Law on Trafficking in Human Beings 2009-2012. An analysis*, p. 146.

<sup>32</sup> Taken from: National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings, Case Law on Trafficking in Human Beings 2009-2012. An analysis*, p. 153.

*her arm and face, put her while it was winter without clothes out of his car and then put her back to work, put a knife at her throat, forced her to work long hours and days (up to 14 hours per day and/or 8 consecutive days), forced her to undergo an abortion and isolated her from her family and friends, making her dependent on him and placing her in an dependent position in which she was fully controlled by him and could not or did not dare to resist him or to back out.*

## **Decision of the court**

### *Claim of the injured party*

The injured party has joined the criminal process in first instance with a civil claim for compensation at € 1.225.929,18 for material damages and € 20.000 for immaterial damages. In its judgement the Court in first instance has awarded the claim till an amount of € 949.929,18 (including the cost of counsel). The injured party has joined the appeal case for the amount of the original claim. The claim is explained during the hearing of the court by the injured party and her counsel. The Advocate-General has requested that the claim should be allocated. The claim is contested by the defence.

### *Admissibility of the claim*

When examining the claim of the injured party a number of questions must be answered. The first question is whether the treatment of such a large claim - as argued by the defence - poses a disproportionate burden on the criminal proceedings, making the handling of the claim to be left to the civil court.

The amount of the claim made is not conclusive regarding the question whether or not the claim constitutes a disproportionate burden of the criminal proceedings. That question must be assessed in the light of the complexity of the claim. In terms of complexity the claim is not of such a nature that it constitutes a disproportionate burden. For this reason the claim will be dealt with in substance.

### *Material damages*

The next question that arises is how the earnings of the injured party as prostitute should be calculated. If the extent of the damage cannot be determined accurately, it is estimated.

As starting point for the calculation of the revenues, the period proven under (...) will be taken. The period commences on October 1, 2000. According to the injured party her activities ceased in June 2007. It therefore concerns a period of 6 years and 9 months (6.75 years). From the statement of the injured party further follows that she worked 44 weeks a year as a prostitute. By herself and her counsel it has been estimated that she earned an amount of - roughly - € 4000 per week. When asked, the defendant stated at the hearing of the court that according to his opinion the amount earned per week was € 2000. For the assessment of the damages the average of these two amounts will be taken and an amount of € 3000 will be used as earnings per week. In this average amount both temporarily higher revenues (for example for SM activities) and temporarily lower revenues (for example because prices were pushed down by Eastern European prostitutes) are sufficiently discounted. This means that the injured party has earned (6.75 x 44 x € 3000) € 891,000 as a prostitute during the alleged period.

From this income, the costs of living of the injured party must be deducted. For this, a connection will be made to the amounts as indicated in the example budgets by the Nibud<sup>33</sup> over the years in question. Given the indicated amounts per month for a single person for the years 2000 to 2007, notably F. 1539 (€ 698.37), F. 1623 (€ 736.49), € 770, € 795, € 810, € 804, € 875 and € 906 per month, the court fixes the costs as a reasonable average on € 10,000 per year. This leads to a total amount of costs of living of the injured party of (6.75 x € 10,000=) € 67,500. This amount will be deducted from the earnings as prostitute, which leads to the following final calculation of material loss: € 891,000 minus € 67,500 = € 823,500.

For the remaining part of the claim, the injured party will be declared inadmissible.

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<sup>33</sup> National Institute for Family Finance Information. See: <http://www.nibud.nl/over-het-nibud/organisatie/about-nibud.html>.

### *Immaterial damages*

The injured party has claimed € 20,000 immaterial damages. The defence has referred to the judgment of the court. This amount qualifies for allocation.

From the investigation by the court and taking into account what has been considered above, it has been sufficiently shown that the injured party as a result of the proven acts of the accused has suffered direct damages to the amount of € 843,500. The accused is obliged to compensate this damage; the claim will thus be allocated for that amount. For the rest the injured party is declared inadmissible in her claim.

### *Criminal Compensation Order*

In order to further that the damage is compensated by the defendant, the measure as prescribed in Article 36f of the Penal Code will be imposed, taking into account the maximum number of days that can be imposed as substitute detention, namely 365 days.

## **Appellate Court Arnhem-Leeuwarden, 8 November 2013**

ECLI:NL:GHARL:2013:8522

Case Nr: 21-002116-11

Re: Trafficking of two women.

Sentence: Imprisonment for 5 years, Criminal Compensation Order in relation to both victims

Available at: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHARL:2013:8522>

### **Summary of the case**

*The suspect had married/entered into a love relation with the two (Moroccan) victims, holding that their income from prostitution would be used for building a joint future and the purchase of joint items. He had told the victims that he had made debts to bring them to the Netherlands and that they had to work off those debts in prostitution. He had taken away their identity papers, beaten them when they refused to work or had not earned enough money, cut their hair off, raped them orally, anal and vaginal, and threatened them with death or severe abuse and/or that he or his accomplices would kill their family or tell their family that their daughter worked as a prostitute or that he would send them back to Morocco. He had also told them that the police would not help them, reason why the victims had not sought help or reported to the police. He had arranged a working place for them, gave them working instructions, brought and took them to and from their working places and controlled them or had them controlled by others during their work, took (the major part of) the money they earned, and forced them to work a great number of days per week and hours per day, also during illness, pregnancy and their monthly periods and when one of the women had a broken leg. The first victim had been exploited by him during six years, the second one during five months.*

### **The Court decided on the damages in relation to victim 1:**

*As to the claim for immaterial damages:* the injured party has suffered direct damages caused by the proven facts (...), which do not exist of material damages. The accused has inflicted these, so they are attributable to him. Based on the principles of fairness, the damage is estimated at € 17.500, which amount the Court allocates to the injured party.

*As to the claim for material damages:* in regard to the post “handed over income from prostitution activities” the Court assumes that the victim has worked 3 months in 2006, 3 months in 2000 and 10 months in each year from 2001 to 2005. The Court takes as a norm € 100 per day based on five days per week. This amounts to a sum of € 112,000 which the Court allocates to the victim. Also the costs for the medical statement of € 37.54 are recoverable.

The Court also awards the € 150 own contribution for legal aid.

For the remaining part the Court is of the opinion that the treatment of the claim would pose a disproportionate burden on the criminal proceedings. In so far, the injured party cannot be declared admissible in her claim and will only be able to submit her claim to a civil court.

**In relation to victim 2:**

The Court estimates the immaterial damages at € 12,500, which amount the court allocates to the injured party. As to the material damages, the Court assumes that the victim worked 5 months. The Court takes as a norm € 100 per day based on five days per week. This amounts to a sum of € 10,000. This amount is allocated. Also the costs for the medical statement of € 37.54 are recoverable. The Court also awards the € 100 own contribution for legal aid.

For the remaining part the Court is of the opinion that the treatment of the claim would pose a disproportionate burden on the criminal proceedings. In so far the injured party cannot be declared admissible in her claim and will only be able to submit her claim to a civil court.

The court sentences the suspect to pay to the State for the benefit of victim 1 € 129,537.54 in default of payment to be replaced by 292 days detention, provided that the application of such detention does not eliminate the obligation to pay compensation to the State for the benefit of the victim.

Similarly the Court decides that in regard to victim 2 the suspect must pay € 22,537.54 to be replaced by 73 days detention in case of non-payment under the same conditions.

## Resources

### PART 1

#### Binding instruments

EU, *Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0080:EN:NOT>

EU, *Directive 2009/52/EC of The European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>

EU, *Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, available at [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/jl0058\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0058_en.htm)

EU, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950), available at <http://conventions.coe.int/treaty/en/treaties/html/005.htm>

European Court of Human Rights (ECtHR), *Rantsev v. Cyprus and Russia*, Application No. 25965/04, 7 January 2010, available at [www.interights.org/rantsev](http://www.interights.org/rantsev)

CoE, *Council of Europe Convention on Action against Trafficking in Human Beings* (CoE Trafficking Convention) and *Explanatory Report* (2005), available at <http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm>

CoE, *European Convention on the Compensation of Victims of Violent Crimes* (1983), available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&CM=1&NT=116>

UN, *Convention against Transnational Organized Crime*, U.N. Doc. A/RES/55/25 (2000) and its *Travaux Préparatoires*, available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Doc. A/RES/55/25 (2000), available at <http://www.unhcr.org/refworld/docid/4720706c0.html>

#### Non-binding documents

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