

# COMPENSATION FOR VICTIMS OF HUMAN TRAFFICKING IN THE NETHERLANDS

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## TABLE OF CONTENTS

INTRODUCTION.....	4
PREFACE: HUMAN TRAFFICKING IN THE NETHERLANDS .....	5
1. COMPENSATION IN GENERAL.....	6
2. COMPENSATION IN CRIMINAL PROCEEDINGS.....	7
Methods to obtain compensation in criminal proceedings.....	7
Related issues .....	9
<i>Forfeiture of proceeds of crime</i> .....	9
<i>Legal aid</i> .....	10
<i>Information duty police and OM</i> .....	10
3. DEVELOPMENTS IN LAWS AND REGULATIONS.....	11
The Law .....	11
Regulations (OM Guidelines ) .....	11
4. COMPENSATION IN PRACTICE .....	13
Case law 2011 and 2012 .....	13
Analysis .....	15
<i>The number of victims joining the criminal proceedings</i> .....	15
<i>Information about possibilities for compensation</i> .....	15
<i>Information during and after the criminal proceedings</i> .....	17
<i>Specification of claimed and awarded compensation in the judgment</i> .....	17
<i>Courts' reasons regarding non-material compensation in criminal proceedings</i> .....	18
<i>Calculation methods in criminal proceedings</i> .....	18
<i>Statutory interest in criminal proceedings</i> .....	21
<i>Inadmissibility of claims in criminal proceedings</i> .....	22
<i>Compensation measure</i> .....	23
<i>Fund</i> .....	24
<i>Reference to the confiscation report in criminal proceedings</i> .....	24

<i>Confiscation and victim</i> .....	25
<i>Fine and victim</i> .....	26
<i>Compensation in civil proceedings</i> .....	26
<i>Settlements out of court</i> .....	26
5. RECOMMENDATIONS.....	28
General.....	28
Inspection/investigation .....	28
Legal profession .....	29
Judicial authorities .....	29
Victim Assistance .....	30
Endnotes .....	31

## INTRODUCTION

This report was written by the FairWork foundation and attorney Marijn Heemskerk.<sup>1</sup>

FairWork fights and prevents modern-day slavery in the Netherlands and assists victims of labour exploitation. Marijn Heemskerk is an attorney practising in Amsterdam. In 2012 and 2013 she conducted legal research into compensation for human trafficking victims in the Netherlands. This report combines the legal knowledge gained from this research with actual cases encountered by the Fairwork foundation. The report focuses on the possibilities for victims to claim compensation in criminal proceedings. It is addressed to anyone working with victims of human trafficking.

Much research has been done into the needs of victims of human trafficking who have escaped their situation of exploitation.<sup>2</sup> Under international treaties they have a right to protection and support. According to Maslow's theory, the basic needs of every human being are: having a safe place, a roof over one's head, and enough to eat and drink. After these needs have been met, reparation for the suffering inflicted on them comes next. Since the nineties, the international movement for Restorative Justice has generated greater attention to the recovery of victims of a crime as opposed to or in conjunction with punishing and fining the perpetrators.

In the past five years the Netherlands has seen increasing attention being paid to compensation for victims of crime in laws and regulations. This report describes a number of these developments, the most important of which is the Dutch Act on Strengthening the Victim's Position in Criminal Proceedings (*Wet versterking positie slachtoffer in het strafproces*), which entered into force on 1 January 2011. Despite these positive developments, there is still room for improvement in practice. We make a number of recommendations in that regard. These recommendations are marked in the text and will be summarized at the end of the report.

With this report we aim to increase awareness of the importance of compensation for victims of human trafficking. The assumption that human trafficking is sufficiently addressed by prosecuting perpetrators and imposing fines on employers for illegal employment does not do justice to the victim's interests. We particularly aim to convince agencies and individuals who assist or represent victims of the importance of compensation. We hope that describing the possibilities for obtaining compensation and the hurdles to be overcome will lead to these possibilities being used more frequently and with greater success.

The essence of the crime of human trafficking is the exploitation of the victim. Whether you are from Poland, India, or the Netherlands, you will want to be paid for your work and will want to be compensated if any harm is inflicted upon you. This is not a matter we can ignore in the Netherlands and we should strive to achieve fair compensation for all victims of human trafficking.

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## **PREFACE: HUMAN TRAFFICKING IN THE NETHERLANDS**

Human trafficking is prohibited by Article 273f of the Dutch Penal Code (*Wetboek van Strafrecht* or “Sr”).

Article 273f Sr, which is based on several international law instruments, entered into force on 1 January 2005 as Article 273a Sr. It was renumbered from 273a Sr to 273f Sr mid-2006, without changes to its contents. The article replaces the old Article 250a Sr, which prohibited human trafficking for the purposes of sexual exploitation only. The current Article 273f Sr is broader and covers all forms of exploitation, including labour exploitation, and the removal of organs.

According to figures from Comensha, the national reporting, registration and coordination desk for victims of human trafficking, 341 trafficking victims were reported in the Netherlands in 2000. Over the years the number of victims reported yearly has risen. 1711 victims were reported in 2012. The majority of the victims concern victims of sexual exploitation, although victims of labour exploitation are also reported. For instance, in 2007-2009 7% of the reported victims were victim of labour exploitation. In 2010, this was approximately 13%. Victims of organ removal are hardly, if ever, reported; only one victim was reported in the period 2007-2012.

## 1. COMPENSATION IN GENERAL

There are three ways in which a victim of human trafficking can be compensated:

- First, through the criminal proceedings in which the (alleged) human trafficker is prosecuted. The victim may join these proceedings and submit a claim for damages. In addition, the court can impose a compensation measure. Compensation is regularly obtained in criminal proceedings and, since the introduction of the advance payment system, this is also the most secure method. On the basis of the advance payment system the state guarantees payment of the compensation measure, meaning that the victim is not personally responsible for execution. See further below.
- Second, the victim can claim compensation from the human trafficker in civil proceedings. In practice civil proceedings are not, or rarely, launched by victims of human trafficking, especially not in cases of sexual exploitation.<sup>3</sup> Civil proceedings are considered lengthy, expensive, and uncertain. The latter in particular, as the victim is personally responsible for the enforcement of a positive judgment.<sup>4</sup> The FairWork foundation is aware of some cases of labour exploitation in which civil proceedings (claim for wages) were launched.<sup>5</sup>
- Third, the victim can apply for payment from the Criminal Injuries Compensation Fund (*Schadefonds Geweldsmisdrijven*) (the “Compensation Fund”). Applications to the Compensation Fund on behalf of victims of human trafficking are made fairly regularly.<sup>6</sup> The Compensation Fund provides compensation for direct consequences of injuries. Consequently, the Compensation Fund cannot grant payment for material damages such as, for example, confiscated money.<sup>7</sup> Furthermore, the maximum compensation from the Compensation Fund is €25,000 for material damages and €10,000 for non-material damages.<sup>8</sup> In cases of human trafficking, the foregoing means that only a small portion of the damage actually incurred can be compensated by the Compensation Fund. Indeed, the amounts awarded are low compared to the compensation awarded in criminal proceedings.<sup>9</sup>

This report focuses on the possibility for victims of human trafficking to obtain compensation in criminal proceedings.

## 2. COMPENSATION IN CRIMINAL PROCEEDINGS

### *Methods to obtain compensation in criminal proceedings*

There are three ways in which a victim of human trafficking may be compensated in criminal proceedings:

- a) the victim can join the criminal proceedings and submit a claim against the alleged perpetrator;
- b) the court can impose a compensation measure;
- c) the court can apply a special condition of sentence.

The special condition of sentence (c) has rarely, if ever, been applied in human trafficking cases since the introduction of the compensation measure in 1995.<sup>10</sup> Therefore, the special condition of sentence will not be discussed in this report. Options (a) and (b) will be discussed below.

### *Option (a): the victim joins the criminal proceedings*

A victim, or “injured party”, may join the criminal proceedings against the alleged perpetrator and submit a claim against the alleged perpetrator (51f-51h Code of Criminal Procedure (*Wetboek van Strafvordering* or “Sv”). Such claim is often referred to as the “injured party claim”.

The formalities for such a claim are fairly simple: the victim joins the proceedings by filling in a form or by informing the court in writing or in person during the proceedings.<sup>11</sup> The injured party needs to be represented by an attorney if this would also be required in civil proceedings (51f sub 4 Sv). Briefly put, this is the case if the claim exceeds €25,000 and is not based on an employment agreement (79(2) and 93 Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering* or “Rv”). The victim does not have to pay a court fee. The claim must be based on civil law. The victim is personally responsible for execution of a judgment in his/her favor.<sup>12</sup>

An injured party has a cause of action insofar as (i) the alleged perpetrator is convicted or a court order is issued (361(2) Sv); (ii) the injured party has suffered direct damages as a result of the offence that is declared proven (361(2)(b) Sv); (iii) no other (civil) court has already rendered judgment on the claim<sup>13</sup>; and (iv) the claim does not disproportionately burden the criminal proceedings (361 (3) Sv).

The victim has (limited) possibilities to expand on the claim. The victim can expand on his/her claim after the public prosecutor has demanded punishment and each time when the public prosecutor has spoken or been allowed to speak (334(3) Sv).<sup>14</sup> The injured party can submit documents before or at the proceedings in evidence of the damages incurred as a result of the offence (334(1) Sv). Other documents in the criminal dossier, such as the victim's own statements or statements by witnesses can serve as evidence.<sup>15</sup> The victim cannot bring in witnesses or experts (334(1) Sv). He/she can, however, ask questions to experts and witnesses called by the public prosecutor and/or the defense. Those questions can only regard the compensation (334(2) Sv). The victim can also ask the public prosecutor to call experts or witnesses to provide evidence of the damage incurred.<sup>16</sup> Requests to call the alleged perpetrator as a witness are usually denied.<sup>17</sup>

The grounds for liability of the alleged perpetrator for the damages incurred by the victim must be based on civil law, for example on the basis of a civil wrong (unlawful act) as defined in the Dutch Civil Code (6:162 *Burgerlijk Wetboek* or “BW”). Such liability exists if (i) the perpetrator committed a unlawful act, (ii) for which the perpetrator is accountable, (iii) the victim incurred damage, (iv) this damage was caused by the unlawful act, and (v) the violated standard is intended to protect the interests of the victim. If human trafficking is declared proven, the unlawful act, as well as the accountability of the perpetrator, are given. The victim does not need to prove this separately.<sup>18</sup> To the extent the claim is considered admissible and the victim claims damages as a result of the trafficking, it is unlikely to think of a scenario in which the other elements are not met.

Damage may consist of financial loss or other injuries (6:95(1) BW). Financial loss includes lost income. 'Other injuries' includes non-material compensation. If there was intent to inflict injury and the person is affected (by physical injury, damage to honor and good name, or in other ways) non-material compensation is granted “within reason” (6:106 BW). If the injured party claims statutory interest, he/she has a right to compensation for it from the moment the injury was incurred (6:119 BW). This applies to both material and non-material damage.<sup>19</sup> Costs following from making a report and putting things in order after a crime (such as time spent, lost income, and travel costs), are eligible for compensation within reason (6:96 BW). If the injured party is successful, the perpetrator can be ordered to compensate the procedural costs of the victim. Costs for legal assistance are estimated in principle based on the so-called 'liquidation fee', a court-approved scale of costs which specifies a standard fee per procedural act, which often does not compensate the actual costs.<sup>20</sup>

If the damage cannot be determined exactly, it can be estimated (6:97 BW). When estimating damage, the court is not bound by the normal rules of assertion and burden of proof. The court thus has a large degree of freedom in estimating the damage.<sup>21</sup>

The court decides on the injured party claim simultaneously with the final sentence on the criminal charges, unless the injured party claim is *prima facie* inadmissible (361(4) in connection with 333 Code of Criminal Procedure (*Wetboek van Strafvordering* or “Sv”)). The court must state the reasons for its decision on the claim (361(4) Sv).

#### *Option (b): the court applies the compensation measure*

The court can apply the compensation measure at the request of the Public Prosecution Service (*Openbaar Ministerie* or “OM”) or on its own motion (36f Sr). Like the injured party claim, the compensation measure can be applied insofar as the perpetrator is liable for the damages incurred by the victim on the basis of civil law. The compensation measure is a sanction imposed on the accused. The compensation measure can be imposed regardless of whether or not the victim has joined the criminal proceedings as injured party. The victim does not become a party to the proceedings and thus does not have the (limited) opportunity to substantiate the damages in the way the injured party has (see above).<sup>22</sup> The compensation measure does not involve any costs for the victim.

If the compensation measure is applied, the perpetrator is sentenced to pay compensation to the government for the benefit of the victim under the express condition that, if the perpetrator does not comply, alternative imprisonment will be applied (36f(7) in connection with 26 and 77L Sr).

The alternative imprisonment serves only as an incentive for the perpetrator to comply with the compensation measure. Even if the prison sentence is served, the perpetrator is still obliged to pay the amount (36f( 7) Sr). The state is responsible for collecting the compensation and paying it to the victim. If both the compensation measure is applied and the injured party's claim was awarded, any payment by the convict on the basis of the compensation measure is deducted from the obligation to comply with the payment order on the basis of the injured party's claim, and *vice versa*.

The compensation measure can be imposed on any person convicted of a crime (36f(1) Sr). The measure is imposed if and insofar as the accused is liable to the victim under civil law for the damage caused by the offense (36f(2) Sr). This means that the amount of the sanction is not tied to the seriousness of the transgression, the culpability and behaviour of the accused, or the financial capacity of the accused. It is based on (the extent of) liability under civil law of the perpetrator for the damage.<sup>23</sup> This also implies that statutory interest can be imposed as part of the compensation measure. Costs of legal aid are not regarded as damage, and therefore they do not fall under the compensation measure. The accused can be sentenced to pay the victim's costs if the victim is successful in his/her injured party claim.<sup>24</sup> Thus, as regards these costs, the victim him/herself will be responsible for enforcement.

The Central Judicial Collection Agency (*Centraal Justitieel Incasso Bureau* or "CJIB") is primarily responsible for collecting the compensation measure and transferring the money to the victim. Since 1 January 2011, if the perpetrator does not comply with the compensation measure, the victim can make use of the so-called advance payment system. On the basis of this regulation, the state guarantees the payment of the compensation measure. This regulation is described in more detail below.

A law has come into effect on 1 January 2014 that makes it possible for the CJIB to provisionally attach the assets of the suspect for the purpose of the compensation measure.<sup>25</sup>

#### *Related issues*

#### ***Forfeiture of proceeds of crime***

At the request of the OM the state can confiscate the proceeds of a crime (36e Sr). The OM needs to obtain a confiscation order from the court in proceedings separate from the criminal proceedings ("forfeiture proceedings"). The forfeiture proceedings can be carried out simultaneously with the criminal proceedings if it does not unreasonably delay the criminal proceedings.<sup>26</sup> When the proceedings are conducted simultaneously, the verdict in the forfeiture proceedings will be delivered immediately after the judgment in the criminal case.<sup>27</sup>

Article 94a Sv allows the provisional attachment of assets in order to secure the proceeds to be confiscated. This means that the state may, even before a judgment is reached against the suspect, seize assets of the suspect in anticipation of a possible forfeiture order. The victim should be informed as soon as possible if these attachments are lifted, in order to give him/her the opportunity to themselves have the assets seized before they are returned to the attachment-debtor.<sup>28</sup>

On the basis of article 577b Sv, the victim can request that (a part) of the amount confiscated should be paid to him or her.

In an international context the OSCE, the UNHCR and the Council of Europe have long been recommending that confiscated proceeds of crime should be used to compensate victims or to establish funds to help victims. The EU Directive on Trafficking in Human Beings also makes a connection made between confiscation of proceeds of crime and compensation for damage.<sup>29</sup>

### ***Legal aid***

The victim can request funded legal aid on the basis of the Legal Assistance Act (*Wet op de Rechtsbijstand* or “Wrb”). In general, the Wrb prescribes that persons with a specified minimum income need to pay an individual contribution for legal aid. However, no individual contribution is required for aid in joining the criminal proceedings (44(3) Wrb). For other aid, article 44(4) Wrb states that also victims of serious violent and sexual crimes, regardless of their financial position, are eligible for free legal aid if they are eligible for payment from the Compensation Fund on the basis of article 3 of the Criminal Injuries Compensation Fund Act. That is the case if a person suffered serious bodily or mental harm as a result of a violent crime committed in the Netherlands. Generally, it is assumed that victims of sexual exploitation fall under this scope.

The situation is different for victims of labour exploitation. We recommend that free legal aid also be made available to the victims of labour exploitation at all times.

### ***Information duty police and OM***

Police and OM have the duty to inform the victim of the possibilities for compensation (51a(4) Sv).

### 3. DEVELOPMENTS IN LAWS AND REGULATIONS

In recent years there has been an enormous increase in attention for the position of the victim in the criminal proceedings in general, and also with respect to compensation for damage specifically.<sup>30</sup> Several of these developments are described below.

#### *The Law*

The Act to strengthen the position of the victim in the criminal proceedings (*Wet versterking van de positie van het slachtoffer in het strafproces* - the "Act")<sup>31</sup> went into effect on 1 January 2011.<sup>32</sup> The Act introduced two important changes.

- First of all the Act replaced the old standard for admissibility of the injured party claim. Until 1 January 2011 such claim was inadmissible (i.e. the merits would not even be considered) if it was not "of such a simple nature that it lends itself to treatment in the criminal proceedings". The new test for admissibility is that the claim may not pose "a disproportionate burden on the criminal proceedings".<sup>33</sup> Under the old test, many claims in human trafficking cases were declared (partially) inadmissible because they would not be "of a simple nature".<sup>34</sup> According to the parliamentary history, the introduction of the new test had the purpose that "*the courts should decide as often as possible – and more often than is the case now– on the merits of the injured party claim*".<sup>35</sup> Various arguments for inadmissibility (for instance: the mere fact that the claim is contested, absence of immediate sufficient substantiation or evidence, that a witness or expert must be heard, or that the amount claimed is higher than average) can no (longer) be reasons for declaring the claim inadmissible.<sup>36</sup>
- In addition, the Act introduced the so-called "advance payment system".<sup>37</sup> This system guarantees victims of human trafficking that the compensation measure is paid to them.<sup>38</sup> Before 1 January 2011 the victim him/herself was responsible for collecting compensation if the CJIB was not successful in collecting it. Since 1 January 2011, the government has been obligated to pay the (remaining portion of) the compensation to the victim. This obligation arises if the perpetrator does not comply with the compensation measure within 8 months after the verdict has become irrevocable (36g(6) Sr). Since it is subsequently the responsibility of the government to recover the amount from the perpetrator, this system is referred to as the "advance payment system". This is a substantial improvement because in this way the victim him/herself is no longer responsible for enforcement of the compensation measure and payment is guaranteed.

#### *Regulations (OM Guidelines )*

The Board of Procurators General can issue guidelines for the OM regarding the performance of their duties (130(4) Judicial Organisation Act (*Wet op de Rechterlijke Organisatie* or "RO")). These guidelines are usually referred to as "Guidelines". In the last five years a number of Guidelines have been introduced in regard to supporting a (trafficking) victim in obtaining compensation.

- The Human Trafficking Guidelines (2013)<sup>39</sup> states as its starting principle that victims must be supported in obtaining compensation.<sup>40</sup> The Human Trafficking Guidelines stress the importance of financial investigations in human trafficking cases.<sup>41</sup> Financial investigations must always form part of human trafficking investigations. The expertise of the Criminal Assets Confiscation

Bureau of the Public Prosecution Service (*Bureau Ontnemingswetgeving van het Openbaar Ministerie* or “BOOM”) can be used for this purpose.<sup>42</sup>

The Human Trafficking Guidelines explicitly state that information from financial investigations can be important for the substantiation of the injured party's claim.<sup>43</sup> The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (*Bureau Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen* or “BNRM”) recommended in 2009 that the confiscation report should be used as substantiation of the compensation to be awarded to the victim.<sup>44</sup> See more on this below.

- The Victim Care Guidelines (2010)<sup>45</sup> contain a chapter specially dedicated to the obligations of the OM in regard to supporting the victim in obtaining compensation.<sup>46</sup> The OM must assist the victim “as well as possible” in obtaining compensation for material and non-material damage, preferably in an as early stage as possible of the criminal proceedings.<sup>47</sup> The Victim Care Guidelines explicitly state that efforts in regard to compensation of victims are a “substantial part” of the policy, even if this prevents the swift completion of the criminal case.<sup>48</sup> If the victim has indicated that he/she has suffered damage and has expressed the wish to claim this damage within the criminal proceedings, the OM must take this into account in the prosecution and settlement decision.<sup>49</sup> In the decision as to at what time the accused will be summoned, the OM must take the needs of the victim into account as much as possible in connection with his/her involvement in the criminal case as injured party.<sup>50</sup> If the OM claims that the claim of the injured party should be awarded, the OM must also always request that the compensation measure be applied.<sup>51</sup> The Victim Care Guidelines clarify that the OM can also request the compensation measure if the injured party did not join the proceedings.<sup>52</sup>
- The Guidelines on Forfeiture (2012) give guidelines for the OM in the context of forfeiture proceedings.<sup>53</sup> The OM must, insofar as possible under the relevant laws and regulations, provide information gained in the context of forfeiture proceedings to the victim to support the victim's claim.<sup>54</sup> According to the Guidelines on Forfeiture, the OM must always consult with the victim when the victim wishes to submit a claim as injured party.<sup>55</sup> If the damage sustained by the injured party is as great or greater than the confiscated proceeds of crime, the OM must consider whether the forfeiture proceedings will be used. Under the forfeiture legislation it is possible to seize assets by way of provisional security before such consultation has occurred.<sup>56</sup> The OM can impose such an attachment of assets on the basis of article 94a(2) Sv.

#### 4. COMPENSATION IN PRACTICE

For this report, the authors have studied judgments in first instance in which a charge of human trafficking had been made. The authors have reviewed all the judgments that were published on [www.rechtspraak.nl](http://www.rechtspraak.nl) and handed down in the period from 1 January 2011 through 25 October 2012. It should be noted that courts decide themselves whether or not a judgment is published on [www.rechtspraak.nl](http://www.rechtspraak.nl); it may well be that more verdicts were handed down in the period studied. Cases in which charges were brought for other crimes alongside charges for human trafficking were also included in the research.

In the following we first present some data that appear from the judgments. This is followed by an analysis with reference to other sources besides the studied judgments. Most notably, the analysis includes the findings of the BNRM in respect of the case law for 2010 and interviews with different parties who deal with (compensation for) victims of human trafficking.<sup>57</sup>

##### *Case law 2011 and 2012*

The tables below schematically depict some general information on injured party claims in human trafficking cases, the decisions on the claims, and the reasons for inadmissibility.

##### *General*

	<b>2011</b>	<b>2012 (through 25 October)</b>
Number of trafficking cases	65	63
Sexual exploitation	58	63
Other exploitation	7	0
Number of (alleged) victims in trafficking cases <sup>58</sup>	169	109
Number of (alleged) trafficking victims that submitted an injured party claim	50	33
Number of (potential) trafficking victims as registered by CoMensha	993 <sup>59</sup>	1711 <sup>60</sup>

*Decisions on injured party claims*

	<b>2011</b>	<b>%</b>	<b>2012 (through 25 October)</b>	<b>%</b>
Fully awarded	8	16 %	6	18 %
Fully inadmissible	13	26 %	8	24 %
Partially awarded and partially inadmissible	23	46 %	18	55 %
Partially awarded and partially rejected	1	2 %	0	0%
Partially awarded, partially rejected and partially inadmissible	5	10 %	1	3 %
Fully rejected	0	0 %	0	0 %
<b>Total</b>	<b>50</b>	<b>100 %</b>	<b>33</b>	<b>100%</b>

*Grounds for inadmissibility*

	<b>2011</b>	<b>2012 (through 25 October)</b>
Acquittal	6	5
Partial acquittal and partial disproportionate burden on criminal proceedings	1	1
Disproportionate burden on criminal proceedings	21	15
Damage not directly caused by proven criminal fact	3	3

On material grounds	1	0
Unspecified	9	3
<b>Total</b>	<b>41</b>	<b>27</b>

## Analysis

### ***The number of victims joining the criminal proceedings***

Although fairly consistent use is made of the possibility to join criminal proceedings as an injured party, the number of human trafficking victims that do so is still relatively low. In the studied cases over 2011 and 2012, approximately 30% of the (alleged) victims of human trafficking submitted a claim as injured party.<sup>61</sup> This corresponds with previous research carried out by the BNRM in 2010.<sup>62</sup> This is an improvement compared to 2007; in that year 14%-16% of the (alleged) victims joined the proceedings as injured party.<sup>63</sup>

It should be noted that by no means all possible instances of human trafficking are prosecuted. This is shown by, among other things, the number of victims reported at CoMensha (2011:993, 2012: 1711) compared to the number of (alleged) victims whose exploiter is prosecuted (2011: 169, 2012: 109<sup>64</sup>).<sup>65</sup> These numbers cannot be compared one-on-one: a victim who was reported to CoMensha in 2011 might not become involved in criminal proceedings until 2012 or 2013. Nevertheless, these figures do show that the possibility of obtaining compensation in criminal proceedings is only open to a small percentage of (possible) victims of human trafficking. Therefore, we recommend that civil proceedings should be conducted on behalf of victims of human trafficking, so that also victims whose cases are not prosecuted receive satisfaction.

### ***Information about possibilities for compensation***

Besides fear, one possible reason cited for the low number of victims involved in criminal proceedings is that many trafficked persons do not feel themselves to be a "victim".<sup>66</sup> Especially in cases of labour exploitation, they are often not aware that they are the victims of human trafficking, an offense that is criminally prosecuted. They may choose to go with civil law as described in more detail below, or they may not be aware of the possibilities for compensation.<sup>67</sup>

In its case law study of 2010, the BNRM concluded that it is often difficult for victims to find their way among the different possibilities for compensation.<sup>68</sup> There is currently no structural mechanism to ensure that possible trafficking victims are informed of possibilities with respect to compensation, during or after the conclusion of a monitoring or investigative action.<sup>69</sup> At this time the system relies on informal contacts and coincidences.<sup>70</sup> This is especially true for cases of labour exploitation.

*Expertise in this area in regard to victims of other forms of exploitation is located mainly at FairWork. The BNRM recommended that, if it is suspected that exploitation is taking place and a monitoring or investigative action is planned, the monitoring or investigating body involves FairWork.<sup>71</sup> If FairWork was not involved in an action, then it is to be recommended*

*that any victims that are identified should be referred to an assistance agency such as FairWork for practical and/or judicial support at a later stage.<sup>72</sup>*

The investigative services and the OM are required to inform the victim of the possibilities regarding compensation. Interviewees say that investigative officers are sometimes very focused on the need to investigate, and specifically that they treat the victim merely as a witness.<sup>73</sup> An active role of the police and the OM, as also required in the various Guidelines cited above, is desirable. It is important that, at the first contact, victims are informed of the possibility of submitting a claim in criminal proceedings, and that they are referred to a specialized lawyer.

In February of 2013 a pilot was started under the direction of the Ministry of Security and Justice in which Victim Support the Netherlands ("*Slachtofferhulp Nederland*"), the National Lawyers Network for Victims of Sexual Crimes (*Landelijk Advocaten Netwerk Zeden Slachtoffers* or "LANZS"), the Association of Personal Injury Lawyers (*Vereniging van Letselschade Advocaten* or "LSA"), the Lawyers for Victims of Personal Injury (*Advocaten voor Slachtoffers van Personenschade* or "ASP"), the Council for Legal Aid (*Raad voor rechtsbijstand*) and the Dutch Bar Association (*Nederlandse Orde van Advocaten* or "NOvA") experimented with speedy referral of victims to a specialized lawyer in cases where there is a need.<sup>74</sup> It is unclear whether this is being used for victims of human trafficking.

In the regions of Alkmaar, Rotterdam and Utrecht the referral mechanism has already existed for a number of years in the form of a station duty service called 'Legal Relief for Victims of Sexual Offenses' (*Juridische Opvang Slachtoffers zedenmisdrijven* or "JOS-piket"). This is a special duty service for referring victims in serious sexual cases to a lawyer. In any event in Alkmaar human trafficking victims are paired with a lawyer via this duty service. In addition, victim support makes referrals to lawyers.

It is important that the lawyers involved in human trafficking cases in the civil and criminal sector cooperate and make referrals to each other in order to maximize the victim's chances for compensation. There are various possibilities for compensation and not every lawyer is aware of every one of these possibilities as they may not fall within his/her area of expertise; in general, a labour law lawyer is not occupied with criminal cases, and vice versa.

### ***Xiang case***

*Xiang is a Chinese man who was working legally in the Netherlands. He had an employment permit and a permit to stay. He had a labour contract. However, he had to work very long days, received hardly any rest or food, and had to sleep in places lacking the most basic provisions. He was never paid for his work and when he asked for money, he was mistreated. His wages were deposited to his bankaccount, but his bankcard was withheld by his employer. His account was emptied by his employer.*

*Xiang literally worked until he dropped. He ended up in hospital, where they referred him to a lawyer. A back wages claim was submitted, which was also awarded. However, the judgment could not be executed because in the meantime the company had gone bankrupt. In the criminal proceedings that followed against the employer, Xiang joined the proceedings as*

*injured party, and his claim was granted. Since the compensation measure was also imposed, the damages could be recovered via the advance payment system. Thus, in this case, both knowledge of civil claims and joining of criminal proceedings as injured party were required.*

The case of Javinder, further on in the report, also shows how important it is to find out for each case what possibilities there are in regard to compensation and which parties must cooperate in this. Sometimes information must be exchanged. Cooperation and a clear directing role for an assistance agency with knowledge of affairs are essential for this.

Based on the above we recommend that a flowchart be made and distributed to the parties involved, such as the police, OM, the Inspectorate SZW, Slachtofferhulp Nederland, CoMensha and (other) victim support organizations, showing what the possibilities for compensation are and to whom a possible victim of human trafficking should be referred for compensation. It must also be clear which organization has the coordinating role. This can form part of the national referral mechanism as recommended by the BNRM in 2013.<sup>75</sup>

We also recommend that a network of lawyers specializing in (supporting victims of) human trafficking be established, consisting of lawyers specializing in labour, immigration, criminal and civil law. This network can be used in order to refer the victim to a lawyer as early as possible in the investigative procedures. The lawyers from the network can share knowledge with each other and refer cases to each other.

#### ***Information during and after the criminal proceedings***

If the victim becomes involved in the criminal proceedings, then he/she can obtain information from the Victims Desk (“*Slachtofferloket*”). The Slachtofferloket is a collaboration of Slachtofferhulp Nederland, the police and the OM.

In murder, manslaughter, violence and sexual abuse cases the OM appoints a case coordinator. The case officer keeps contact with the victim and his/her lawyer during the proceedings. It is unclear whether this is already happening nationally in all human trafficking cases. Insofar as this is not already standard, we recommend that a case officer be appointed in all human trafficking cases, both in cases of labour exploitation and in cases of sexual exploitation.

After a compensation measure has been imposed, the victim can obtain information on the settlement thereof from the Victim’s Information Point for Compensation Measures (*Slachtoffer Informatiepunt Schadevergoedingsmaatregelen*).

#### ***Specification of claimed and awarded compensation in the judgment***

It is important that the nature (that is, material/immaterial) and the amount of compensation is specified in judgments. This applies to both the compensation claimed and the compensation awarded. In this way victims can build on existing case law in substantiating claims for damages. In addition, this facilitates empirical research into the nature and the amount of the claimed and awarded compensation.

In 2012, the nature and amount of compensation was specified in 97% of the judgments. This is an improvement in regard to previous years: in 2011 the nature and/or amount of compensation was

specified in only 58% of the judgments. In 2010, only 65% of the judgments contained an specification on this point.<sup>76</sup> We recommend the courts to continue the positive trend of 2012 and specify the nature and amount of compensation in their verdicts.

### ***Courts' reasons regarding material compensation in criminal proceedings***

Previous decisions regarding claims can be important for victims in determining how to substantiate a claim. Thus, it is important for victims that the courts furnish decisions on compensation with sufficient grounds. However, courts do not always provide equally good grounds for their decisions on compensation. The legal basis for the decision is often missing and, if a calculation is made, courts often do not specify how the variables of the calculation are determined. The Leeuwarden District Court, for example, applied a fairly extensive calculation in a judgment rendered in 2012. The court thereby gave an insight into the method of calculation, which is to be applauded. However, in regard to the amount taken from the victim by the trafficker, the court merely stated: "*in regard to the material part of the compensation, the court considers it plausible that [plaintiff 1] earned an amount of € 500 per day*", without specifying what this variable was based on (Court of Leeuwarden 26 July 2012, LJNL BX3800).

We recommend courts to explain how each of the variables in the damages calculation is determined.

We recommended courts to give better grounds for the decision regarding material compensation. The grounds must in any case indicate the legal basis for the compensation and the (factual and legal) basis for the calculation of compensation.

### ***Courts' reasons regarding non-material compensation in criminal proceedings***

Non-material compensation, if claimed, is quite consistently awarded. On average, in 2011 and 2012 66%-69% of the claimed non-material compensation was awarded (66% in 2011 insofar as it can be ascertained, and 69% in 2012). The grounds for non-material compensation are still more summary than those for material compensation. In regard to case law over 2010, this picture is confirmed by the BNRM.<sup>77</sup> Usually it is simply stated that the court considers it to be equitable that a certain amount should be compensated, without specifying why. Often courts merely hold that it is "*a generally known fact*" that non-material damage is suffered in situations of exploitation.

Circumstances such as the duration of the exploitation, whether and what harm is inflicted, and whether there are reports from medical assistance, can all play a role in the awarding of non-material compensation. This sort of consideration cannot normally be found in judgments. Here also, we recommend that decisions be better motivated so that victims can substantiate their claims with reference to previous judgments.

### ***Calculation methods in criminal proceedings***

A stumbling block often mentioned with regard to compensation for human trafficking is that it is difficult to substantiate the material amount of loss. This is also evident from case law over 2011 and 2012, during which 49%-54% of the claimed material damage was awarded (54% in 2011, insofar as can be deducted from the judgments published, and 49% in 2012).

It is often difficult for victims to substantiate precisely how much money was taken from them. In sexual exploitation cases it often boils down to the number of days worked, the number of clients per day and the amount that the victim had to surrender to the exploiter. Proper record keeping is often lacking and it is consequently difficult to establish how much money the victim had to surrender to the exploiter.<sup>78</sup> We recommend that all authorities / care providers who encounter possible victims of human trafficking advise the victims to record the number of worked days, hours, clients and amounts received/surrendered, for example in a personal notebook. This also applies for the period during which prostitutes still claim to be working voluntarily. Experience teaches that a moment may come when a prostitute later admits that she was not working voluntarily in prostitution and it is then important that an action for damages can be substantiated.

Another manner of substantiating damage is by referring to the findings of the confiscation proceedings. In 2007 and 2012 the BNRM advised towards making use of the confiscation investigation for the substantiation of damage.<sup>79</sup> This will be discussed below.

If the court cannot calculate the damage exactly, the court can estimate the damage (6:97 BW). The court has discretionary power in this regard. In 2012 in particular, courts based their estimates on facts declared proven in the period of exploitation. Statements of the victim and/or other witnesses, as well as (if available in the records of a criminal case) telephone tapping constituted the basis of the estimated amount that was earned per day and had to be surrendered to the trafficker.

*See for example Haarlem District Court, 21 July 2011, LJN: BR2862: "In determining the amount of material damage the court has taken the statements of [victim 4] and [victim 5] as starting point. They declared inter alia that during three years they worked approximately six days per week in prostitution, during which they each earned between € 500 and € 1,000 the first evening. The court estimates the earnings of [victim 4] in all events to be reasonably estimated at € 500 per day. In the beginning she was forced to surrender half of the money earned by her to the suspect. Later on, the money earned by [victim 4] was present in the dwelling and the suspect just took money if he needed it. Suspect did not have any earnings personally. Having regard to this, the court assumes that at least half of the money earned by [victim 4] was always taken by suspect. Taking into account the periods during which [victim 4] possibly worked less than six days per week, due to for example illness or holidays, the court considers it plausible that [victim 4] worked approximately 300 days per year. In total [victim 4] therefore earned during three years approximately € 450,000 through prostitution work (3 years x 300 days x € 500 per day). From this [victim 4] has - on estimation - surrendered half to suspect. The court establishes the material damage of [victim 4] by rounding down, in all events to be considered as reasonable, to an amount of € 200,000."*

Reference to the facts declared proven and statements from the file indeed appears to be the most appropriate method for the calculation of the damage. However, this judgment does illustrate that courts often use their discretionary power to, to the disadvantage of the victim, work from the 'lower end' of their estimate (in above case the minimum was taken for the earnings per day, the part that had to be surrendered to the trafficker per day, and the number of worked days; the outcome was thereupon rounded down by € 25,000). The reason for this is not clear. This is

particularly ill-advised since victims often stake their claim at a low level out of fear that the claim would otherwise be considered to disproportionately burden the criminal proceedings (see below). There is therefore often no reason to be extra careful with the damage calculation.

With respect to the amount of money a trafficked person had to hand over to the trafficker, reference is often made to case law with regard to the amount which must be found to be plausible. Some courts refer to case law in which the damage was established at € 100 per day as a safe assumption.<sup>80</sup> Other courts are more flexible and do not refer to a minimum of € 100 per day.<sup>81</sup> Some courts deduct the costs of providing for the victim's living expenses from the compensation awarded.<sup>82</sup> The question is whether this is justifiable considering that the trafficker brought the victim into the exploitative situation. The question is if such costs ought not to remain for the expense of the offender.

The BNRM rightly notes that the calculation methods as used by the courts are inconsistent. Amounts are perhaps not the same in all prostitution sectors, nor does the period of exploitation in every case encompass the same amount of days in which the victim was exploited or forced to work. Furthermore, much depends on how the claim of the disadvantaged party is brought (the court, for example, cannot award more than what is claimed; however the court can impose a compensation measure for a higher amount than claimed by the injured party). All of the above can and must certainly play a role in the calculation of damage, but it should be less ambiguous how the amount to be awarded is subsequently established. More clarity and consistency could also prevent minimum amounts (for example: € 100 per day) from being used as a calculation reference, which are much lower than the actually taken earnings, according to the BNRM.<sup>83</sup> The BNRM advised in this regard in 2012 that the courts should formulate principles for the awarding of compensation in human trafficking cases.<sup>84</sup>

On the basis of the aforesaid we recommend that the judicial authorities draw up guidelines for the calculation of compensation for victims of human trafficking in order to acquire more consistency in such calculations. Such guidelines could be based on a more in-depth analysis of the calculation methods for compensation as used by the courts in the past years. In respect of estimating lost earnings, it could perhaps be possible to link up to current research (if this exists) with regard to average earnings in specific prostitution sectors (compare Breda District Court 4 August 2010, LJN: BN3284, whereby the court -in confiscation proceedings- based the estimated income from the exploitation on average earnings in the prosecution sector as established by research into the earnings from legal prostitution in the year 2006).

In this context the legal profession indicated that there is a need for an analysis of legal precedents and a central database where information with regard to compensation for victims of human trafficking will be kept up-to-date.<sup>85</sup> This would facilitate the substantiation of claims for disadvantaged parties. We recommend that such a central database is set up. Information can further be exchanged within a network of human trafficking lawyers, the setting-up of which we recommended above.

The general impression is that it is somewhat easier to substantiate damages in labour exploitation cases, because different evidentiary presumptions can be applied in regard to calculating lost earnings. Examples are the evidentiary presumptions contained in Article 23 of the Foreign Nationals

(Employment) Act (*Wet Arbeid Vreemdelingen*), Minimum Wage Act (*Wet minimumloon en minimum vakantiebijslag* or “WML”), the Working Hours Act (*Arbeidstijdenwet*), and Collective Labour Agreements.<sup>86</sup> The Den Bosch District Court on 4 October 2011, LJN: BT6501, for example, based the compensation on the minimum wage as contained in the Minimum Wage Act.

The case below demonstrates how in a roundabout way compensation can hopefully still be claimed.

### ***Javinder case***

*Javinder is a refugee who has exhausted all appeals in the Netherlands. He cannot return to his country and he is an undocumented person. He can only survive by accepting the proposition from a man who offers him work in a tourist shop. Javinder works there seven days per week, 16 hours per day. In the morning he works in renovation work and during the day he works in the shop. He is not allowed to sit down at any time and does not get any breaks, since the shop is open during this time and he is often the only person there. The employer has arranged a place for him to sleep in one of his properties. However, there is no bed, and also no water or electric power. The boss pays Javinder € 25 per day; approximately € 1.50 per hour. When Javinder states that he finds the situation hard, the employer tells him that he must return the key to his sleeping place. Javinder has no choice, if he leaves he will not have any money to buy food.*

*The exploitation continues for about a year and a half. Ultimately Javinder comes into contact with FairWork through a customer in the shop. After a while he dares to apply for and gets a B9 permit (since then called a B8 permit). Extensive investigation by the Ministry of Social Affairs and Employment Investigation Department follows. At the same time Javinder starts, with the assistance from FairWork and his employment law lawyer, civil proceedings to claim his unpaid wages. The OM decided not to prosecute the case regarding human trafficking as a result of the absence of witness statements which could confirm the exploitation. The OM did prosecute the illegal employment. Javinder and FairWork hope that a conviction for illegal employment under criminal law can support the civil claim. If the court deems it proven that Javinder worked illegally, then six months wages can be claimed on the basis of the evidentiary assumption of Article 23 Foreign Nationals (Employment) Act. This way, Javinder would still find justice and receive the money for which he has worked so hard.*

### ***Statutory interest in criminal proceedings***

In 2011 and 2012 statutory interest over the claim of the disadvantaged party was awarded fairly consistently. Statutory interest can only be awarded if this is claimed by/or on behalf of the victim. The statutory interest may be applied to both material and non-material damages. On 18 September 2009 the National Consultations of the Chairmen of the Criminal Law Sectors of the Courts of Appeal and the District Courts (*het Landelijk Overleg Vakinhoud Strafrecht*, formerly known as *Landelijk Overleg van Voorzitters van de Strafssectoren van de gerechtshoven en de rechtbanken* or “LOVS”) made the agreement that if the disadvantaged party claims statutory interest and this is awarded, then the court also awards statutory interest over the amount awarded under the compensation measure.<sup>87</sup> It is evident from the studied cases that statutory interest is not always claimed. It is therefore important that the lawyer/authorized representative of the victim claims statutory

interest. Hence, we recommend legal counsel for trafficked persons to always claim statutory interest.

### ***Inadmissibility of claims in criminal proceedings***

The claims which were awarded in 2011-2012 were awarded on average for 57%-62% (57% in 2011, insofar as can be traced, and 62% in 2012). The part which was not awarded was in general declared inadmissible. The reasons for the declaration of inadmissibility are represented in the aforesaid table (see 'Data').

The case law from 2011 and 2012 indicates that in those years 44%-48% of the claims were declared inadmissible because they would burden the criminal proceedings disproportionately.<sup>88</sup> In 2007, 74% of the injured party claims in human trafficking cases were declared (partially) inadmissible because the claim would not be of a simple nature: in 2010 this percentage was 41%. The new test as per 1 January 2011 has therefore not brought visible improvement vis-à-vis 2010.

Case law from 2011 and 2012 creates the impression that courts have the tendency to declare a part of the claim inadmissible, unless the victim has personally already made a very careful estimate.

*For example, in Arnhem District Court, 11 May 2012, LJN BW5491, human trafficking was declared proven over a period from 1 January 2007 until 28 May 2010. The court awarded compensation of € 20,000 for lost earnings. The victim had claimed damage of € 100 per day assuming five working days per week during the period claimed. There are 880 working days in this period. The claim over this period came to an amount of € 88,000. From the facts declared proven it is evident that the victim at a given time earned at least € 500 per day, which means that the fixed amount of € 100 claimed was very careful. Furthermore, it is evident from the facts declared proven that from a certain point in time the victim had to surrender all her earnings to the suspect. The suspect did not dispute the claim with regard to lost earnings, or at least this does not show from the judgment.*

*The court held: "the court will award the civil claim with regard to lost earnings. It is evident from the declared proven fact 1 that [victim 1] had to surrender her earnings to the suspect. Nevertheless the percentage of what had to be surrendered and the entire amount of the earned earning is not known. The court in any event estimates this at € 20,000 and will award this amount by means of advance payment. A further assessment of these loss items would cause a disproportional burden to the criminal proceedings, so that the disadvantaged party is declared inadmissible for the remainder. (...)"*

*The court does not specify how the € 20,000 is calculated, neither does the court refer to the period declared proven, which encompassed 880 working days. For the avoidance of doubt: € 20,000 spread over 880 days comes down to € 23 per day.*

Declaring claims that are perceived as being large partially inadmissible is not the system of the law. The legislature has not created a qualitative test for admissibility (as applied until 1995),<sup>89</sup> in the sense that claims that exceed a certain amount must be declared inadmissible, but a substantive admissibility test, meaning that the consideration of the claim may not pose a disproportionate burden on the proceedings. In accordance with this substantive test, a claim may not be declared

inadmissible solely because an amount is at stake that is higher than the average, the claim is disputed, is not immediately supported by sufficient evidence, or implies that witnesses or experts must be heard or (such as clarified in the parliamentary history).

Also according to the LOVS consultation platform for the presidents of criminal courts, the new admissibility test must result in more injured party claims being considered on the merits.<sup>90</sup> According to the recommendations on injured party claims and compensation measures for the criminal sectors of the court and appeals courts (issued in 2011) (“Recommendations 2011”), *“the scope of these legislative changes must not be underestimated. The criminal court is instructed to a serious effort to assess the civil claim on the merits as far as is possible.”*<sup>91</sup> The Recommendations 2011 clarify that the absence of items of evidence in itself is not a ground for declaring the claim inadmissible, seeing as the damage can be estimated.<sup>92</sup> Furthermore, according to the Recommendations 2011 it is recommended that the decision with regard to inadmissibility is made stating reasons.<sup>93</sup> As follows from the above, these recommendations are typically not put into practice.

We recommended courts to interpret the inadmissibility test in conformity with parliamentary history. This means that a claim may not be declared inadmissible solely because the claim is disputed, is not immediately supported by sufficient evidence, implies that witnesses or experts must be heard, or an amount is at stake that is higher than average.

In addition, the decision of an inadmissibility declaration in practice is rarely provided with reasons. We recommend the courts to better motivate their decision that a claim would result in a disproportionate burden to the criminal proceedings.

### ***Compensation measure***

In 2011 and 2012 the courts usually applied the compensation measure in the same amount as the damages awarded to the injured party. In 2011 this was done in 35 out of the 37 cases. In 2012 it was in all cases. Rightly so, it does not seem relevant whether or not the Public Prosecutor requests application of the compensation measure; even in cases where the Public Prosecutor does not, the compensation measure is nevertheless applied (see for example Zwolle District Court, 3 January 2012, LJN:BU9986; Arnhem District Court, 4 April 2012, LJN:BW3216; Maastricht District Court, 27 April 2012, LJN:BW5805). This use of compensation measures is positive because it means that victims can make use of the advance payment system.

We recommend the courts to continue this practice, whereby they apply the compensation measure to the same amount as the damages awarded to the injured party.

Compensation can be ordered *ex officio*, even if the victim has not joined the criminal proceedings. In 2011-2012 this happened only once (Arnhem District Court, 11 May 2012, BW5502). This was a case where the victim did join the proceedings against the co-accused of the accused.

We recommend to the courts to order compensation *ex officio*, even if the victims have not joined the proceedings as injured parties. This is a good way to put an end to the profits of the perpetrator and allow the money to go directly to the victim. In the case of an unknown or uninvolved victim the

money can be deposited in a future Fund for victims of human trafficking (see below). The law would have to be changed to make this possible.

### **Fund**

In the Netherlands there is currently no link between confiscated profits and compensation for victims of human trafficking.<sup>94</sup> We recommend that in human trafficking cases, for example if the victim has not joined the proceedings or cannot be traced, the confiscated profits, insofar as they are not used for compensating the injured parties, be deposited in a fund for victims of human trafficking (the "Fund"). The Fund can be used, for example, for test cases or as insurance for execution of civil judgments. If no victim joined the human trafficking case, the compensation measure or special condition of sentence, should, if possible, be applied *ex officio* and the money deposited in the Fund. The special condition of sentence explicitly allows the possibility of depositing a sum to be determined by the court into the Criminal Injuries Compensation Fund or with an agency that advocates for victims of punishable offences (14c Sr).

### **Reference to the confiscation report in criminal proceedings**

As mentioned earlier, in 2009 and 2012 the BNRM recommended the use of confiscation reports to support the claims of the injured party, for the OM is better equipped to investigate the financial profits of the exploiter than the victim is.<sup>95</sup>

*That the confiscation report may contain useful information for the substantiation of the amount of income that a trafficking victim was forced to hand over to the trafficker, is well illustrated by the proceedings before the Utrecht District Court, 2 July 2012, LJN:BX0204.*

*In this case the income to be surrendered to the exploiter per prostitute was assessed at €800 per day, based on telephone taps and statements by the victim: "[t]he court, as well as the Public Prosecutor, will assume that the victim had to surrender to the convict a sum of € 800 per day. The court considers that sufficient supporting facts and circumstances are present in the dossier, inter alia from the following telephone taps. In a tapped conversation of 3 May 2003 between [victim 10] and [the co-accused], [victim 10] tells the [co-accused] that she did not have a good day; she has 12. On 5 May 2003 the [co-accused] asks how much she has made so far. [victim 10] says 750. On 31 May 2003 between [victim 10] and the [co-accused], [victim 10] reports that she has 1250. On 1 June [victim 10] tells the [co-accused] that she has 7 but that he should not be worried yet. On 2 July 2007 [victim 11] states the following to the police: You ask what I earn on average. Sometimes it is €300 and other times it is €600. Sometimes you have two customers and then you have already earned €1000. On 17 February and 3 March [victim 12] states to the examining court that the time came when €800 was also no longer enough. In a tapped conversation of 17 March 2006 [victim 12] reports that she earned €1,000."*

So far the recommendation of the BNRM has not had the desired effect. In 2011 and 2012 victims referred to the confiscation report of the Public Prosecutor Service several times. This did not yet lead to the desired result.

*The Maastricht District Court, for example, ignored the referral to the confiscation report and assessed the damages itself based on the number of weeks the victim was exploited and how much she had earned on a weekly basis (Maastricht District Court, 27 April 2012, LJN:BW5805).*

*The Arnhem District Court likewise ignored the confiscation report and called it "a too simplistic substantiation for a civil claim." (Arnhem District Court, 9 March 2011, LJN:BP6993).*

Courts seem to be reluctant to assess damage in the same amounts assessed as profits in forfeiture proceedings. It appears that the profits in forfeiture proceedings are more easily assessed than lost income in criminal proceedings, and at a higher amount, whereas in reality it should come down to the same thing. The profits made by exploitation consist, after all, of the income surrendered by the victim. And it is exactly this income that an injured party is claiming back. The court can estimate the damage incurred by the victim based on the profits made by the perpetrator (6:104 BW). It is not clear why the profits are assessed higher in forfeiture proceedings than in criminal proceedings. The courts do not specify any judicial basis for the difference in profits confiscated on the one hand, and the damages awarded to the victim on the other hand. The judgments cited above are examples of this discrepancy. The same is true for three deprivation cases of the Utrecht District Court, 5 July 2012 (LJN:BX0204, BX0209 and BX0213) and the Utrecht District Court, 12 March 2012, LJN:BV9150.

We recommend that guidelines be issued on how the courts should, and should be made able to, take the findings of the confiscation report into consideration in the decision on the injured party claim. Earlier recommendations of the BNRM on this topic should be taken into consideration (BNRM7, recommendations 3 and 38).

### ***Confiscation and victim***

In 2012 the BNRM recommended that the OM actively strive to let seized assets benefit the victim. This recommendation is supported in this report. For the OM this would mean that the victim should be entitled to receive the confiscated money, regardless of whether the victim joined the criminal proceedings to insert a claim.<sup>96</sup> The victim should be able to make a (well-substantiated) claim to the OM to allow him/her to receive the confiscated money.<sup>97</sup>

The advocates general at the Leeuwarden District Court and the Arnhem District Court suggest that this is possible.<sup>98</sup> If and how this can be done has not been confirmed in practice. In any case, the OM can support the victim by giving the victim notice when the OM lifts pre-judgment attachments, as was confirmed in documents of Senate (see above). This may give the victim the opportunity to levy pre-judgment attachments in order to secure a claim against the trafficker.

Furthermore, based on article 577b(2) Sv, victims can petition the court to use the assets of the confiscation attachments to compensate their damages (see above). That way victims can make use of the extensive possibilities of the OM to trace and attach assets. Arguably this article also applies to victims who make a civil claim in civil court. We have not found any judgments in which such a petition was submitted by, or on behalf of, victims of human trafficking.<sup>99</sup> It is recommended that advantage be taken of these possibilities.

### ***Fine and victim***

In human trafficking cases the accused often also commits additional administrative or criminal offences. These offences may be in the area of poor housing, but often offences are also detected by inspection services in regard to underpayment related to the WML working hours and minimum wage rules. It is possible that an employer must pay a substantial fine to the State for subverting the WML, without actually paying the outstanding wages to his employees. In this way, wages that the employee has worked for end up with the State. We recommend that when determining fines in human trafficking cases, all stakeholders, including administrative authorities, take account of the victim's right to compensation of outstanding wages. The proceeds of any fines that are imposed for exploitation should be used to compensate the victim.

### ***Compensation in civil proceedings***

As mentioned earlier, victims of human trafficking rarely make use of the option of filing a claim in civil court. However, there are circumstances in which this should at least be considered.

Take for example cases of human trafficking in which the OM drops the case due to lack of evidence, or the court considers human trafficking unproven. Also in cases where a claim in criminal proceedings would constitute a "disproportionate burden", a trip to the civil court may offer relief.

The civil court pays more attention to the claim for damages and cannot declare the claim inadmissible for constituting a "disproportionate burden". Potentially, therefore, higher sums are awarded in civil proceedings. The disadvantages usually mentioned with regard to civil proceedings do not necessarily have to apply. Civil proceedings, particularly proceedings in the sub-district court for wage claims, do not need to take longer than criminal proceedings. With regard to expenses, the victim can claim reimbursement of legal costs (under certain circumstances without charge). With regard to execution, the possibilities of collaboration with the OM can be considered, if and insofar as a prejudgment attachment was levied in a compensation claim. In larger cases collaboration with companies specializing in locating assets could be considered. Perhaps costs could also be covered by the Fund to be established, see above, or a fund for test cases.

Whether a civil claim has prospects must be considered per case and per victim. Proof of work or services performed is essential. Witness statements, diary entries, photographs, etc. may play a crucial role.

We recommend that civil claims are litigated on behalf of victims of human trafficking, if only to conduct a number of test cases.

### ***Settlements out of court***

A settlement that avoids intervention by the courts may particularly provide relief to victims of labour exploitation. For them it is very important that they keep their job or find a new job. Organizations such as trade unions can play a role.

*In 2012 the trade union Christian National Union ("CNV") CNV announced a project financed under the Collective Bargaining Agreement for the construction sector. A network of telephone help desks for foreign workers was established with a number of volunteers of Polish origin. This was publicised via Polish newspapers. Someone (a worker) telephones a*

*volunteer with a problem. First a check is done whether a problem really exists, for example by checking pay slips. Then a few people who are having the same problem at the same company are invited to a meeting. At that time the CNV decides whether or not something will be done about the problem. Then the CNV talks to the company and tries to get the claim by the workers resolved. The CNV looks at how long the situation has been going on, for example three years. In that case the CNV then claims one year, the rest is waived. Furthermore, the situation needs to be improved and the company must pay the costs of membership in the CNV. A number of things have then be achieved: the workers keep their jobs (often the most import thing for the people involved) and therefore their housing (often the work is connected to the housing), they receive part of the money they lost and they are guaranteed guidance by the CNV for the next three years.<sup>100</sup> Other interviewees also mentioned situations in which workers chose to keep working for the same employer under (substantially) improved conditions.<sup>101</sup>*

We recommend that the role that (labour) organizations can play in intermediating in respect of damages is further explored. At the moment the unions do not have all the knowledge required to inform victims of human trafficking about their legal position as a victim of human trafficking. What they do have is a practical method to support victims in claiming outstanding wages and to strengthen their position in the labour market.

## 5. RECOMMENDATIONS

### *General*

1. The role of trade unions and trade organizations with regard to intermediation for compensation in cases of other exploitation should be further explored.
2. A referral mechanism for victims of human trafficking with regard to compensation should be set up. A flowchart, to be distributed among all parties involved should clarify which possibilities for compensation exist and to whom a victim must be referred. This flowchart must also make clear which authority has the coordinating role.
3. A central database should be set up in which information with regard to compensation for victims of human trafficking is collated and shared.
4. An analysis should be made of the case law with regard to injured party claims submitted by trafficked persons, so that (lawyers of) trafficked persons can better substantiate their claim by referring to comparable cases in the past.
5. The Legal Aid Act should be adjusted, or interpreted in such a manner that victims of all forms of human trafficking can always obtain legal assistance free of charge.
6. A Fund should be set up for the benefit of victims of human trafficking. Confiscated benefits, insofar as not paid to victims, should be transferred to this Fund. Also compensation measures imposed *ex officio* should be transferred to this Fund insofar as no injured party had joined the criminal proceedings.

### *Inspection/investigation*

7. If labour exploitation is suspected and an inspection or investigation is planned, the inspection or investigation body should involve a specialized assistance organization such as FairWork. If no such organization was involved during an action, any possible victims should be referred to such organization for practical and/or legal assistance.
8. Investigative services and the OM should assume an active role with regard to the provision of information about compensation for victims of human trafficking.
9. The OM should appoint a case coordinator in all human trafficking cases in which a victim joins as injured party.
10. The OM should make active efforts to have the victim benefit from confiscated or withheld earnings.
11. In case financial penalties are imposed on (any) human traffickers, it must be safeguarded that this is not at the expense of the payment of unpaid wages. When the financial penalty is collected, the proceeds should be used for compensation of the victim.

### *Legal profession*

12. A network should be set up of lawyers who are specialized in (assistance to victims of) human trafficking, comprising of lawyers specialized in employment, immigration, criminal and civil law.
13. Lawyers must always claim the statutory interest over material and non-material damages when they submit an injured party claim on behalf of a victim of human trafficking.
14. Claims of victims of labour exploitation could, insofar as possible, be based on the statutory evidentiary presumption under article 23 Foreign Nationals (Employment) Act, Minimum Wage Act, the Working Hours Act and Collective Labour Agreements.
15. Use should be made of the possibilities to profit from attachments levied by the OM for security of a confiscation order. This can be done by levying attachments if the Public Prosecutor's attachments securing a possible confiscation order are lifted.
16. Use should be made of the possibility to apply to the court for payment of the confiscated profits to the victim (577b(2) Sv).

### *Judicial authorities*

17. The courts need to specify the nature and extent of injured party claims in their judgment.
18. Courts need to (better) substantiate their decisions with regard to material compensation. The legal basis for the compensation as well as the basis of the calculation of the damages must be evident.
19. Courts need to (better) substantiate their decisions with regard to non-material damages. Circumstances such as the duration of the exploitation, if and what injury was inflicted, and if there are reports of medical assistance, must also be taken into consideration.
20. The judicial authorities should draw up guidelines for the calculation of compensation for trafficking victims in order to acquire more consistency in such calculations.
21. Guidelines need to be drawn up on how courts can/must take into consideration the findings from the confiscation report or the confiscation proceedings in the decision on injured parties' claims.
22. Courts should interpret the admissibility test under article 361(3) Sv in conformity with the parliamentary history. This means that a claim may not be declared inadmissible solely because the claim is disputed, is not immediately supported by sufficient evidence, implies that witnesses or experts must be heard, or an amount is at stake that is higher than the average.
23. Courts need to better substantiate their decision that a claim would result in a disproportionate burden of the criminal proceedings.
24. Courts should also impose compensation measures if there is no victim who joined the criminal proceedings as injured party.

### *Victim Assistance*

25. Assistance providers and other agencies who in their daily work encounter (possible) victims of human trafficking should advise these possible victims to keep a record of the number of days worked, hours, clients and received / surrendered money for the purpose of an action for damages that could possibly be brought later on.
26. Assistance providers should be trained about the various possibilities of acquiring compensation. Assistance providers should be enabled to monitor cases in the field of compensation.
27. More civil claims should be brought by / on behalf of trafficked persons.

## Endnotes

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<sup>1</sup> This English report is a translation of the Dutch report entitled 'Compensatie voor slachtoffers van mensenhandel'. The authors would like to thank Translators Without Borders (<http://translatorswithoutborders.org/>) for their translation work.

<sup>2</sup> Rijken, Van Dijk, Klerx-van Mierlo, *A victim's perspective on the human rights based approach to Trafficking in Human Beings; research on cost-benefit analyses by victims*, Tilburg 2013; Montpellier, *De kracht om te spreken, Een onderzoek naar het verloop van de aangifte en strafrechtelijke procedure bij slachtoffers van mensenhandel in Nederland*, University of Amsterdam, 2009; I.Geutjes, *Arbeidsuitbuiting*, Leiden, June 2013.

<sup>3</sup> In the period of January 2011-October 2012 no such cases were found by entering the search term 'human trafficking' into the database of the published case law in civil proceedings ([www.rechtspraak.nl](http://www.rechtspraak.nl)).

<sup>4</sup> Inter alia interview of Public Prosecutor Human Trafficking- I; interview of Public Prosecutor Human Trafficking – II; interview lawyer.

<sup>5</sup> Interview FairWork (see below, endnote 57).

<sup>6</sup> In 2010 51 applications were submitted to the Compensation Fund, in 2011 42 according to Nationaal Rapporteur Mensenhandel (2012), *Mensenhandel. Jurisprudentie mensenhandelzaken 2009-2012. Een analyse*, Den Haag: BNRM (**BNRM2012**), p. 157). In comparison: in 2010 63 injured party claims were submitted by trafficking victims (BNRM2012, p. 137 and 140), in 2011 50 injured party claims were submitted by trafficking victims (see later in this report).

<sup>7</sup> <https://schadefonds.nl/aanvraag-indienen/alles-over-de-uitkering-aanvraag/schade>, last visited: 18 September 2013 and BNRM2012, page 164.

<sup>8</sup> <https://schadefonds.nl/aanvraag-indienen/alles-over-de-uitkering-aanvraag/schade>, last visited: 18 September 2013.

<sup>9</sup> The BNRM studied the payments made in the period 2009-2011. On average this concerned in 2011 € 1,366, in 2010 € 403, and in 2009 € 866.

<sup>10</sup> Nationaal Rapporteur Mensenhandel (2007), *Mensenhandel – Vijfde rapportage van de Nationaal Rapporteur*, Den Haag: BNRM, (BNRM 5), page 84.

<sup>11</sup> Article 51g(1) Code of Criminal Procedure and 51g(3) Code of Criminal Procedure. This can be done no later than until the public prosecutor's closing speech demanding the sentence.

<sup>12</sup> Explanatory Memorandum, Parliamentary Papers II, 1989/1990, 21 345, no. 3, page 18. The implementation takes place in conformity with the provisions concerned of the Dutch Code of Civil Procedure.

<sup>13</sup> Mr. A.H. Sas, *Strafrecht voor civilisten: de verbetering van de mogelijkheid om schade via het strafrecht te verhalen*, TVP 2010, nr. 3 (**Sas 2010**).

<sup>14</sup> See also Recommendations on injured party claims and compensation measures on the basis of the Victim Support Act and the Act for the improvement of the position of the victim (intended for the criminal sectors of the court and appeals courts) (*Aanbevelingen civiele vordering en schadevergoedingsmaatregel m.b.t. de Wet Terwee en de Wet ter versterking van de positie van het slachtoffer*) (**Recommendations 2011**), page 6, to be found at <http://www.rechtspraak.nl/ProceduresLandelijke-regelingen/Sector-strafrecht/Documents/Wet-Terwee.pdf>, last visited on 16 September 2013.

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- <sup>15</sup> Recommendations 2011, page 19, with reference to Supreme Court 19 April 2005, LJN: AS9314.
- <sup>16</sup> A.C. Bijlsma, *Handboek benadeelde partij*, Kluwer, Alphen a/d Rijn, 2005 (**Bijlsma 2005**), page 80.
- <sup>17</sup> Wöretshofer, *Tekst en Commentaar Strafvordering (2011)*, sec 287, annotation 2; F.F. Langemeijer, *Het slachtoffer en het strafproces*, Kluwer, Deventer, 2010 (**Langemeijer 2010**), page 91. Both with reference to Supreme Court, 19 April 2005, NJ 2007, 452.
- <sup>18</sup> Langemeijer, p. 126.
- <sup>19</sup> Confirmed in Recommendations 2011, page 22.
- <sup>20</sup> Supreme Court 29 May 2001, NJ 2002, 123. The court is free to derogate from the court-approved scale of costs. See Supreme Court 26 February 2002, LJN: AD8866.
- <sup>21</sup> Recommendations 2011, page 20.
- <sup>22</sup> F.F. Langemeijer, *Het slachtoffer en het strafproces*, Kluwer, Deventer, 2004 (**Langemeijer 2004**), page 87.
- <sup>23</sup> Langemeijer 2004, page 87.
- <sup>24</sup> Recommendations 2011, page 33.
- <sup>25</sup> Act of 26 June 2013 concerning the modification of the Code of Criminal Procedure, the Penal Code; and the International Criminal Court (Implementation) Act with regard to the introduction of the possibility to levy prejudgment attachment on the assets of the suspect for the benefit of the victim, Bulletin of Acts and Decrees 2013, 278. The Act will come into effect on 1 January 2014, see Decree of 30 August 2013 for the setting of the date of coming into effect of the Act of 26 June 2013 for the modification of the Code of Criminal Procedure, the Penal Code and the International Criminal Court (Implementation) Act concerning the introduction of the possibility to levy prejudgment attachment on the assets of the suspect for the benefit of the victim, Bulletin of Acts and Decrees 2013, 278.
- <sup>26</sup> Hofstee, *Tekst en Commentaar Wetboek van Strafrecht (2008) (Hofstee)* article 36e, annotation 2 b, reference to Memorandum of Reply, Parliamentary Papers I, 1992/1993, 21 504 and 22 803, page 2.
- <sup>27</sup> Hofstee, article 36e, annotation 2 b, reference to Memorandum of Reply, Parliamentary Papers I, 1992/1993, 21 504 and 22 803.
- <sup>28</sup> Senate, session year 2012–2013, 33 295, C, p. 8.
- <sup>29</sup> National Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen (2013), *Human trafficking. Ninth report of the National Rapporteur*, BNRM: Den Haag, 2013 (**BNRM9**), page 47-48.
- <sup>30</sup> It is to be expected that this positive development has not finished. The Rutte II cabinet wishes to improve the position of the victims in the criminal process. That is why 'the victim is central' is one of the key themes of the Ministry of Security and Justice for the coming years. In the paper Giving justice to victims (February 2013) the Secretary of State of the Ministry of Security and Justice stated his vision of the victim policy. In the report 5 objectives are stated for the victim policy for the next 4 years. One of which reads: 'Victims have possibilities of redress of the consequences, financially, practically as well as emotionally.' See <http://www.rijksoverheid.nl/onderwerpen/slachtofferbeleid/rechten-voor-slachtoffers>, last visited on: 18 September 2013.

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<sup>31</sup> Act of 17 December 2009 concerning the amendment of the Code of Criminal Procedure, the Penal Code and the Criminal Injuries Compensation Fund Act for the improvement of the position of the victim in the criminal process, Bulletin of Acts and Decrees 2010, 1.

<sup>32</sup> Decree of 13 July 2010 for the setting of the date of the coming into effect of the Act of 17 December 2009 concerning the amendment of the Code of Criminal Procedure, the Penal Code and the Criminal Injuries Compensation Fund Act for the improvement of the position of the victim in the criminal process (Bulletin of Acts and Decrees 2010, 1), Bulletin of Acts and Decrees 2010, 291.

<sup>33</sup> Article II of the Act, concerning amendment of article 361(3) Code of Criminal Procedure.

<sup>34</sup> National Rapporteur Mensenhandel (2009), *Mensenhandel – Zevende rapportage van de Nationaal Rapporteur*, Den Haag: BNRM (**BNRM7**), page 502. In the human trafficking cases studied over 2007, 74% of the claims were declared inadmissible wholly or in part because the claim would not be of a simple nature. In 2010 this was 54%.

<sup>35</sup> Parliamentary Papers II, 2007-2008, 30 143, no. 16.

<sup>36</sup> Ibid.

<sup>37</sup> Article II of the Act, with which a new subsection (6) was added to 36f of the Penal Code.

<sup>38</sup> Section 1 and 2 Decree of 24 July 2010, concerning the establishing of the Implementation Decree of advance payment order for damages, Bulletin of Acts and Decrees 2010-311. Victims of human trafficking can make unlimited use of this opportunity to receive advance payment.

<sup>39</sup> Human Trafficking Guidelines, 31 December 2008, Government Gazette 2008, 253. A revised version was published on 24 December 2012: Government Gazette 2012 no. 26876. The latest version came into effect on 1 July 2013. Government Gazette 2013 no. 16816 (**Human Trafficking Guidelines**).

<sup>40</sup> Human Trafficking Guidelines, page 1.

<sup>41</sup> Also in EU context agreements have been made so that member states from 2013 will conduct proactive financial research into cases of human trafficking. Europol will, no later than in 2015, draw up an analysis of the information from the member states about the financial research in the event of human trafficking. See BNRM9, page 47.

<sup>42</sup> Human Trafficking Guidelines, page 3.

<sup>43</sup> Ibid.

<sup>44</sup> BNRM7, Recommendation 38, page 605.

<sup>45</sup> Victim Care Guidelines, Government Gazette 2010, 20476 (**Victim Care Guidelines**).

<sup>46</sup> Chapter 2 of Victim Care GuidelinesVictim.

<sup>47</sup> Victim Care Guidelines, page 6.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

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<sup>50</sup> Victim Care Guidelines, page 7.

<sup>51</sup> Victim Care Guidelines, page 7-8.

<sup>52</sup> Ibid.

<sup>53</sup> Guidelines Confiscation (2009A003g), Government Gazette 2012, no. 26875 (**Guidelines Confiscation**).

<sup>54</sup> Guidelines Confiscation, page 10.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> The interviews were, upon the request of some interviewees, anonymized. Interviews were conducted by Susan Mathijssen and Caia Vlieks, both students at the University of Tilburg, during the period May - August 2012 with two public prosecution officers with the human trafficking portfolio (**interview Public Prosecutor Human Trafficking – I** respectively **interview Public Prosecutor Human Trafficking – II**), a lawyer specialized in the assistance of victims of human trafficking (**interview lawyer**), two members of staff of Inspectorate SZW respectively Social Security Information and Investigation Service (**interview Social Security Information and Investigation Service**), a member of staff of FairWork (**interview FairWork**), a member of staff of the BNRM (**interview BNRM**) and a representative from National Federation of Christian Trade Unions in the Netherlands Skilled Workers (**interview National Federation of Christian Trade Unions in the Netherlands**).

<sup>58</sup> Every criminal case concerns one suspect, also if the human trafficking was committed jointly or within a criminal organisation. Each suspect can have exploited more than one victim. This means that usually one suspect is involved during each criminal process, but that there can be several victims. Those victims can be involved in several proceedings, for example if they became victims of exploitation by a criminal organisation or several suspects jointly.

<sup>59</sup> CoMensha Annual report 2011, <http://www.mensenhandel.nl/cms/docs/jaarcijfers2011CoMensha.pdf>, page 8. Last visited on 12 April 2013.

<sup>60</sup> CoMensha Annual Report 2012, <http://www.mensenhandel.nl/cms/docs/jaaroverzicht2012.pdf>, page 22.

<sup>61</sup> It is evident from the table that in 2011 50 of the 169 (alleged) victims submitted a claim (29.6%). In 2012 33 of the 109 (alleged) victims submitted a claim (30.3%).

<sup>62</sup> BNRM2012, page 135-143. It concerns 29% in sexual exploitation cases, p 140; 30% in other exploitation cases, page 137.

<sup>63</sup> BNRM 7, p. 497. The BNRM refers to 14%. The BNRM does not include three claims. These were related to the charged human trafficking offence as well as another - simultaneous - charged offence. Since this report does include such claims the percentage is calculated as if the BNRM would also have included those. This amounts to 16%.

<sup>64</sup> Whereby it must be appreciated that it concerned 34 victims up to and including 25 October 2012. The figures of CoMensha concern the entire year.

<sup>65</sup> Likewise: interview Public Prosecutor Human Trafficking-I and Public Prosecutor Human Trafficking-II.

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<sup>66</sup> Interview Public Prosecutor Human Trafficking – I; interview FairWork; interview National Federation of Christian Trade Unions in the Netherlands.

<sup>67</sup> Interview Public Prosecutor Human Trafficking – I; interview Public Prosecutor Human Trafficking – II; interview lawyer, interview FairWork; interview Social Security Information and Investigation Service.

<sup>68</sup> BNRM2012, page 136.

<sup>69</sup> Ibid.

<sup>70</sup> Interview FairWork.

<sup>71</sup> BNRM9, p. 107-108.

<sup>72</sup> Ibid.

<sup>73</sup> Interview Social Security Information and Investigation Service.

<sup>74</sup> Parliamentary Papers I, 2012-2013, 33295 no. C, 11 June 2013.

<sup>75</sup> BNRM9, page 316. (recommendation 2)

<sup>76</sup> In 2011 21 of the 50 claims were not specified. In 2010 the situation was as follows. BNRM 2012, page 138 (other exploitation: 5 of the 11 claims unknown) and page 141 (sexual exploitation: 8 of the 26 claims unknown).

<sup>77</sup> BNRM2012, p. 155.

<sup>78</sup> Interview lawyer.

<sup>79</sup> BNRM7, page 474; BNRM2012, page 164 et seq.

<sup>80</sup> For example Utrecht District Court, 6 April 2012, LJN: BW2312; Utrecht District Court, 1 June 2011, LJN: BQ6884.

<sup>81</sup> For example Leeuwarden District Court 26 July 2012, LJN: BX3800; Haarlem District Court, 21 July 2011, LJN: BR2862. In both cases the amount of the profit was estimated at € 500 per day.

<sup>82</sup> Den Bosch District Court, 28 January 2011, LJN: BP2304.

<sup>83</sup> BNRM2012, page 153.

<sup>84</sup> BNRM2012, page 177 (recommendation 3).

<sup>85</sup> Interview lawyer.

<sup>86</sup> Interview FairWork; interview lawyer; Public Prosecutor Human Trafficking-I.

<sup>87</sup> Recommendations 2011, page 24.

<sup>88</sup> It is evident from the table referred to that in 2011 22 claims were (partially) declared inadmissible because dealing with the claim would result in a disproportional burden on the criminal proceedings. This concerns 44% of the claims submitted that year (50). In 2012 16 claims were declared (partially) inadmissible because dealing

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with the claim would result in a disproportionate burden on the criminal proceedings. This concerns 48% of the claims submitted in that year (33).

<sup>89</sup> Act of 23 December 1992, Bulletin of Acts and Decrees 1993, 29; Parliamentary Papers 21 345. Prior to the implementation of the Victim Support Act victims could submit a claim as victimised party not exceeding 1500 guilders.

<sup>90</sup> BNRM2012, p. 174.

<sup>91</sup> Recommendations 2011, page 15.

<sup>92</sup> Recommendations 2011, page 19.

<sup>93</sup> Recommendations 2011, page 8.

<sup>94</sup> BNRM2012, page 165.

<sup>95</sup> BNRM7, page 474; BNRM2012, page 164 et seq.

<sup>96</sup> BNRM2012, page 177.

<sup>97</sup> BNRM2012, page 166.

<sup>98</sup> Ibid.

<sup>99</sup> Likewise: BNRM2012, page 166.

<sup>100</sup> Interview National Federation of Christian Trade Unions in the Netherlands.

<sup>101</sup> Interview Social Security Information and Investigation Service.