

COMPENSATION FOR VICTIMS OF HUMAN TRAFFICKING: INCONSISTENCIES, IMPEDIMENTS AND IMPROVEMENTS

Master thesis criminology

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Compensation for victims of human trafficking: inconsistencies, impediments and improvements

Master thesis criminology

Major: Organized Crime

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August 2015

Acknowledgements

This thesis was written on behalf of La Strada International. I would like to thank La Strada, and specifically Marieke van Doorninck, for offering this opportunity and helping me set up the research. From VU University, I would like to thank Edward Kleemans and Miriam Wijkman for providing many very helpful comments. I would further like to thank Annet Koopsen, Eline Willemsen (Fairwork), Conny Rijken (INTERVICT) and Floor Hol (BNRM) for taking the time to answer my questions, and for giving many useful suggestions. Lastly, I would like to thank my father, for all his help and support.

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Abstract

Any person who has been a victim of human trafficking has a right to compensation. Compensation entails the reimbursement of material and immaterial damages a trafficked person has suffered. Receiving compensation can serve as an acknowledgement of victimhood. Restoring money that was taken from a victim both satisfies a sense of injustice and helps victims on their road to recovery. This can be reached by a verdict that sentences an offender to pay, or by reimbursement paid by the state itself.

Regardless of the internationally acknowledged right to compensation, the number of trafficked persons in Europe that have actually received any reimbursement is very low. The present study aims to contribute to a rise in the frequency compensation is received by trafficked persons by analysing the obstacles to compensation. It has done so by conducting a literature review (covering the years 2010-2012), interviews and a case file analysis (covering 2013 and 2014), answering the question which obstacles exist that prevent victims of human trafficking from receiving compensation, both at the European level and the national level of the Netherlands.

Three routes to compensation are currently relevant, each of which has unique obstacles related to them; civil court, criminal court and a state fund. At the European level, many impediments are related to legislation or law enforcement. Obstacles related to legislation include limitations on the amount that can be claimed, the type of damages that can be claimed and the victims that can claim compensation. Obstacles related to law enforcement include a lack identification of victims, a lack of prosecutions and convictions and prejudice towards victims. Additionally, it was found to be difficult to assess the extent of the damage for which a victim should be compensated. Furthermore, lack of information and the unavailability of free legal aid are obstacles to compensation. Lastly, an important issue at the international level is that offenders that have been sentenced to pay compensation often have no traceable assets, resulting in non-payment.

In the Netherlands, attempts to obtain compensation in criminal court have shown to be both promising and problematic. Using a provision in criminal law, a victim can append a claim ('injured party claim') for any damages suffered by the trafficking in the offenders' trial. Another important route is an application to the Criminal Injuries Compensation Fund. It was found that only an estimated four percent of all registered victims claims compensation in criminal court. Additionally, only thirty percent of the victims whose trafficker is being

prosecuted claim compensation in court. A lack of information and unwillingness to claim compensation on the side of the victim can be causes for this low number of claims. Around a quarter of all these claims in criminal court are fully inadmissible. An important obstacle causing this is the difficulty with accurately establishing damages. This is related to a lack of proof in many cases, caused by for example lack of bookkeeping, insufficient financial investigation and the incomplete testimonies, which leads to only minimum amounts being awarded. Availability of proof such a testimonies and bank statements was found to be a characteristic of awarded cases. However, in some cases where proof seemed sufficiently available, judges still decided to either dismiss the claim, or award a minimum. As a result, compensation is more often than not out of proportion with damages that have actually been suffered.

An improvement in the proportion of claims that was fully inadmissible was observed in 2013 and 2014 compared to the three previous years. New information from the case file analysis includes that men and victims of labour exploitation appear underrepresented. Concerning claims on behalf of victims of labour exploitation, these appear in no way to be more successful than other claims. This further shows that claims are influenced by various factors, and that no single factor has a strong individual influence; the success of an injured party claim can be influenced by many different factors that can be hard to predict. This is partly related to the liberty of judges to estimate damages or dismiss claims, abilities that are both used unpredictably.

This study therefore recommends that guidelines be set up for judges, to increase the number of claims that are awarded, and the amounts that can be claimed and awarded. Furthermore, victims of trafficking should always be correctly and fully informed of the possibility to claim compensation. By continuing research and improving different aspects in practice, it is hoped that more and more victims of human trafficking will receive the compensation to which they have a legal and moral right.

1 Introduction

1.1 Trafficking in human beings

Trafficking in human beings (THB) is a globally relevant issue, affecting nearly every country in the world. As a result, there are vast numbers of local, national and regional interpretations and responses to this crime (UNODC, 2012). All these responses to this crime, however, have one focus in common: the victims. Human trafficking does not exist without the trafficked persons who become victimized by this crime. The UNODC (2014) registered over forty thousand victims globally between 2010 and 2012, and Eurostat (2015) registrations record 30,124 victims in the European Union in the same time frame. It is likely that the actual number of victims is much higher, since a large proportion of this specific crime remains undiscovered. Although no reliable global estimates exist, the International Labour Organization (ILO) estimates that between 2002 and 2011 twenty million persons were the victim of forced labour, which includes most forms of human trafficking (National Rapporteur on trafficking in Human Beings, 2013). Human trafficking is further characterized by the large number of victims who are trafficked in order to work in prostitution. Exploitation of trafficked persons can take place in all work environments imaginable, but according to registered data, the most prevalent is exploitation in the sex industry. According to Eurostat (2015), 69 percent of all human trafficking is for the purpose of sexual exploitation. Nineteen percent of trafficking in human beings happens for labour exploitation situations. The victims of trafficking in human beings are mostly women (67%) and girls (13%). Trafficking of persons can take place within countries, as well as across borders. In Europe, 65 percent of registered victims were EU citizens, indicating that trafficking mainly takes place within the region. An average of 37 percent of victims was registered in their home country (Eurostat, 2015).

Regardless of sector, country or manner of exploitation, the main goal of human trafficking is the same: financial profit. Trafficking in human beings is considered to be an important income source of organized crime groups, grossing an estimated revenue of 114 billion euro each year worldwide, and 36 billion euro in Europe (National Rapporteur on trafficking in Human Beings, 2013; Savona & Riccardi, 2015). A large proportion of these revenues are earned at the costs of the victims, for example by taking earned money from them or by withholding wages. The total damage suffered by trafficked persons is estimated

at thirty billion euro each year in the European Union alone (Levi, Innes, Reuter, & Gundur, 2013).

1.2 Compensation

Given the large severe consequences trafficked persons often suffer due to their victimization, it is extremely relevant to implement rights that help them recover effectively. Under international law, the victims of trafficking have a right to be compensated for the damages they have suffered. This is known as the right to compensation, which can be defined as “*to make amends to someone for loss, injury or wrong, especially by suitable payment*”¹. The right to compensation constitutes the right to reimbursement for both material (i.e. financial) and immaterial (including for example physical and psychological injuries) damages.

Compensation for trafficked persons is necessary for several reasons. Firstly, the deprived pay for which the victim has worked, and to which he/she has a legal right, is restored to the victim. Secondly, compensation can be a support on a victims’ road to recovery. It serves as an acknowledgement of victimhood, symbolizes restoration of justice and provides the much needed financial means to victims to rebuild their lives. The availability of financial means also prevents re-victimisation (Geurts & Schrama, 2012; La Strada International, 2013; Ruitenbeek-Bart & Schijns, 2014). While the main goal of compensation is to restore justice to the victim, sentencing the trafficker to reimburse the victim is considered to be a very appropriate punishment, and possibly a deterrent, for a crime which is primarily committed for financial profit (La Strada International, 2013).

However, recent reports evaluating implementation of the right to compensation, both in European countries and the United States, have shown that human trafficking victims’ access to compensation is in many ways limited. Large differences exist between countries when it comes to the safeguarding of the right to compensation. A key finding is that it is extremely rare for victims of human trafficking to receive any compensation at all (La Strada International, 2013; Thompson & Jernow, 2008).

¹ Definition of compensation in *Chambers 21st Century Dictionary*, 2004.

1.3 Aim of the study

In order to set out strategies for improvement, the obstacles that keep victims of human trafficking from receiving compensation need to be examined. This will be the goal of the present study. In order to understand the obstacles to compensation, it is useful both to review obstacles at the international level and at national levels. Because every country has its own legislation concerning human trafficking, studies at the national level are necessary to identify both country specific problems and national best practices that may be useful for other countries. Reviewing the international level offers a perspective in which the findings at the national level can be placed. Based on the availability of data, Europe and the Netherlands were chosen for this analysis.

These considerations led to the following main questions:

- 1) *Which obstacles prevent victims of human trafficking in Europe from receiving compensation?*
- 2) *Which obstacles prevent victims of human trafficking in the Netherlands from receiving compensation?*

1.4 Method

In order to answer the first question, a literature review was carried out. This review focussed on legislation concerning compensation for victims of human trafficking, and reports investigating compensation in practice. For the review of obstacles in the Netherlands, a literature review and two interviews were carried out. Both national legislation on compensation and compensation in practice were analysed. From the literature and interviews, several hypotheses on obstacles to compensation were derived. These were tested in a case file analysis carried out for this study. One specific route to compensation in Dutch legislation, the injured party claim, was found to be especially relevant, and therefore reviewed in-depth, both in the literature review, interviews, and case file analysis. Additionally, information of the compensation claim in criminal law is publically available, while details on other routes are not the focus of studies. By using these methods, both the legal aspect and the practice of claiming compensation can be reviewed. Furthermore, by using both a case file analysis, a literature review and interviews, the practice of claiming compensation can be analysed at different stages in the process of claiming compensation,

and from the view of different actors that are involved. It is therefore expected that these methods will result in a comprehensive review of obstacles that prevent victims of human trafficking from receiving compensation. Each chapter's introduction will further specify the methods used.

1.5 Relevance

The aim of the present study is expected to have both societal and scientific implications. By contributing to a better understanding of obstacles to compensation, it may give direction to adjustment of political and legal action that can be taken towards improvement. In this way, access to appropriate compensation will hopefully be bettered, aiding the well-being of human trafficking victims. In addition to this, the present study may aid the qualification of damages suffered by the victims of crime. Quantifying damages suffered by victims is complicated, and not very often a part of studies into crime and/or victimhood (Levi et al., 2013). Immaterial damages such as the costs of violence (both from traffickers and clients), and diminished quality of life are not easy to quantify. This means that it is not only difficult to appropriately reimburse victims, it also means that available estimates of damages are very unreliable (Dubourg & Prichard, 2008). This study provides an assessment of the height of damages suffered by trafficked persons based on case studies instead of proxies and estimates, and may therefore serve as a step in the direction of a more reliable estimate of damages suffered by the victims of this crime.

1.6 Outline

The first two chapters will present the legal framework. First a brief history of the right to compensation in European law will be given, including a short review of its implementation. This included both a review of legal documents and evaluating reports (chapter 2). In chapter 3, the details of the legal right to compensation in Dutch law will be explained and briefly reviewed. Following, a literature review at the national level of the Netherlands will be presented. This literature review will examine the current knowledge on the obstacles related to claiming compensation in the Netherlands, including previous Dutch jurisprudence research (chapter 4). Chapter 5 provides a detailed explanation of the case file analysis, discussing the method and presenting the results from the analysis. Both these chapters will be supplemented with conclusions drawn from the interviews. The final chapter (6) summarizes and discusses the study, and includes recommendations.

2 International legislation and implementation

2.1 Introduction

This chapter tries to answer the first question: *Which obstacles prevent victims of human trafficking in Europe from receiving compensation?* This is done by a literature review, for which previous reports on compensation were a starting point. The status quo of the implementation of victims' rights at the international level is reviewed on a regular basis. Two recent reports have focussed on reviewing the right to compensation specifically, pointing out numerous problems. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has conducted research into several countries'² implementation of the right to compensation (Thompson & Jernow, 2008). The COMP.ACT project, conducted by La Strada International and partners in order to improve access to compensation, included research into the identification of obstacles that prevent trafficked persons from accessing compensation in thirteen European countries (La Strada International, 2013).³ These two reports will be the focus of the last paragraphs of this chapter.

The first half of the chapter presents the international legislative documents and guidelines that establish the right to compensation. The review of legislation outlines criminalization of trafficking in human beings, the rights that trafficked persons have in general, and the right to compensation in specific. The second half of this chapter first presents the analysis of the ways in which compensation can be obtained. Secondly, the obstacles associated with each of those ways are analysed, in addition to a review of obstacles that can arise regardless of the route chosen.

2.2 Criminalization and definition of human trafficking

The international standard for the definition of trafficking in human beings was worded in the first globally, legally binding instrument against human trafficking; the Trafficking in Persons Protocol (2001)⁴, that was a supplement to the United National Convention against Transnational Organized Crime (UNOTC). It is also known as the Palermo Protocol, and defines human trafficking as follows:

² US, UK, Ukraine, Russian Federation, Romania, Moldova, France and Albania

³ See compactproject.org

⁴ Fully: The "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children", adopted by General Assembly resolution 55/25. Entered into force on 25 December 2003.

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant” (UN Palermo Protocol, 2000: Art.1).

In other words, human trafficking includes at least an act (e.g. recruiting or transporting a person), means (e.g. use or threat of violence, deception or abuse of power), and purpose (exploitation). Exploitation can take many different forms, but three main forms are distinguished by the Protocol: sexual exploitation, forced labour and removal of organs. Exploitation may also entail working in slave-like conditions, for example in domestic settings (UNODC, 2012). Human smuggling and human trafficking are often confused, but are two different offences. While human smuggling mainly concerns the crossing of a border, human trafficking also entails exploitation and coercion. Put briefly, being smuggled may be voluntary, being trafficked never is. A trafficked person may have been smuggled; in this sense smuggling can proceed, or be an element of, human trafficking (Aronowitz, 2001).

Subsequent to the Palermo Protocol, several guidelines have been adopted that further specify the measures parties are to take to prevent trafficking, protect potential victims and prosecute traffickers⁵. Documents concerning these ‘three P’s’, as they are generally termed, include articles on how victims should be treated, what rights they have, and how these rights can be protected (Thompson & Jernow, 2008).

2.3 Victims’ rights

According to UN legislation and guidelines, not only do states have an obligation to criminalize human trafficking, they also have an obligation towards the victims of this crime. Over half a century before human trafficking was internationally defined by the UN, the

⁵ These include for example the Trafficking in Persons Protocol (2000), several ILO Forced Labour Conventions, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) and Council of Europe Convention on Action against Trafficking in Human Beings Warsaw (2005).

Universal Declaration of Human Rights in 1948 was adopted. This Declaration was founded on the firm belief that every human being has a right to be free from slavery, servitude and forced labour, a right to liberty and security, and a right to fair and just working conditions (UN General Assembly, 1948). Once one of these rights (or another) is violated, states must attempt to achieve the situation that existed before the wrongful act, or that would have existed without this act (Gallagher, 2010). This may be achieved by for example guarantees of non-repetition, rehabilitation and compensation (La Strada International, 2013). Put differently, a victim of trafficking has the right to adequate and appropriate remedies (UN Office of the High Commissioner for Human Rights, 2002). Some of these remedies include the right to assistance in physical, psychological and social recovery, a recovery and reflection period and compensation in legal redress (Council of Europe, 2005). The latter will be the focus of the following paragraphs.

2.4 Right to compensation

As early as 1977, providing compensation to victims of serious crimes was considered an important issue in Europe. The Council of Europe drafted a Resolution that recommended states to contribute to the compensation of anyone who had sustained severe bodily injury as a result of an intentional crime. In case the offender could not pay the victim, states are urged to consider setting up a fund that can compensate damages. These damages would include loss of past and future earnings, and rehabilitation (Council of Europe, 1977). Several decades later, the Palermo Protocol introduced the right to compensation for victims of human trafficking specifically: *“Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”* (UN Palermo Protocol, 2000: Art. 6).

The way in which compensation can be claimed and the damages that can be claimed are not standardized. One way to claim compensation is a state fund as described in the paragraph above. The Recommended Principles and Guidelines on Human Right and Human Trafficking suggest that adequate remedies may be criminal, civil or administrative (UN Office of the High Commissioner for Human Rights, 2002:13). At the time of the drafting of these recommended guidelines, it had become clear it was extremely rare for victims to receive compensation from traffickers. For this reason, establishment of state funds was emphasized (Thompson & Jernow, 2008). Several international standards suggest that profits made by

traffickers should be directed towards a state fund, for the benefit of victims (La Strada International, 2013; Thompson & Jernow, 2008). The 2005 Principles and Guidelines on the Right to a Remedy and Reparation specify several conditions the compensation should meet: *“Compensation should be provided for any economically assessable damage⁶, as appropriate and proportional to the gravity of the violation and the circumstances of each case”* (UN General Assembly, 2005: Art. IX). The types of damages that can be claimed according these guidelines include both physical and mental harm, loss of earnings, lost opportunities, and costs of medical, legal and/or other assistance. Compensation was most recently covered by the EU Directive on preventing and combating trafficking in human beings and protecting the victims (Council of the European Union, 2011). In addition to European legislation and guidelines, International Labour Organization (ILO) conventions assert the right to compensation in case of rights abuse, and require national labour law to ensure the payment of wages.

2.5 Access to justice and ancillary rights

Several barriers may exist for trafficked persons, before they can access legal provisions. ‘Access to justice’ is a term used to describe the degree of such impediments, which exist for disadvantaged groups in society. These barriers may be financial and social, for example lack of knowledge of the local language or distrust of law enforcement and legal institutes. Furthermore, without understanding or being aware of the right to compensation in the first place, victims will not receive it. Therefore, several rights have been recognised as rights that are necessary to implement, in order to improve the access to the right to compensation. In other words, these rights are ancillary to compensation (La Strada International, 2013). These ancillary rights are established in international law. The Palermo Protocol (2000) states that it must be ensured that information on relevant court and administrative proceedings are provided to victims of trafficking in human beings, and that State Parties shall consider implementing measures that improve provision of *“counselling and information, in particular a regard their legal rights”* (UN Palermo Protocol: article 6). The UN High Commissioner for Human Rights (2002) recommends providing information in a language the victim understands, and making arrangements for the trafficked persons to be able to remain in the country during the proceeding. In addition, the Warsaw convention

⁶ As will appear later, precisely this assessment, and determining the appropriate amount of compensation, is very complicated

(2005) affirms several important ancillary rights, including the right to information from the first contact with competent authorities on, and the right to legal assistance and free legal aid.

2.6 Implementation

Although the protection of the rights of the victims of trafficking is binding (Council of Europe, 2005), many of the conventions described above in sections 2.2 to 2.5 are soft law, meaning that they are not legally binding. Therefore, states have a relatively large amount of freedom in implementing the rights described above, and in choosing ways in which they enable compensation. In practice, three possible routes to compensation exist (Thompson & Jernow, 2008; La Strada International, 2013):

- Criminal court: the criminal courts sentence the offender to pay damages to the victim, either upon a claim by the victim or on its own initiative. The route to compensation via criminal proceedings is based on the prosecution of a trafficker. In some countries, a judge may order the trafficker to pay compensation once a trafficker is convicted. Other countries have the possibility to submit a civil claim for damages during the criminal proceedings. Most countries have this possibility to pursue a civil claim within the criminal procedure (Thompson & Jernow, 2008);
- Civil court: the offender is sued for damages by the victim based on civil law;
- State Fund: the state establishes a fund or scheme to which victims can apply for compensation. In this route, the state pays for compensation. In the three other routes, the offender pays;

The implementation of these routes to compensation in national legislation is a first step towards enforcing the right to compensation. However, several obstacles are associated with implementation. In the following paragraphs, obstacles that every victim of trafficking that seeks compensation may be faced with are discussed, followed by obstacles that are specific to each of the three routes mentioned above. These obstacles apply to the European level. The extent to which they apply at the national level of the Netherlands will be discussed in chapter 4 and 5.

2.6.1 Non-identification of victims

Several impediments have been identified that keep trafficked persons from receiving compensation, regardless of the route they choose. Those that have appeared to be of important influence in many of the analysed countries will be discussed here. One of these impediments is non-identification of victims. A victim of human trafficking that is not identified as such will not be able to claim compensation. This is related to several other issues. Although most Western countries have criminalized human trafficking, specific types of exploitation, such as labour exploitation, have not yet been recognized as human trafficking everywhere. This becomes evident from Eurostat (2015) data, that show that of all fifteen EU member states that provided data on the sector of exploitation in prosecutions, only seven reported prosecutions based on labour exploitation. The UNODC (2014) estimates that over two billion people globally are not fully protected under the Trafficking in Persons Protocol. However, determining the number of undiscovered victims is complicated; it would constitute measuring something that has by definition not been observed. It is clear however, that lack of priority to investigate human trafficking cases within law enforcement agencies, which is especially the case for male victims and other types of exploitation than sexual exploitation, will lead to a lack of identification of victims (Thompson & Jernow, 2008).

2.6.2 Prejudice

Negative attitudes of both law enforcement and judges towards trafficked persons can influence whether those victims can access their right to compensation (Thompson & Jernow, 2008). A victim may be viewed as a perpetrator, because of their illegal status in the country or because their behaviours were illegal or considered immoral. For example, sex workers may be imprisoned in countries where prostitution is criminalized (Villacampa & Torres, 2014). Additionally, blaming the victim for being victimized and negative attitudes towards sex workers are reported to be common, and to influence the amount of compensation that is acknowledged (La Strada International, 2013).

2.6.3 Lack of legal aid

A different issue is lack of information and (legal) aid. Once trafficked persons are identified as such, they are not always informed about their right to compensation and how they can access it. Eurostat (2015) reports that 1211 instances of legal aid were recorded in EU MS between 2010 and 2012, however, the way in which this number is recorded differs

per country, and a large number of countries did not provide data. It is therefore likely to be misleading. However, it is still very low compared to the total number of registered victims (30,146). Further impeding this, claiming compensation often includes complicated procedures that are likely to be unfamiliar and intimidating to most victims. Legal assistance is therefore necessary to help victims navigate these procedures, but is not always available. Furthermore, this aid needs to be free, as victims are often in poor financial circumstances after their exploitation.

Not only victims can misunderstand or not know about compensation, this may be true for law enforcement, judges and lawyers as well. A lack of expertise among social or legal workers and judges is reported. Professionals who can advise on, or assist with, claims are often not specialized in aiding the victims of human trafficking, and those who do assist victims of trafficking specifically are not often specialized in consulting on claims. Much needed awareness and understanding of the available procedures among involved professionals, without which victims do not know about, or cannot have access to, compensation, has appeared to fall short (Thompson & Jernow, 2008; La Strada International, 2013).

2.6.4 Self-identification and fear

Even when legal aid is available, it is not uncommon for victims to decide not to claim compensation. Some victims, especially victims of labour exploitation, do not identify with the label 'victim' or 'victim of human trafficking'. These victims of labour exploitation may not pursue a criminal process against their trafficker but instead focus on finding new income as soon as possible. Other victims do not pursue compensation out of fear; fear of retaliation is very common with victims of THB, as traffickers will often threaten to hurt family members or the victim her/himself to prevent them from (among others) undertaking legal steps. Victims may also fear reliving their exploitation; the process of claiming compensation can be intense and lengthy, and many victims are eager to leave all memory of the exploitation behind instead of reliving it for the purpose of compensation (La Strada International, 2013).

2.6.5 Issues related to compensation via criminal proceedings

Several issues have been found to be associated with this route to compensation. These may be grouped into three groups, based on the phase of the proceedings: access to the proceedings, issues during the proceedings, and payment after the proceedings.

2.6.5.1 Access to the proceedings: lack of prosecution

Only the victims of prosecuted traffickers can access compensation via the criminal procedure. This is problematic, because few cases are in fact prosecuted, and ever fewer traffickers are convicted. The United Nations Office on Drugs and Crime (UNODC) reports that, globally, many countries have issues with responding to human trafficking in and states that “*impunity prevails*” (UNODC, 2014, p13). Half of the countries investigated in this report⁷ report between zero and 50 convictions yearly, and fifteen percent reported no convictions at all. On average, out of a hundred persons investigated only 45 are prosecuted, and 24 are convicted in first instance. Eurostat (2015) reports that between 2010 and 2012, 8,805 traffickers were prosecuted, out of which 3,855 were convicted. This shows that in Europe, prosecution is more prevalent. Considering however that the total number of registered victims was over 30 thousand, a notable amount of traffickers goes free.

This can be caused by for example a lack of evidence, or lack of police efforts or resources. Another issue with the compensation claim in the criminal proceeding is related to the international character of human trafficking, which becomes evident from the finding that 36 percent of convicted traffickers are not citizens in the country where they are convicted (UNODC, 2014). A trafficker may be prosecuted in a different country than where the victim is living, which complicates submitting a claim (Thompson & Jernow, 2008). Additionally, when a trafficker is prosecuted for a different offence than human trafficking, e.g. human smuggling, the victim cannot claim compensation for being exploited.

2.6.5.2 During the proceedings

The biggest issue with the route to compensation via the criminal proceedings, is that without conviction, no compensation will be received (La Strada International, 2013). The victim will often have little influence on this, although a victim’s testimony can be an important piece of evidence without which proving the trafficking offence can become very complicated. However, having to testify can be re-traumatizing, and some victims are unwilling to cooperate because of this. The same reasons that cause unwillingness or reluctance of a victim to claim compensation, such as fear of the traffickers, can also play a part in a trafficked person’s decision to not testify or otherwise cooperate (Thompson &

⁷ 128 countries

Jernow, 2008). It remains difficult to avoid that criminal proceedings are partly dependent on the cooperation of victims, who may be vulnerable or in the process of recovering.

Another concern during the criminal proceedings is that, as mentioned above, the judges' and law enforcements attitudes influence the compensation claim. Judges who consider the claim to play a minor role compared to the criminal case can decide to ignore the claim. Another harmful attitude is that judicial actors in the case may expect that the victim is only participating in the proceedings for the money. They therefore question the reliability of the victim's testimony, which can often lead to a rejection of the claim (Thompson & Jernow, 2008).

One troubling finding throughout many countries is that calculation of the height of the compensation is inconsistent. Amounts that are rewarded vary widely; the lowest and highest amounts rewarded in Moldova are 295 and 10,638 euro for example (Thompson & Jernow, 2008). Differences between countries are even bigger. Due to various factors, compensation claims can be very complicated, and guiding criteria or precedents on how to assess the damage are often lacking. Claimants and their lawyers may lack the necessary expertise to present a clear and correct claim, and judges do not always understand how to evaluate a claim (La Strada International, 2013). The height of the compensation is therefore often more related to the opinion and expertise of individual judges and whether a qualified lawyer is involved, than it is to the actual damage suffered. Commonly, claims that are awarded only cover a portion of the damages (Thompson & Jernow, 2008).

Other obstacles include that claims can be restricted by legislation to certain types of claims (only material or immaterial), an upper or lower limit on compensation awards, and the level of evidence that is demanded (Thompson & Jernow, 2008). Proving the actual damage that was suffered is found to be difficult. Additionally, some countries do not recognize prostitution as a profession, and therefore do not award lost income in sexual exploitation cases (La Strada International, 2013).

2.6.5.3 Payment

The biggest issue related to payment of awarded claims is easily explained: compensation claims that are awarded are rarely received. All eight countries in the ODIHR study have *"a significant problem of compensation awards not being paid"*, meaning that *"the actual receipt of a compensation payment by a trafficked person is extremely rare"*

(Thompson & Jernow, 2008, p 10). A court order for payment can be issued, but when it is not voluntarily paid by the trafficker, enforcement must be applied. This does not always happen, and when it does, it is often unsuccessful. Traffickers who have moved, laundered, hidden or simply spent all their money cannot be forced to pay (Thompson & Jernow, 2008). Traffickers are reported to often spend their money on luxury products or gambling. Furthermore, in organised human trafficking cases, the earned money may not be in the hands of the prosecuted trafficker, as money is distributed over the organised network and mainly ends in the hands of the networks' bosses (Petrunov, 2011).

A possible solution for this would be seizing the assets of criminals as early as possible, before they can be laundered or spent, and using those seized assets for the benefit of the victims. However, few countries have actually put this into practice (UNODC, 2014). Some countries lack the legislation that allows for this, other countries do have this legislation but underuse it. Whether this is due to unwillingness, lack of expertise or lack of financial resources, or a combination, is difficult to say and will differ per country.

2.6.6 Issues related to compensation via civil court

The abundance of obstacles associated with compensation via the criminal procedure can lead to the conclusion that other routes should be considered instead. However, civil proceedings and state funds are not free of complications either.

Civil litigation is associated with several difficulties, including high costs and a time-consuming character. A large amount of money and time needs to be invested to bring a case to civil court, without any prior insurance that compensation will be awarded or received (La Strada International, 2013). This is partly related to lack of payment; a trafficker may be sentenced to pay compensation, but when he is unable to do so, the victim receives nothing. Some advantages are associated with civil litigation, however, an important one being that the precise amount of damage can be established, because civil court provides the option to extensively argue and present evidence. Yet, civil litigation is assumed to be hardly ever used by the victims of human trafficking, and a lack of precedents further discourages it (Thompson & Jernow, 2008).

An option available uniquely to the victims of labour exploitation is to seek compensation in civil courts via labour regulations; most countries have regulations on minimum wages, working hours and related affairs. Based on violations of these laws,

trafficked persons, or labour organisations/unions acting on their behalf, can sue the offender and claim damages and unpaid wages. Labour courts do not necessarily have the expensive and time-consuming character of civil litigation, but do present other complications. The main issue with labour courts is that the group of THB victims that are eligible for labour or employment law procedures is limited. As mentioned above, most countries do not recognize prostitution as employment, and therefore sexual exploitation victims cannot benefit from the protection of labour laws (Thompson & Jernow, 2008). Another problem is that exploited persons do not always have a legal contract, and therefore may be inadmissible in labour courts. For example, a contract may not be acknowledged when the victim had an irregular residence status during the exploitation. This was the case for a Pakistani victim of labour exploitation in Ireland. His trafficker was sentenced to pay him almost 100,000 euro, but a higher court overruled this because of the lack of a legal contract (La Strada International, 2013). All in all, labour courts are not an option for a large group of trafficked persons (recalling that 69 percent of victims is the victim of sexual exploitation, (Eurostat, 2015)), suggesting the need for viable alternatives.

2.6.7 Issues related to compensation via a state fund

An alternative to civil and criminal legal procedures may be found in state funds. Many countries have established a state fund for the victims of crime, from which the state can award financial support to applicants. It is not yet available everywhere; only in four out of the eight countries analysed by ODHIR, compensation from a state fund was possible (Thompson & Jernow, 2008). By applying to a state fund, trafficked persons can avoid some of the issues with the judicial proceedings described above: the trafficker does not need to be persecuted or convicted, a long trial can be avoided, and the payment is usually prompt (La Strada International, 2013). However, state funds have restrictions placed on which victims are eligible for support. Foreign victims can be excluded, and some funds only award compensation to those who are considered victims of violent crime, which often excludes labour exploitation victims. Other restrictions may include a limit on the maximum amount that can be claimed, or a limitation on the types of damage that can be claimed (Thompson & Jernow, 2008).

2.7 Conclusion

This chapter reviewed compensation at the European level. Three routes to compensation were identified, each of which has unique obstacles related to them. Many of these obstacles are related to legislation (limitations on claims or eligible victims) or law enforcement (including a lack identification of victims, and a lack of prosecutions and convictions). Other obstacles were prejudice towards victims, and the unavailability of free legal aid. Lastly, it was found to be difficult to assess the extent of the damage for which a victim should be compensated. Whether the same issues apply to the national level as well will be the focus of the next chapters.

3 Dutch legislation: the injured party claim and other routes

3.1 Introduction

After having presented the international legal framework and reviewed obstacles to compensation at the European level, the remainder of the study will focus on the Netherlands. The Netherlands are internationally known for their legalisation of prostitution. This however, does not mean that trafficking in human beings is not an issue in the country⁸. Besides human trafficking for the purpose of sexual exploitation, exploitation in building and agricultural sectors has also been signalled as an important issue. Only recently, compensation for victims of human trafficking has gained more attention in research and media⁹, which have observed that obtaining compensation can often be very difficult.

The aim of this chapter is to outline the legislation relevant for obtaining compensation in the Netherlands. A literature review focussed on the legal framework in which human trafficking is criminalized and compensation is enabled will be presented. First, the criminalization of human trafficking will be discussed. Following, the manner of implementation of the three routes to compensation, criminal law, civil law, and/or a state fund (see 2.6), will be discussed. The focus will lie on criminal law, as previously explained in chapter 1. The practice of compensation and obstacles associated with these routes will be discussed in chapters 4 and 5.

3.2 Criminalization of human trafficking

Human trafficking is criminalized in the Netherlands in article 237f of the Dutch Penal Code¹⁰. The article replaces an older article that only criminalized sexual exploitation. The current article additionally prohibits labour exploitation, the removal of organs and forced begging. Article 237f Sr follows the Palermo Protocol by including an act, the use of force and the aim to exploit as the defining aspects of human trafficking. These acts include trafficking in the sense of transportation, but also recruitment and housing. In case of the exploitation of minors, no force has to be proven in order to for the offence to be qualified as human trafficking (National Rapporteur on trafficking in Human Beings, 2012b). The definition of certain acts as human trafficking is still evolving. For example, the forced signing of contracts

⁸ The legalization of sex work is a controversial topic, and its impact on trafficking is not clear. See for example (Outshoorn, 2012).

⁹ See for example (EenVandaag, 2015; Ramesar, 2013; "Slachtoffers mensenhandel nauwelijks gecompenseerd," 2013; Van der Laan, 2013).

¹⁰ *Wetboek van strafrecht*, or Sr

has also led to human trafficking convictions recently (Fairwork, 2013; National Rapporteur on trafficking in Human Beings and Sexual Violence against Children, 2012b, 2013). The aim to exploit someone is punishable, so even if no work has actually taken place, someone can still be qualified as a victim of human trafficking, and be eligible for compensation.

3.3 Ancillary rights and access to justice

Several rights and practices that are ancillary to access to compensation have been adopted. For example, the police and public prosecutor have the duty to inform the victim of the possibilities for compensation¹¹. When the public prosecutor informs the victim on the prosecution, they will include an injured party claim form, and information on an organization¹² that can aid the victim in their claim (Geurts & Schrama, 2012). Additionally, a national referral system is being set up, that will aid victims as well as professional in understanding what options are available to them. This includes information on compensation¹³. Furthermore, the Legal Assistance Act states that victims of serious violent and sexual crimes are eligible for free legal aid if they also meet the criteria for payment from the Criminal Injuries Compensation Fund. However, this excludes victims of exploitation situations in which no violence was used (further explained in 3.6). Lastly, a legal provision¹⁴ exists that allows victims of human trafficking with an irregular residence status to remain in the Netherlands after their exploitation. This allows them to remain in the country while they consider compensation, and to await the outcome of a criminal procedure against the trafficker.

3.4 Compensation in criminal law

In the past decades, several laws have been introduced aimed at supporting victims during the criminal proceedings, such as the right to be treated correctly by police, judges and public prosecutors, the right to speak in court¹⁵. Provisions for obtaining compensation were also adopted:

- The victim can join the criminal proceedings with a claim for damages;
- The court can impose a compensation measure ;

¹¹ 51a Sv

¹² Slachtofferhulp Nederland

¹³ See for example <http://www.hoenuverder.info/waar-kan-ik-terecht/hulpverlening> and <http://www.wegwijzermensenhandel.nl/professional/schadevergoedingen/>

¹⁴ B8/3 Vc., formerly B9-provision

¹⁵ 51e Sv

- The court can impose compensation as a special condition of the sentence;

These first two options will be discussed below, the latter will not be discussed because of its lack of practical relevance; it is rarely used (data on the number of times it was used are not available) (Fairwork, 2013; Ruitenbeek-Bart & Schijns, 2014).

3.4.1 Injured party claim

In 1995, a law¹⁶ was introduced that created the possibility for victims who had been directly injured by a criminal act to join the criminal process with a claim for the full or partial damage that was suffered. This claim is termed 'injured party claim', and is a civil claim imbedded in the criminal procedure. Liability under civil law requires, among other things, that the defendant committed an unlawful act, for which he is accountable, and that the victim incurred damage that was the consequence of that act. The victim joins the criminal proceedings with a claim by filling out a form, specifying the damages suffered and the height of the amount that is being claimed. The victim may also claim compensation without having filled out this form, by stating their claim and the motivation for it during the proceedings in court¹⁷.

In court, the judge decides on the admissibility and the height of the injured party claim. Because the injured party claim is a civil claim, the court needs to decide whether the claim is eligible for review by the criminal judge. Since the claim is based on civil law, complicated claims may surpass the criminal judges' expertise. Furthermore, evaluating a claim can be too time-consuming during the criminal proceedings, where the main objective is to establish whether the defendant is guilty (Ruitenbeek-Bart & Schijns, 2014; Van Wingerden, 2008). Admissibility is based on several conditions¹⁸:

- The defendant is convicted for the offence for which the claim is submitted;
- The claim has not already been ruled upon by a different court;
- The damages must be the direct consequence of the offence for which the claim is submitted, i.e. there must be a close relation between the damage and the offence;
- The claim does not disproportionately burden the criminal proceedings (this is further explained below in 3.4.3.1);

¹⁶ 51f-51h Sv

¹⁷ 51g Sv

¹⁸ 361(2,3)Sv

If a claim is found to be inadmissible, the court will not rule on the claim, and no compensation will be awarded. The victim will be referred to the civil court to resubmit their claim there, where it can be extensively evaluated. A court may also decide to declare the claim partially admissible. In that case it will rule on a part of the claim that is deemed admissible, and the remainder of the claim can be brought to civil court.

3.4.1.1 Height of the claim

In case the court decides that the claim is (partially) admissible, it will determine the height of the damage¹⁹. Damages can be material or immaterial. Material damages include loss of income or damage to property, immaterial damages cover damages that are not financial, and include moral, psychological and related harms. Several losses can be specified in the form with which the victims joins the proceedings as an injured party, and evidence supporting the claim can be attached to it. Based on the evidence that is presented or evident from the case file, the court can fully award the claim or make a new calculation and partially award the damages. The victim or their counsel may explain the claim at the hearing, and may submit documents as evidence. The documents from the criminal dossier may also serve as evidence. It is not possible to bring in witnesses or experts to support the claim, but it is possible to ask questions regarding the compensation claim to experts and witnesses called by the public prosecutor or defendant. The court is at liberty to estimate the height of the claim, in case the exact damage cannot be determined²⁰. Immaterial damages will be awarded 'within reason'²¹.

A victim that was exploited by multiple traffickers is free to submit a claim in each of the traffickers' court cases. If multiple persons are responsible for the damage, the court can rule that the offenders have a joined responsibility to pay compensation. Responsibility for collection of an awarded injured party claim lies with the victim.

3.4.2 Compensation measure

A different route to compensation in the criminal procedure is the compensation measure²², which entails that the perpetrator is sentenced to pay an amount to the state for the benefit of the victim. This measure is a sanction that can be claimed by the public

¹⁹ 361(1) Sv

²⁰ 6:97 BW

²¹ 6:95, 6:96, 6:106 BW

²² 36f Sr

prosecutor or imposed by the judge on its own motion. It can be imposed when the offender is liable for the victim's damages under civil law, in the same way as is the case with the injured party claim. The compensation measure is not a fine; the height is based on the extent of the liability of the perpetrator for damages suffered by the victim. In practice, the awarded amount of the injured party claim is often imposed as a compensation measure, which means that collecting the money becomes the responsibility of the state²³ instead of the victims'. The measure may also be imposed when a claim is not admissible or no claim is submitted. However, when the injured party claim is rejected, the measure cannot be imposed, because the offender needs to be liable under civil law. The compensation measure and the injured party claim complement each other; if the trafficker is sentenced to pay both, the amount that is paid for one will be deducted from the other and vice versa. In this way it is avoided that damages are paid doubly (Geurts & Schrama, 2012). The state will pay the amount to the victim once it is received. In case of non-compliance to the compensation measure, alternative imprisonment will be applied, which will not relieve the perpetrator of his duty to pay.

3.4.3 Recent changes in criminal law related to compensation

Three important developments related to compensation took place in 2011, when a new law was implemented aimed at reinforcing the position of the victim in criminal proceedings²⁴. A new criterion for the admissibility of claims was introduced, as well as an advance payment system (Fairwork, 2013). A more recent addition to legislation is related to the seizure of assets.

3.4.3.1 Disproportionate burden

As described above, one of the conditions for the admissibility of an injured party claim is that the claim does not disproportionately burden the criminal proceedings. It may be too complicated to establish the liability of the offender or the height of the damages. For example, damages can be difficult to assess, only become apparent after a certain time, or the victim and the defendant have made conflicting statements (Geurts & Schrama, 2012). In those cases, evaluation of the claim may require an amount of time and/or expertise that is

²³ The Central Judicial Collection Agency executes the compensation measures

²⁴ the "wet ter versterking van de positie van het slachtoffer in het strafproces" [law to reinforce to position of the victim in the criminal proceedings]

not available in the criminal court, and the claim will be ruled inadmissible. Before the complexity of a claim was evaluated by the extent to which it is a disproportionate burden, the criterion was that the claim needed to be 'simple in nature'²⁵. The new standard was introduced to prevent judges from dismissing claims too easily: simply the fact that a very high amount is claimed, or that the defence contests the claim are no longer sufficient reasons to dismiss a claim (Ruitenbeek-Bart & Schijns, 2014). Whether the new criterion has changed compensation outcomes will be discussed in following chapters (4 and 5).

3.4.3.2 Advance payment

In addition to changing the criterion for admissibility, the new law also introduced an advance payment system. This system comes into view when an offender who was sentenced to pay the compensation measure fails to pay it. Under normal circumstances, the offender will pay the owed amount to the Central Judicial Collection Agency (CJIB), which will transfer every received amount to the victim as soon as possible. As a special measure, the victims can agree with the CJIB that the payments will not be made as soon as possible, but on set dates. In this way, it will be avoided that victims are confronted with irregular payments, which can be a reminder of a painful past (National Rapporteur on trafficking in Human Beings, 2012a). When the full amount is not received within eight months after the verdict has become irrevocable²⁶, the CJIB will transfer the full remaining amount to the victim, regardless of the payments of the perpetrator or the height of the amount (Ruitenbeek-Bart & Schijns, 2014). This guarantees payment to the victim in case the compensation measure is imposed.

3.4.3.3 Confiscation of assets

It is recommended by the Public Prosecution, that parallel to every investigation into human trafficking, a financial investigation (*SFO*) is conducted²⁷. A financial investigation may lead to a separate judgement in which the court will decide the amount that the offender has illegally obtained from their crime, and will have to pay back to the state²⁸. However, compensation to the victim has priority, and will be paid first. In order to avoid that the

²⁵ 361Sv

²⁶ 36g(6) Sr

²⁷ Openbaar Ministerie (2013), *Aanwijzing mensenhandel (2013A012)*.
<https://www.om.nl/onderwerpen/mensenhandel/@86278/aanwijzing-1/>

²⁸ 36^e Sr

offender will hide or spend their money, assets can be seized. As of 1-1-2014²⁹, the assets of a suspect of human trafficking can be seized for the benefit of the compensation measure. Assets can be seized at an early stage in the proceedings, to prevent that the defendant hides their money³⁰ (Candido, Hoendervoogt, Van Dam, & Gest, 2013). In case of acquittal, the assets will be returned to the suspect. The victim potentially benefits from the financial investigation, not only because assets can be seized, but also because the confiscation report could be used to substantiate the height of the suffered damages³¹, ³² (Fairwork, 2013).

Next to criminal law, two other routes to compensation exist for trafficked persons: claiming damages or unpaid wages in civil court, and an application to the State Fund: the Criminal Injuries Compensation Fund.

3.5 Civil court

Based on civil law, any citizen can claim damage inflicted to them by another citizen in civil court. Based on violated labour regulations a victim, or a labour organisation on behalf of the victim, may claim unpaid wages or other damages. These labour regulations are for example the Minimum Wage Act, the Working Hours Act, and Collective Labour Agreements. In this light, Article 23 of the Foreign Nationals Employment Act is especially interesting. It states that in case an employer has illegally employed a foreign national, it will be assumed that the victim has worked for six months, which allows the victim to claim at least six months minimum pay in their sector of exploitation. When criminal court has decided that a claim is inadmissible in court, the victim can bring that claim to civil court. In case a claim was ruled partially inadmissible, the inadmissible part of that claim can be brought to civil court. However, a claim that is rejected by the criminal judge cannot be brought to civil court, as one of the conditions for admissibility of a civil claim is that no other court has already ruled on the contents of the claim³³.

3.6 Criminal Injuries Compensation Fund

The Criminal Injuries Compensation Fund is a State Fund as recommended in several international conventions, to which victims of violent crime can apply for financial reimbursement from the state. It grants compensation to victims for direct damages suffered

²⁹ 36^e (8) Sr

³⁰ 103 Sv, 94a Sv

³¹ As suggested by the National Rapporteur on Trafficking in Human Beings (2009), BNRM7, Recommendation 38, page 605

³² Koopsen, personal communication, april 2015

³³ 361(2,3) Sv

by violent crimes (including sexual crimes) committed in the Netherlands. The Funds payments are limited to a maximum of 35,000 euro, consisting of 20,000 for material and 15,000 for immaterial damages³⁴. However, amounts received by trafficked persons are likely to be below this amount. The amount of the compensation is based on placing the victim into one of six categories, based on the severity of their suffering. For example, human trafficking over a longer period of time, including regular use of violence or threat of violence, is placed in category two, which results in payment of 2,500 euro. Sexual exploitation in combination with rape would lead to an award of 10,000 euro. The Fund does seem to make a distinction between sexual exploitation and other forms of exploitation, but based on their guidelines it seems they will only reward imbursement to the latter when violence was used³⁵. The Fund decides on a claim within 180 days, which makes it a swifter route to compensation than routes via court (National Rapporteur on trafficking in Human Beings, 2015b).

A condition for eligibility is that the damages are not compensated in another way. However, an amount may be awarded even when an injured party claim is being submitted, on the condition that the acknowledged amount will be repaid to the Fund once compensation is received via that route (Geurts & Schrama, 2012).

3.7 Conclusion

This chapter has shown that three legal options are available for trafficked persons who want to claim compensation in the Netherlands. It also shows that these legal options are still developing; some adoptions aimed at improvement have only been adopted recently. The manner in which these routes are used, and the influence of these recent developments, will be the focus of the following chapters.

³⁴ <https://schadefonds.nl/aanvraag-indienen/alles-over-de-uitkering-aanvraag/schade>

³⁵ <https://schadefonds.nl/images/Letselijst20150602.pdf>

4 Compensation in practice: literature review and interviews

4.1 Introduction

The previous chapters (2 and 3) have described the right to compensation as set out in both international and Dutch legislation. Obstacles and developments on an international level have also been discussed (chapter 2). The following two chapters will assess the compensation claim in the Netherlands in practice. Answering the second main question will be the aim of these chapters: *'Which obstacles prevent the victims of trafficking in human beings in the Netherlands from receiving compensation?'* The current chapter presents a literature review and interviews. In order to gain further insight into the practice of claiming compensation in the Netherlands, two interviews were conducted and two exploratory conversations were held in order to gain starting points for both the literature review and the case file analysis (chapter 5)³⁶. The literature review is further based on an online search³⁷. The focus of the literature review and the interviews was on the injured party claim. As mentioned in the introduction (chapter 1), this route was found to be especially relevant in previous studies, and information of the compensation claim in criminal law is publically available, while data on other routes are less so.

This chapter is structured as follows. First, in order to understand how the number of claims, and the characteristics of these claims, relate to the extent and nature of trafficking in human beings in the Netherlands, a short overview on victims of human trafficking in general will be presented. Second, the practice of obtaining a compensation claim in criminal court will be discussed. Thirdly, the last paragraphs contain notes on civil court, the State Fund and experiences with claiming compensation.

4.2 Trafficking Human Beings in the Netherlands

An important development related to trafficking in the Netherlands is that the past ten years, the number of registered victims³⁸ has increased, from 424 in 2005 to 1,561 in 2014. However, it is unclear whether this increase reflects an increase of the actual size of human

³⁶The two interviews are with Annet Koopsen, who represents victims of THB as an attorney, and Eline Willemsem, who works at Fairwork, an organisation that supports the victims of labour exploitation. The interviews were semi-structured. The conversations were held with Conny Rijken (INTERVICT) and Floor Hol (BNRM).

³⁷ Google scholar and a journal database were used (<http://www.bjtitjdschriften.nl/>), with the terms 'compensation human trafficking', both in Dutch and English.

³⁸ The number of registered victims is in fact the number of *potential* victims. These victims have been reported by different instances. There is no further objective evaluation of whether these victims have in fact been victimised. This should be kept in mind, and applies in every instance in which 'registered victims' are mentioned in this study.

trafficking in the Netherlands. Since it is based on registered victims, it may very well be attributable to increased law enforcement efforts or other factors. Furthermore, data on registered victims is an underrepresentation of the actual yearly number of victims; a number of victims will remain unknown and/or unregistered. The figures do show however, that more and more victims are known, which means that more victims can potentially claim their right to compensation (National Rapporteur on trafficking in Human Beings, 2015a).

4.2.1 Victim characteristics

Based on the registered victims of human trafficking, several observations can be made about the characteristics of trafficked persons in the Netherlands. The National Rapporteur on Human Trafficking and Sexual Violence against Children (BNRM) (2015a) has summarized the data on possible victims of human trafficking over the years 2010 through 2014. They found that over these five years, an average of 86 percent of all victims were female. The average age of a trafficked person is 26 years, and minors make up 16 percent of the registered population. The largest group of victims of human trafficking is Dutch. Other prevalent origins include Middle- and Eastern European and Western-African countries. As an illustration, in 2013 the top five of nationalities were Dutch (32%) Romanian (13%), Hungarian (12%), Bulgarian (9%) and Nigerian (4%) (National Rapporteur on trafficking in Human Beings, 2015a).

These victims were exploited in various sectors. Approximately nine percent of the victims had not worked yet, 68 percent had worked in the sex industry and 15 percent in other sectors. These other forms of exploitation include for example the hospitality-, transport- and agricultural sectors. Women are mainly exploited in the sex industry (72%); only five percent of all trafficked women are exploited in labour situations. Men are mainly exploited in labour situations (48%), and 24 percent of male victims are forced to work in the sex industry (National Rapporteur on trafficking in Human Beings, 2015a). These observations are based on registrations; it should be kept in mind that the actual characteristics of human trafficking may deviate from this.

4.2.2 Profits and damages

A few reports describe trafficking in human beings in financial terms. A report by the national police force estimates that a trafficker in the sex industry earns 4,100 euro each month per prostitute (Bottenberg, 2012). Another report has calculated the average illegally

profit per suspect of human trafficking in the Netherlands is as 410,000 euro. This number, however, is based on police data, and only takes into account serious and organised crime cases, which means it is not completely reliable as a representation of the average traffickers earnings (Savona & Riccardi (Eds.), 2015). Since there is no methodology explained for the 4,100 estimate, 410,000 euro per trafficker is considered more reliable. This last figure might serve as a proxy for deprived pay, but does not include any immaterial damages. Such an estimate was not calculated in the Netherlands. However, estimates from the UK put the average immaterial damages per victim of violent sexual exploitation at 307,062 euro (Dubourg & Prichard, 2008; Levi et al., 2013). Adding up the last two estimates, damages suffered may well exceed 700,000 euro per victim in the sex industry. Whether the immaterial damages are comparable for victims of other forms of exploitation has not been estimated so far.

4.3 Criminal proceedings: injured party claim

4.3.1 Method

The following paragraphs present previous research on two linked ways for obtaining compensation in the criminal proceedings: the injured party claim and the compensation measure. Two recent studies have used case law to study injured party claims made by victims of human trafficking in the Netherlands. Most recently, Fairwork (2013) published a study using verdicts in first instance in which a charge of trafficking in human beings was made, that were handed down between 1/1/11 and 25/10/12. This was a part of the COMP.ACT project (La Strada International, 2013). The BNRM has included a study into injured party claims from 2010 in their most recent publication on case law. This study also concerned verdicts in first instance, in which a claim was made based on a human trafficking charge (National Rapporteur on trafficking in Human Beings, 2012). The Fairwork data are likely to slightly under-represent the actual number of verdicts, since they are based only on published verdicts. Verdicts are published on rechtspraak.nl. This website publishes most, but not all, verdicts made in courts in the Netherlands. This is not an issue with the BNRM data. The two studies are supplemented with results from studies into the injured party claim in general, and research under victims of human trafficking in the Netherlands in general.

4.3.2 Access to court

Table 1 shows the number of injured party claims that were made between 2010 and 2012. The table shows that respectively 63, 50 and 33 compensation claims were made in these years.

Table 1: Number of injured party claims

	2010	2011	2012 (through 25/10)
Number of human trafficking cases	-	65	63
Sexual exploitation	-	58	63
Other exploitation	-	7	0
Number of victims³⁹	217 (147 SE + 70 OE)	169	109
Number of victims that submitted a claim	63 (42 SE + 21 OE)	50	33
Number of potential victims (CoMensha)	993	1.222	1.711

Source: (CoMensha, 2013; Fairwork, 2013; National Rapporteur on trafficking in Human Beings, 2012)

Both studies specify the total number of victims identified in the verdicts, and the number of victims that submitted a claim; it is possible for a victim to be involved in the criminal proceedings without submitting a claim (e.g. by providing a testimony). Across all three years, an average of 29 percent of all victims in the verdicts claimed compensation. This is an increase compared to 2007, when 14-16 percent of identified victims in court cases submitted a claim (Fairwork, 2013). However, it means that over sixty percent of the victims that theoretically had the possibility to submit an injured party claim, decided not to do so.

Many victims do not have this possibility, because only a small number of all victims become involved in criminal proceedings. Consequently, an even smaller percentage of all victims can claim compensation. Comparing the number of claiming victims to the number of potential victims, as shown in the last row of table 1, it appears that an average of four percent of all registered victims claimed compensation in court in 2010 –to 2012. However, it is important to note that the number victims registered in a year by CoMensha cannot be considered comparable to the number of victims that have claimed compensation in that year. Months or even years may pass between the moment a victim is registered and the moment a trafficker is summoned to court, which means that the year in which they are registered can easily be different from the year in which they claim compensation (Fairwork, 2013). It is more likely that there is some form of lag between the registered and claiming

³⁹ A victim is defined as such when he/she was registered as an injured party in the court case, and includes victims of defendants that were acquitted. In this sense the victims are alleged victims; no offense against them has been proven.

populations; when a large number of victims is registered, they may show up in case files a year or more later. However, the figure does serve as an indication that only a very small proportion of victims claim compensation in court.

One other thing that stands out is that in 2012, no single claim on behalf of a victim of exploitation in another sector than the sex industry was recorded. It is to be expected that the number of sexual exploitation claims is higher than the number of claims based on other sectors of exploitation, because the sexual exploitation is more prevalent. However, no claims at all on behalf of persons exploited in other sectors seems very low.

The findings above prompt several questions. Firstly, how can it be explained that only an estimated four percent of victims claim compensation? Secondly, why does only thirty percent of victims involved in the criminal proceedings claim compensation?

4.3.2.1 Obstacles: lack of prosecution

As explained in section 3.4.1, no injured party claim can be submitted when the trafficker is not brought to trial. Lack of prosecution may therefore partly explain that only four percent of registered victims claim compensation. It is interesting to note that in addition to the rise of registered victims, the number of cases and convictions per year is rising as well. Over the past five years (2010-2014), on average 260 cases against individual offenders were concluded per year. Yearly, 48 of these cases did not result in prosecution because it was too unlikely prosecution would lead to a conviction, for example due to lack of evidence. An average of 185 offenders is summoned to trial yearly, out of which 108 are convicted for human trafficking and 14 are convicted for other offences (National Rapporteur on trafficking in Human Beings, 2015c). Considering that the average number of registered victims in the past five years was 1,385 per year, an estimated thirteen percent of all victims are able to claim compensation in court. Therefore, it seems fair to conclude that lack of prosecution is an important obstacle to claiming compensation.

4.3.2.2 Obstacles: lack of information and unwillingness

Still, only thirty percent of all victims whose trafficker was prosecuted submitted claims compensation. Reasons for this are not evident from the case law. However, based on obstacles presented in chapter 2, the national level literature and the interviews, two possible explanations why a victim whose exploiter is prosecuted does not claim compensation can be hypothesized. Firstly, lack of information can prevent someone from submitting a claim. At

the Dutch level, both victims of crime in general who sought compensation, and victims of human trafficking have been confronted with a need for more clarity on the procedures (Lindenbergh, Hebly, & van Dongen, 2013; Rijken, Dijk, & Klerx-van Mierlo, 2013). In order to improve this, a national referral system has been set up (see section 3.3). However, this development is very recent; its use and effect will have to be evaluated in the future.

Secondly, unwillingness of the victim to submit a claim appears to be an obstacle. When considering the decisions a victim will make whether they want to claim compensation, a few explanations can be named. Firstly, self-identification as a victim will influence whether someone will seek out aid (Brunovskis en Surtees, 2007 in Rijken, Dijk, & Klerx-van Mierlo, 2013). Both a lack of self-identification as a victim and self-blame for the victimization, are likely to discourage compensation claims. Secondly, the victim may have conflicting feelings towards their trafficker, which is especially the case with victims of sexual exploitation that may have been in some form of relationship with their trafficker. This can result in contradictory statements, or an unwillingness to report and testify entirely (Verhoeven, Van Gestel, De Jong, & Kleemans, 2015). Fear of retaliation may also cause this⁴⁰. As a consequence, prosecution may be forgone because of lack of evidence, which shows the interaction between victim and law enforcement. This interaction may be of importance, because, prior negative experiences with law enforcement are also reported to be of influence on whether a victim will claim compensation or testify. Involvement in the criminal procedure is experienced as intense and emotionally burdening. Victims that have already experienced this when they claimed compensation or testified may discourage other victims (Lindenbergh et al., 2013; Rijken et al., 2013). Lastly, the time after victims have left their situation of exploitation is often very stressful and confusing, so compensation may not be a priority during that period. This is especially the case for victims of sexual exploitation. Foreign victims may want to return to their home country, for example to be reunited with their family, although they have the right to stay in the Netherlands after their exploitation. This makes it very complicated to still claim compensation (and also to disburse any awarded amounts)⁴¹. To prevent this, suggestions have been made to create legal possibilities for victims to claim compensation in their home country. As of yet, no such provisions exist. Victims of labour exploitation, on the other hand, usually see regaining their lost income as

⁴⁰ Koopsen, personal communication, 2015

⁴¹ Ibid.

the most important priority after the exploitation (Rijken et al., 2013). However, they make up only a small group of claimants.

4.3.3 Admissibility

From the claims that are submitted, most claims are partially awarded and partially inadmissible. In 2010 and 2011 this was 46 percent and in 2012 55. Still, a substantive proportion of the claims are fully inadmissible, meaning that the victims did not receive any reimbursement from their traffickers. In 2010, 38 percent of all claims were fully inadmissible. This figure declined slightly in 2011 and 2012, when 26 respectively 24 percent was fully inadmissible. It is not unusual for injured party claims to be declared inadmissible; little under half of claims concerning all types of offences were declared fully inadmissible in 2010 (Geurts & Schrama, 2012). Claims are not often fully awarded, but neither are they fully rejected. This is shown in Table 2. It should be noted that in their further analysis of 2010 case law, the BNRM only takes into account cases in which the claim concerned *only* human trafficking. This is a contrast with the Fairwork methodology 2011 and 2012, when cases where the claim was based on several offences (e.g. both THB and rape) were also included.

Table 2: Verdicts on claims

Verdict	2010	2011	2012 (through 25/10)
Fully inadmissible	38%	26%	24%
Partially awarded and partially inadmissible	46%	46%	55%
Fully awarded	8%	16%	18%
Other ⁴²	8%	12%	3%
Total number of claims	37 (26 SE + 11 OE)	50	33

Source: (National Rapporteur on trafficking in Human Beings, 2012; Fairwork, 2013)

From 2010, a distinction between types of exploitation is available. It appears that a larger proportion of claims based on sexual exploitation is awarded or partially awarded; 66 percent of these cases were (partially) awarded, against 27 percent of other exploitation cases. However, this is based on a small amount of cases (National Rapporteur on trafficking in Human Beings, 2012).

⁴² Other: partially awarded and partially rejected; partially awarded, partially rejected and partly inadmissible; and no ruling on the claim

4.3.3.1 Grounds for inadmissibility

Specification of the motivations for decisions on claims is not always given in the verdicts, which complicates understanding why around a fourth of all claims is inadmissible, and why claims are so rarely fully rewarded. Some verdicts, however, do provide explanations. In 2010, 41 percent of all claims were (partially) inadmissible because the claim was not simple in nature (National Rapporteur on trafficking in Human Beings, 2012). In 2011 and 2012, after the criterion had changed (see 3.4.3), a ‘disproportionate burden on the criminal proceedings’ was the ground for (partial) inadmissibility in approximately 46 percent of all claims (Fairwork, 2013). Given that around half of all claims were still inadmissible because of their complicated nature, the changed criterion does not seem to have improved the large number of inadmissible claims. Acquittal of the offender, insufficient support for the claim, and lack of causality between damage and offence are other important causes for inadmissibility (National Rapporteur on trafficking in Human Beings, 2012, Fairwork, 2013).

4.3.4 Height of the claim

As shown in Table 3, the average claim in other exploitation cases was 13,786 euro in 2010. In sexual exploitation cases this amount is higher; 34,190 euro (National Rapporteur on trafficking in Human Beings, 2012). Data on this are not available for 2011 and 2012.

Table 3: Height of compensation claims by type of damages and type of exploitation

Type of damage claimed	Other exploitation			Sexual exploitation		
	Average	Min	Max	Average	Min	Max
Immaterial damages n=4 (OE); n=10 (SE)	€ 1,625	€ 500	€ 5,000	€4,930	€2,000	€9,100
Material damages n=6 (OE); n=7 (SE)	€11,975	€ 3,512	€31,293	€30,238	€276	€100,000
Combined claims n=3	-	-	-	€65,425	€12,100	€164,949
Unspecified claims n=1 (OE); n=5 (SE)	€18,151	-	-	€31,637	€ 5,500	€ 88,000
Total n=11 (OE); n=18 (SE)	€13,786	€ 4,012	€ 6,293	€34,190	€ 3,376	€164,949

Year: 2010, Source: (National Rapporteur on trafficking in Human Beings, 2012b, pp. 138,142)

Across all three years, most victims claim both material and immaterial damages. In cases of other exploitation, it is more common for victims to only claim material damages, whilst only in trials for sexual exploitation some claims were solely immaterial. Specification of the damages claimed is mentioned in 97% of verdicts in 2012, a considerable difference vis-à-

vis 2010, when specification was given in 58 percent of all cases (Fairwork, 2013). Material damages that are claimed mainly concern lost income, but may also include other costs, such as the removal of tattoos. Removal of tattoos can be a cost in claims because it is not uncommon for traffickers (especially pimps) to have their names tattooed on their victims' bodies (National Rapporteur on trafficking in Human Beings, 2012b).

The awarded amounts are notably lower than the claimed damages, based on 2010 data. Only three claims were partially awarded in labour exploitation cases, with an average reward of 1,478 material damages (only material damages were claimed). In sexual exploitation cases, the claims were awarded for an average amount of 20,697 euro (n=17, min= 1,500, max = 105,000), which is approximately 60 percent of the claimed amount (National Rapporteur on trafficking in Human Beings, 2012). In 2011 and 2012, between 49 and 54 percent of claimed material damages were awarded, and 66 to 69 percent was awarded for immaterial damages (Fairwork, 2013).

4.3.4.1 Obstacles: proving the damages

Sufficiently substantiating a claim is very important; without enough and clear substantiation a claim may be declared inadmissible. Furthermore, the damages suffered by the victim need to be calculated correctly, in order to compensate him or her appropriately. This can be very difficult, and lack of proof therefore often results in either inadmissibility or the acknowledgement of only a very small proportion of the damages. Difficulties with substantiating a claim usually arise because the number of days worked, number of clients per day and/or the amount of income that the victim was allowed to keep or had to give away are rarely recorded (Fairwork, 2013). In some cases, matters are further complicated by a false administration (Rijken et al., 2013). In cases where more proof is available, for example in the form of advertisements from sex websites that specify prices, or police surveillance registrations, higher amounts can be claimed. However, in order to avoid inadmissibility due to an insufficiently substantiated estimate of the damages, a minimum amount is often claimed⁴³. Claimed amounts are therefore likely to under-represent the actual damage. This is troubling not only because of financial reasons, but because receiving compensation – especially from the trafficker – has an element of emotional satisfaction. When the awarded

⁴³ Koopsen, personal communication, april 2015

amount is disproportionate to the damages suffered, a victim may not feel compensated at all⁴⁴.

4.3.4.1.1 Sources of proof

One source of proof can come from law enforcement; when police have asked specifically about income and relinquished amounts, this may be of help in determining the height of the damages⁴⁵. Recently, financial investigations have become more common, especially when money laundering is charged alongside human trafficking. When this is done, the financial report used to prove illegal benefit can also be used to substantiate the injured party claim (see also 3.4.3.3). However, uncovering the amounts that were relinquished by the victim is usually not the priority of law enforcers⁴⁶. The confiscation report focuses on the amount the offender will pay to the state, and not specifically on the money owed to the victim(s). Furthermore, since prostitution is mostly a cash economy, financial investigation is not always successful (Van Gestel & Verhoeven, 2014). In those cases, the report cannot be used as proof. Lastly, the judges do not always accept the confiscation report as a substantiating of the claim, and often reward lower amounts than mentioned in the reports (Fairwork, 2013).

Statements from victims or witnesses are also influential in determining the damage. An issue related to this, is that victims may take a long time before they decide to press charges or claim compensation. Proving the use of violence or recalling the specific facts related to the start or end of the exploitation period (e.g. day of arrival in the Netherlands) can be difficult after a long period of time has passed⁴⁷, especially given that memory loss is not uncommon in trafficked persons (Rijken et al., 2013). It can be beneficial for a victim to seek out professional aid. In addition to being directly helpful to the victim, seeking for example psychological or medical aid is beneficial for receiving compensation, because documents from these professionals can help substantiate the claim⁴⁸. In some cases, records of the customers are kept by victims, which can be used as proof.

Substantiating the claim is usually easier with victims of labour exploitation. While in sexual exploitation cases the amount that is earned per day is contested, other sectors of

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ In the case of labour exploitation, the relevant authority is the Inspectorate SZW.

⁴⁷ Koopsen, personal communication, april 2015

⁴⁸ Ibid.

exploitation usually have agreements on minimum pay that can be used as a benchmark⁴⁹. When a number of hours per day can be established or estimated, further discussion can be avoided.

4.3.4.2 Obstacles: calculations

Overall, the courts' calculations of the suffered damages show no uniform method (Fairwork, 2013). This is partly to be expected, due to differences between exploitation situations (e.g. prostitution sectors, intensity of exploitation). Additionally, some claims may have been substantiated better than others, allowing for more precise calculations. Regardless, there are no guidelines or standards. For example, some courts deduct living expenses from the damages, others don't. Specific calculations on material damages are rarely given by judges. The amount earned per day appears to be leading in the calculation, but may be estimated differently by different judges in differing cases. An amount of 100 euro a day is taken as a safe, minimum estimate in some cases, while in others 500 euro per day has been assumed to be appropriate (Fairwork, 2013). The height of immaterial damages appears to be determined by duration of exploitation, the extent to which violence was used, and whether there are reports from medical assistance that substantiate the claim. The awarded amount can be lowered because the court considers a shorter exploitation period proven than was claimed by the prosecutor (National Rapporteur on trafficking in Human Beings, 2012). In what way, or to what extent, these factors are considered consistently and in similar ways by different judges remains unclear (Fairwork, 2013).

Although awarding a minimum when no further evidence is available is understandable, it is problematic. Claims are usually already lower than the actual damages, in order to prevent inadmissibility. As a consequence, awarded amounts are even lower (Fairwork, 2013). Inconsistency in verdicts on injured party claims is not unique to human trafficking cases, it was observed in claims made on victims of other crimes as well (Van Wingerden, 2008).

4.3.5 Cooperation and expertise

Two actors that have not been discussed much before can also potentially influence a claim; lawyers and public prosecutors. Cooperation between lawyers and prosecutors may be

⁴⁹ Ibid.

beneficial when preparing an injured party claim on behalf of the victim. The lawyer is dependent on the public prosecution for receiving the case files on which a claim can be based, which can include for example financial and medical files, and the victims' and witnesses' statements to the police. Furthermore, it is possible for the public prosecutor to support the claim and ask the judge to (partially) award it, and to additionally apply the compensation measure. A public prosecutor may also point out flaws in the claim to the lawyer before trial, based on the detailed knowledge they have of the case⁵⁰. However, cooperation between instances is not always successful. Familiarity between the actors involved would make cooperation easier (Van Gestel & Verhoeven, 2014).

The lawyer's expertise is also very relevant. When, for example, the offence that is charged is human smuggling instead of human trafficking, the victims' possibilities are limited. In the case human smuggling is charged, the lawyer can ask the public prosecutor why that was the done, and to change the charges to human trafficking. Someone specialized in, for example, residence legislation may not be aware of the differences in possibilities as a consequence of the charged offence. It is also relevant that the lawyer is present at the trial, so he/she can reply to any objections concerning the claim⁵¹.

In relation to expertise, it can be noted that human trafficking expertise is not common among judges; in 2010 most judges (77%) only ruled on one human trafficking case. This may possibly explain why calculations are so inconsistent. Specialization in THB is already common among public prosecutors and lawyers, it is not clear why it is not yet the case for judges (National Rapporteur on trafficking in Human Beings, 2012).

4.4 Criminal proceedings: Compensation measure

The BNRM publishes yearly updates on compensation measures (National Rapporteur on trafficking in Human Beings, 2012, 2015). It appears that in almost every awarded claim, the compensation measure is imposed. Respectively 16, 14 and 35 compensation measures were imposed between 2010 and 2012, mostly for amounts between 500 and 15,000 euro. Collecting the money from the offender is time-consuming, which is apparent from the fact that 99 out of the 136 imposed measures between 2010 and 2014 have still not been collected. This means that the advance payment system is often used; 75 percent of the

⁵⁰ (Koopsen, personal communication, april 2015)

⁵¹ Ibid.

compensation measures have been advanced to the victims, for an average of 25,901 euro (National Rapporteur on trafficking in Human Beings, 2015b).

When a judge imposes the compensation measure, they are obligated to also impose alternative imprisonment⁵². Judges sometimes refrain from the compensation measure when they expect the offender to be unable to pay it, to avoid that he/she will have to serve the full imprisonment sentence (one year) (Geurts & Schrama, 2012).

4.5 Civil court

There have not been any reports specifying the number of claims in civil court on behalf of victims of human trafficking, or any other general information. As is the case on an international level, trafficked persons rarely claim compensation from their traffickers via this route (Fairwork, 2013). Civil proceedings are an enormous investment in terms of time, money and emotional burden, with an uncertain chance of success. Furthermore, in the case of winning a civil claim, the victim is still responsible for collecting the money. This can often prove impossible, because perpetrators will have either spent or hidden all their money. The advance payment provision only applies to claims appended in the criminal procedure. A won civil claim will therefore often still leave the victim empty handed (La Strada International, 2013).

Regardless, there have been successful civil claims on behalf of trafficked persons. A court recently ruled that seventy Polish and Portuguese construction workers had a right to more pay and to reimbursement of housing and travelling costs that they had unrightfully paid to an English employment agency. The Dutch workers union and a construction watchdog had made complaints, that eventually led to the ruling (Troost, 2015). The case has not been qualified as human trafficking. Whether this is an example of labour exploitation that is not recognized as human trafficking or whether this was in fact not a trafficking case cannot be determined from the available facts. Nonetheless, it does show that the possibility of compensation via civil court exist for exploited persons.

⁵² art. 36f Sr jo. 24c Sr

4.6 Criminal Injuries Compensation Fund

4.6.1 Victims

In the past five years (2010-2014), an average of 52 yearly applications on behalf of victims of trafficking human beings was made to the Criminal Injured Compensation Fund (abbreviated: State Fund) (National Rapporteur on trafficking in Human Beings, 2015b). The most recent data on decisions made on these applications shows that mostly women apply (2013 -2014, 91%), and that minors are underrepresented in the claims made to the Fund. The number of minors among registered victims is 18 percent, while in 2013 and 2014 only 2.5 percent of the applicants were under eighteen. Furthermore, most involved victims are Dutch (42%), followed by a rising number of Middle- and Eastern European victims. Almost 90 percent of all victims have been exploited in the sex industry. Most applications were awarded, 36 percent of applications were rejected.

One remarkable finding is that over 80 percent of claims on behalf of African victims are rejected, which differs with victims from other regions (National Rapporteur on trafficking in Human Beings, 2015b). This is possibly related to the finding that police often do not take further action on the reports of these victims, because they do not contain enough evidence. This is a motive for the State Fund to dismiss a claim (National Rapporteur on trafficking in Human Beings, 2014). The lack of evidence in those reports can be the result of the incomplete and short testimonies West-African victims often give. The victims that do so are unwilling or unable to reveal details on, for example, their traffickers. In turn, police officers may become prejudiced towards this group of victims, because their testimonies are often lacking, and will therefore decide more easily to not take further action⁵³. This is an example of the negative effect law enforcements attitudes may have on compensation. It also shows interaction between the State Fund and the criminal proceedings; police reports often form substantiating for an application to the State Fund⁵⁴. Lack of sufficient evidence can therefore also be a difficulty with this route.

⁵³ Koopsen, personal communication, april 2015

⁵⁴ Ibid.

4.6.2 Obstacles and benefits

One of the issues with this fund is that victims of labour exploitation who were not physically abused, or have no serious physical or psychological injuries, are not eligible for payment⁵⁵. Another issue is that unpaid wages cannot be claimed, which means that payment may be low even when exploitation was extensive (especially in labour exploitation cases), and that the victim does not recover the money that was illegally taken from them. A sense of emotional satisfaction is likely to be absent in that case. For some victims the fact that the state instead of the offender compensates them prevents them from applying to the Fund⁵⁶.

On the other hand, there are several benefits associated with the State Fund, an important one being that when the offender is not prosecuted (as is the case for an estimated 87 percent of victims), reimbursement of damages can still be sought. Furthermore, the compensation offered by the state symbolizes solidarity of the state with the victim (Ruitenbeek-Bart & Schijns, 2014). Another advantage of the Criminal Compensation State Fund is that financial compensation is paid swifter. Since the advance payment in the criminal procedure is only carried out eight months after a verdict has become irrevocable, it usually takes a long time before the victim receives anything. This is especially the case when a decision is appealed; in that case years may pass before any payments are received. Therefore, an application to the State Fund is often done alongside an injured party claim⁵⁷. In the case of a successful claim, any amounts rewarded by the Fund can then be paid back upon collection of payment from the offender.

4.7 Experiences with receiving compensation

The experiences that victims have with the process of claiming compensation, and with receiving compensation, have not been discussed extensively so far. Positive effects that are hypothesized to be related to receiving compensation include reconciliation of justice, an acknowledgement of victimhood, and prevention of re-victimization. Vulnerability for human trafficking often begins with a poor financial situation, and, without compensation, trafficked persons are likely to return to that situation. In addition, victims of crime in general that have claimed compensation reported emotional motives, related to, for example, reconciliation or

55 <https://schadefonds.nl/aanvraag-indienen/alles-over-de-uitkering-aanvraag/schade>, <https://schadefonds.nl/images/Letsellijst20150602.pdf>

56 (Koopsen, personal communication, april 2015)

57 Ibid.

penance (Geurts & Schrama, 2012; La Strada International, 2013; Rijken et al., 2013; Ruitenbeek-Bart & Schijns, 2014; Van Dongen, Hebly, & Lindenberg, 2014). However, the extent to which those emotional needs are satisfied is dubious. Victims have reported to feel treated inappropriately by law enforcement during the proceedings. The public prosecutor is reported to provide little information, and the proceedings take a long time. Additionally, it is emotionally burdening to participate in the proceedings. Having to testify repeatedly, for example, can be re-traumatizing (Rijken et al., 2013; Van Dongen et al., 2014). In other words, victims may feel re-victimized by the very process that is supposed to prevent them from being re-victimized.

Another impediment associated with receiving compensation, is that after receiving a large sum of money, a victim may lose the right to social benefits, or even have to repay legal aid, because they are suddenly wealthy⁵⁸. Lastly, compensation that is disproportionate to the damages suffered may even stand in the way of recovery⁵⁹. In such a case, victimhood is not sufficiently acknowledged, and invested time and energy will have resulted in little compensation. Research into experiences like these is relevant in order to understand the effect of claiming compensation on victims of trafficking, and whether the goals of compensation are being met.

4.8 Conclusion

In this chapter, compensation in practice in the Netherlands was examined. The two main routes are the injured party claim (63 and 50 claims in 2010 and 2011), and the State Fund (52 yearly claims). This can be caused by lack of information and willingness, as was the case on the European level. Negative attitudes were not mentioned as much as on the European level, but negative experiences with law enforcement have been reported. It appears that only thirty percent of the victims whose trafficker is being prosecuted claim compensation in court, and that around a quarter of all these claims is fully inadmissible. An important obstacle causing this is the difficulty with accurately establishing damages. This is related to a lack of proof in many cases, caused by lack of bookkeeping, insufficient financial investigation and the time passed between the offence and the trial, which leads to only minimum amounts being awarded.

⁵⁸ (Willemsen, personal communication, april 2015)

⁵⁹ (Koopsen, personal communication, april 2015)

5 Case law analysis

5.1 Introduction

The previous chapters have presented the injured party claim and compensation measure in the criminal proceedings, and the Criminal Injuries Compensation Fund, to be the most used ways to obtain compensation in the Netherlands. This chapter will further explore obstacles associated with the injured party claim. Verdicts on this route to compensation are publicly available, as opposed to applications to the State Fund. The chapter will therefore answer a sub question to the question which obstacles to compensation exist in the Netherlands: *which factors influence the success of an injured party claim?*

From the data presented in chapter 4, several hypothetical answers can be formulated:

- Claims are easier to substantiate in labour exploitation cases, because a minimum pay is agreed upon in legislation;
- A lack of proof negatively influences the outcome of a claim; causing inadmissibility or the reward of a minimum estimate of the damages;
- Lack of proof may take different forms: lack of bookkeeping, insufficient financial investigation and no (reliable) testimonies ;
- Lack of proof may be caused by a long time passed between the offence and the trial;

This chapter will have three goals: evaluating the influence of these factors, searching for other potentially relevant factors and updating data on the number of claims.

5.2 Method

In order to evaluate these hypotheses related to injured party claims by the victims of human trafficking in the Netherlands, a selection was made using verdicts as published on *rechtspraak.nl*. Rechtspraak.nl publishes most, but not all verdicts, the actual number of verdicts may therefore be higher than presented here.

The criteria for selection follow the previous studies as much as possible, and were as follows:

- Dated between 1/1/2013 and 31/12/2014⁶⁰;
- The claim was made in first instance;
- The defendant was indicted for human trafficking⁶¹;
- A claim for compensation was made based on the indictment for human trafficking.
- Claims were also included if the defendant was acquitted of human trafficking, the victims are therefore alleged victims. Victimhood is difficult to establish objectively, especially given the limited data available. Acquittal may be due to various reasons, which makes it possible that the crime was committed but did not lead to a sentence. However, only persons who have been injured by the offence can join the criminal proceedings. This provides to some degree a confirmation that the injured parties in the claims are indeed the victims of human trafficking;

For each claim, data were collected regarding the height of the claim, the type of damage claimed, type of exploitation, verdicts on the claim, height of the awarded amount, reason for inadmissibility (when applicable), and characteristics of the claiming victim.

Factors such as level of proof and calculation method require more attentive reading of the verdicts, which was not an option for the full population given the large number of verdicts (n=190). Therefore, a sample of verdicts was made to explore in-depth which characteristics of a case may be associated with the success or failure of an injured party claim. Firstly, all fully inadmissible (n=37) and fully awarded cases (n=23) were selected. The fully awarded and fully inadmissible cases may show most clearly what will lead to success and what to failure. Next, a selection was made from the partly inadmissible and partly awarded cases (n=24). The partially inadmissible cases make up the biggest group of all verdicts (n=116), and may show the most common issues encountered when making an injured party claim. The selection is not representative for all partially inadmissible cases because a selection was made based on information available in the verdict; some verdicts do not specify why the judges made a certain decision on the claim, or which type of damages were being claimed or awarded. For practical reasons, cases were included in which as much

⁶⁰ The last research conducted into verdicts on claims in criminal courts included cases up to 25/10/2012 (Fairwork, 2013). Verdicts from 26/10/2012 – 31/12/12 were also collected to complete data on this year, but were left out of further analysis.

⁶¹ Keyword = *mensenhandel*, art 273f of the Dutch Penal Code.

information as possible was specified. Cases were further selected to include different types of exploitation and different types of victims so the possible influence of these factors could be reviewed.

This chapter presents new and unique data, as no research has been conducted on these years so far. Furthermore, some new elements have been added to the current case law analysis vis-à-vis former years: characteristics of the victims will be included in the review, and motivations for the decisions will be reviewed in more detail. The first paragraph will update previous research with new numbers on the height of the claim, and compare these numbers to previous years. Following, the characteristics of claiming victims will be reviewed, in order to gain insight into which victims have access to compensation via the criminal court. Then, data on admissibility and height of the claims will be presented and compared to previous years. Following, results from the in-depth analysis will be presented, grouped by type of verdict.

5.3 Number of claims

Tables 4, 5 and 6 below show the total number of claims, victims and cases. They show that in 2013 and 2014, a total of 113 cases were published, in which 190 claims were made on behalf of 114 victims. Each case concerns one defendant, but may contain multiple victims and multiple claims; a victim that was exploited by several defendants may submit a claim in each single court case. For this reason, the number of victims can be higher than the number of cases, and the number of claims higher than the number of victims.

Table 4: Number of claims

	2013		2014		Total
Sexual exploitation claims	70	67%	78	91%	148
Other exploitation claims	33	32%	5	6%	38
Combination	0	0%	3	3%	3
Number of claims	104⁶²		86		190

Source: calculations based on verdicts from rechtspraak.nl

⁶² In one claim, the type of exploitation was not specified. This claim is not included in rows above, but was included in the total.

Table 5: Number of victims⁶³

	2013		2014		Total
Sexual exploitation victims	45	73%	46	88%	91
Other exploitation victims	16	27%	4	8%	21
Combination	0	0%	2	4%	2
Number of victims	62⁶⁴		52		114
Number of alleged victims (CoMensha)	1.437		1.561		

Source: calculations based on verdicts from rechtspraak.nl ; CoMensha, 2014, 2015

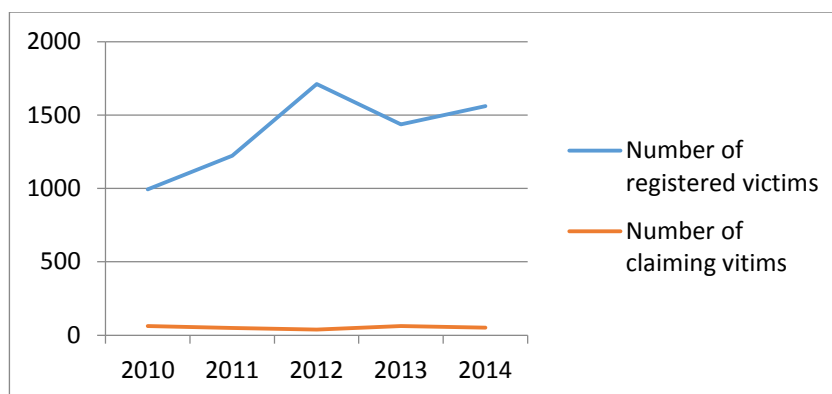
Table 6: Number of defendants/cases

	2013		2014		Total
Sexual exploitation cases	39	67%	51	93%	90
Other exploitation cases	19	33%	1	2%	20
Combination	0	0%	3	4%	3
Number of cases	58		55		113

Source: calculations based on verdicts from rechtspraak.nl

Compared to previous years the number of victims who claim compensation has not changed substantively; respectively 63, 50 and 39⁶⁵ victims claimed compensation in 2010-2012, 62 and 52 victims claimed compensation in 2013 and 2014. The number of registered victims, however, did grow in the past years, as shown in figure 1.

Figure 1: registered and claiming victims



Source: calculations based on verdicts from rechtspraak.nl, (CoMensha, 2013, 2014, 2015; Fairwork, 2013; National Rapporteur on trafficking in Human Beings, 2012)

⁶³ BNRM (2012) and Fairwork (2013) assessed the total number of victims identified in the cases. However, this number has not been collected in this study. In some cases, it was unclear whether persons were only witnesses or also victims, or what the total number of victims was. Given the number of cases and the limited time, this was not further explored.

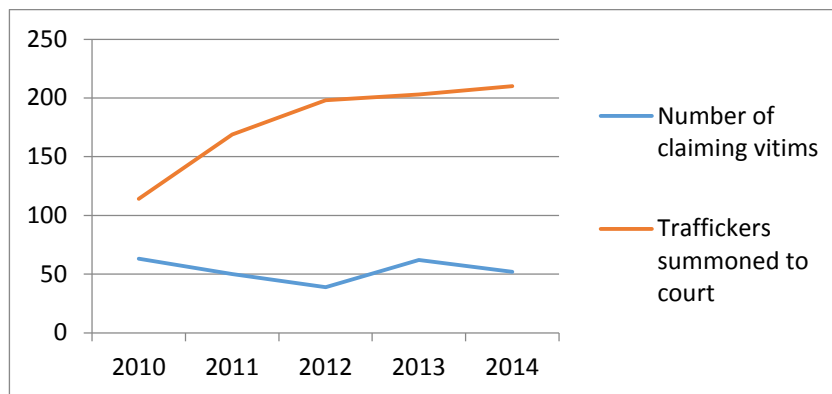
⁶⁴ In one claim, the type of exploitation was not specified. This claim is not included in rows above, but was included in the total.

⁶⁵ 33 before 25/10, 6 after 25/10

In chapter 4, it was hypothesized that a lag may exist between the rise of the registered victims and a rise of claiming victims. The number of registered and claiming victims for each year cannot be compared to one another, but a rise in the registered victims is likely to result in a rise of claiming victims as well. More victims are known, and therefore they can consequently use the available aid and provisions to claim compensation. As of yet, however, an increase has not been observed. This suggests that either the lag between larger numbers in registration and larger number of claims exceeds five years, or that a rise of claims is absent. Since there is no data on the average time that is expected to pass between registration and possible involvement in the criminal proceedings, this cannot be said with certainty. In this study, the average length of exploitation per victim was nineteen months (n=110), and the average time passed between the end of the offence and trial was 32 months (n=55). This suggests that the moment between registration and a possible claim may well approach five years. Future studies will have to evaluate whether a lagged rise in claims will indeed take place, or if claims are not increasing because of other reasons.

The definite possibility remains that this difference is caused by persistent obstacles, such as a lack of access to court. Concerning lack of prosecution, the number of traffickers has increased slightly in 2013 and 2014, as shown in figure 2.

Figure 2: Claiming victims and summoned traffickers



Source: calculations based on verdicts from *rechtspraak.nl*, (Fairwork, 2013; National Rapporteur on trafficking in Human Beings,

2012, 2015c)

This indicates that lack of prosecution may be becoming less of an issue, but whether this trend will be sustained will have to appear from future studies. Moreover, the development does not appear to have had a positive influence on the number of submitted claims, as those have not risen alongside the number of prosecuted traffickers. Whether lack of information and unwillingness to claim were influential obstacles in 2013 and 2014 cannot

be said based on the case files. However, based on the interviews, those obstacles do not appear to have changed in the past two years. Absence of a rise of claims in combination with a rise in prosecution would point in the direction that lack of information and unwillingness to claim compensation are important and persistent obstacles to compensation.

5.4 Access to court: which human trafficking victims are claiming compensation?

Currently, few data are available on the characteristics of the claiming victims, and on the influence of these characteristics on the success of the claim. In order to review access to compensation via criminal court, a comparison was made between the victims who submit claims and the registered victim population as described in section 4.2, based on sector of exploitation, sex, age, and nationality.

5.4.1 Sector of exploitation and sex

As described in chapters 3 and 4, exploitation can take place in different sectors, and sector of exploitation may influence the success of a compensation claim. From the gathered data it appeared that most claimants were exploited in the sex industry; 73 and 88 percent of all victims were exploited in this sector in 2013 respectively 2014 (table 7). This is slightly higher than the percentage of victims of sexual exploitation in the registered victim population; 68 percent.

Sector of exploitation and sex are related, as women are mostly exploited in the sex industry and men in other sectors. This distribution was also observed among the claiming victims, as depicted in in Table 7 below. While the figures concerning these two characteristics from 2013 are fairly consistent with the general registered victim population, 2014 shows some deviation. Six percent of the claimants were male in this year, against 14 percent in the registered population. None of these men were exploited in the sex industry, while 24 percent of all male victims are exploited in the sex industry according to registrations. The case below shows an example of the sexual exploitation of a man.

Case⁶⁶: One male victim of exploitation in the sex industry was a minor when he was forced into prostitution. He was convinced he had a debt to the traffickers, and violently forced by them to initiate contact with other men on a chat website. These men were then invited to

⁶⁶ ECLI:NL:RBNHO:2013:12803

have sex with the victim. This was filmed, in order to later blackmail these clients. The money earned with these encounters was given to the traffickers as payment for the debt. The traffickers were prosecuted and sentenced to prison. The victim received 2,600 euro compensation for immaterial damages.

Additionally, female victims of other forms of exploitation were underrepresented in the verdicts. According to registered figures, 72 percent of trafficked women are exploited in the sex industry. Data on claiming victims, however, show that exploitation of 84 respectively 94 percent of all women took place in the sex industry.

Table 7: Distribution of sex over type of exploitation

Type of exploitation	2013		2014	
	F n=49	M n=12	F n=49	M n=3
Sexual exploitation	84%	33%	94%	0%
Other exploitation	16%	67%	2%	100%
Combined exploitation	0%	0%	4%	0%

Source: calculations based on verdicts from rechtspraak.nl

Case: Two separate persons were the victims of both sexual and other exploitation. One case concerns a girl who was the victim of lover boy techniques⁶⁷. The defendant convinced this woman they were in a relationship, and regularly asked her to give him money. He had attempted to force the victim to sign a phone subscription and a loan. She would regularly give him the money she had earned in a clothing store, from student grants, or borrowed money from friends to give to him. This left her with a debt of 3,000 euro. Eventually, the victim was persuaded to work in prostitution as well. In another case, a woman and her husband were recruited to travel from Romania to the Netherlands to sell newspapers. Once arrived in the country, they were told they had high debts, and would have to relinquish their earnings. The woman was told she would be able to pay off her debts quicker when she would work in prostitution, which she did⁶⁸.

⁶⁷ ECLI:NL:RBLIM:2014:2757

⁶⁸ ECLI:NL:RBGEL:2014:7747

5.4.2 Nationality

Studying the nationality and ages of victims who claimed compensation is more problematic than studying sector of exploitation and sex, because this information is not specified in every verdict. In some verdicts, however, a place of birth or country of origin is mentioned and other verdicts mention that the victim did not speak Dutch. It may be possible that victims for whom no such indications of nationality are mentioned are mainly Dutch victims. However, this is highly speculative. Countries of origin, in so far as available, are shown in Table 8 below. It shows that for 48 out of 114 victims, information on origins is known.

Table 8: Number of claimants per country of origin

Country of origin	2013		2014		Total
Romania	5	8%	9	17%	14
Bulgaria	7	11%	5	10%	12
Hungary	4	6%	8	15%	12
Other foreign	6	10%	4	8%	10
Unknown	40	65%	26	50%	66

Source: calculations based on verdicts from *rechtspraak.nl*

The table shows that Romania, Bulgaria and Hungary are most mentioned as countries of origin. The distribution of victims shows that almost a third of all claimants are of Eastern European origins, which is in line with the registered victims in general as well. No specific groups appear to be under- or overrepresented. The countries that are mentioned are in line with countries of origin of the registered victims. However, given that 66 of 114 claimants' origins remain unknown, this cannot be said with certainty.

5.4.3 Age

Only when the victim was a minor at the time of the crime, an indication of age is given. Since in case of a minor victim no use of force needs to be proven, age will need to be established in the case. Therefore, a distinction can be made between -18 and +18, and this figure can be considered fairly reliable. Under-age trafficked persons make up respectively 18 and 29 percent of all victims in 2013 and 2014, which is higher than the 16 percent in the general registered population. Just one of these 29 minors was male and two were exploited in labour situations. This result further affirms the underrepresentation of male victims and other exploitation victims.

5.4.4 Obstacles: underrepresented victims

Conclusions that can be drawn from looking closer at the claiming victims include that both men and victims of other forms of exploitation are less present in the claiming population than in the population of registered victims. The low number of victims of other exploitation that claim compensation in the criminal proceedings, compared to the registered victims, was also evident from the case law in previous years (National Rapporteur on trafficking in Human Beings, 2012b). As discussed in section 3.5, victims of labour exploitation can claim compensation in civil courts more easily than victims of sexual exploitation, because of provisions in labour law. This might explain the low number of claims on behalf of other exploitation victims. Whether victims of labour exploitations use other routes to obtain compensation is not clear. It is known, however, that applying to the State Fund is likely to be unsuccessful for these victims when no violence was used. Furthermore, regardless of the success of a civil claim, the advance payment system is only applicable in criminal verdicts. Therefore claiming compensation during the criminal proceedings is certainly not redundant for victims of labour- and other forms of exploitation.

On an international level, male victims of human trafficking have received less attention than female victims, both from media, academia and law enforcement (Jones, 2010; Tien, 2013). In this light it is not surprising that they make up only a small proportion of both the registered and the claiming groups of victims. However, there is still a gap between the percentage of registered and claiming victims that is difficult to explain. Male victims are reported to be more oriented towards the future, and male victims of other exploitation have a strong need for financial support (Van Londen & Hagen, 2012). Furthermore, the number of registered male victims is rising (from 113 registered victims in 2010 to 247 in 2014), which is not reflected in the data from the present study (National Rapporteur on trafficking in Human Beings, 2015a). This may partly be explained by the strong overlap between male victims and victims of other forms of exploitation; they may be choosing other routes. Another cause may be that some male victims of trafficking in human beings may not identify as such, and are reluctant to accept help, due to cultural roles (Tien, 2013).

A third group that is barely visible among the claiming group are the trafficked persons who had not been exploited yet. In both studied years, only three victims were not yet exploited, which is almost three percent against nine percent in the general population.

However, victims who have not yet worked are victims nonetheless, and therefore have the same right to compensation as victims that have had to work.

5.5 Admissibility

After having reviewed the number of claims that were submitted, and the persons on whose behalf those claims are made, the following paragraphs will look at the rulings on the claims. The focus will be on the claims, instead of on the victims. For each single claim four possible verdicts were observed: fully awarded, partially awarded and partially rejected, partially awarded and partially inadmissible and fully inadmissible. It is also possible for a claim to be partially awarded, partially rejected and partially inadmissible (Wijers, 2014). However, this was not observed.

The verdicts on the claims are presented in Table 9. It shows that overall, 19 percent of the claims were inadmissible. This indicates that 81 percent of the victims that submitted a claim were awarded at least some amount of compensation.

Table 9: Verdicts on claims

Verdict	2013		2014		Total	
Fully inadmissible	18	17%	19	22%	37	19%
Partially awarded and partially rejected	14	13%	0	0%	14	7%
Partially awarded and partially inadmissible	60	58%	56	65%	116	61%
Fully awarded	12	12%	11	13%	23	12%
Total number claims	104		86		190	

Source: calculations based on verdicts from rechtspraak.nl

It is difficult to compare this to previous years in a reliable way, because of differences in methods. In 2010, solely claims that concerned *only* human trafficking were included in the analysis of admissibility. This resulted in the finding that 64 percent of other exploitation and 27 percent of sexual exploitation cases were inadmissible (National Rapporteur on trafficking in Human Beings, 2012b). In 2011 and 2012, the percentage of admissible cases was based on the number of victims. In this year, 26 and 24 percent of all cases were fully inadmissible (Fairwork, 2013). The present study, by contrast, bases the figures for inadmissibility on the number of claims, which is higher than the number of victims. Furthermore, claims that also concern other offences were not excluded. Although the differences between these years need to be interpreted carefully, it does appear that most claims are partially awarded and partially inadmissible in the past five years, and that the proportion of fully inadmissible

claims has probably declined. This means that a larger proportion of claiming victims has been acknowledged at least some amount of compensation in 2013 and 2014 compared to the three years before.

5.6 Height of the claims: claimed amounts

The following paragraphs describe the height of the claims and the rewards. For the review of the amounts a distinction was made between claims that consisted in a combination of material and immaterial damages, and claims in which only immaterial or only material damages were claimed. Following, a distinction was made between sexual exploitation and other forms of exploitation. Not all verdicts specify the amount of damage that was claimed or awarded; these were left out of the analysis. Results of this specification are shown in tables 10, 11, 12 and 13. Across both years, all types of exploitation and both types of damages, the average claim is 68,657 euro (n=147, sd=149,098) (not shown in the table). The amounts that are being claimed lie between 740 and 925,000 euro. Most claims are a combination of both material and immaterial damages, with 61 to 67 percent material damages (not shown in the table).

Table 10: Claims sexual exploitation 2013

	Average	Min	Max
Claimed damages combined n=31	€111,1834	€5,201	€1,065,000
Claimed immaterial damages n=6	€3,300	€2,600	€5,000
Claimed material damages n=6	€8,361	€1,529	€13,400
Total average n=43	€81,783 ⁶⁹		

Source: calculations based on verdicts from rechtspraak.nl

Table 11: Claims sexual exploitation 2014

	Average	Min	Max
Claimed damages combined n=52	€102,954	€ 4,000	€ 925,000
Claimed immaterial damages n=10	€ 6,300	€1,500	€7,500
Unspecified ⁷⁰ n=6	€ 57,953	€ 5,143	€ 113,605
Total average n=68	€ 84,769 ⁷¹		

Source: calculations based on verdicts from rechtspraak.nl

⁶⁹ sd=182,465 euro

⁷⁰The type of damage that is being claimed is not specified

⁷¹ sd=158,951 euro

Table 12: Claims other exploitation 2013

	Average	Min	Max
Claimed damages combined n=25	€27,546	€1,168	€ 145,719
Claimed material damages	€ 2,287	n=1	n=1
Unspecified	€ 2,468	n=1	n=1
Total average n=27	€ 25,682 ⁷²		

Source: calculations based on verdicts from rechtspraak.nl

Table 13: Claims other Exploitation 2014

	Average	Min	Max
Claimed damages combined n=3	€ 2,649	€ 740	€ 6,467
Unspecified n=2	€ 27,731	€ 10,218	€ 45,244
Total average n=5	€ 12,682		

Source: calculations based on verdicts from rechtspraak.nl

In most cases, both material and immaterial damages were claimed. Claims regarding sexual exploitation are usually much higher; in both years the average sexual exploitation claim exceeds 80,000 euro. In other exploitation cases the average claim is much lower (25,682 euro in 2013 and 12,682 euro in 2014) as well as the minimum and maximum amounts claimed. The highest claim in a sexual exploitation case exceeded one million euro (2013), which is over seven times higher than the maximum amount in other exploitation cases: 145,719 euro in 2013.

Recalling section 4.2.2, immaterial damages per victim of violent sexual exploitation were estimated at 307,062 euro in the UK. The average illegally obtained benefit per suspect in the Netherlands was put at 410,000 euro, and the monthly income of a prostitute was put at 4,100 euro (Bottenberg, 2012; Dubourg & Prichard, 2008; Levi et al., 2013; Savona & Riccardi, 2015). Across both years and all sectors, the average material proportion of a claim was 61,148 euro (n=134, sd=151,158) (not shown in the table). The claimed material damages per victim are almost 340,000 euro lower than the estimated illegally obtained benefit per trafficker. It should first be noted that the 410,000 average is based on 'serious' cases, meaning they were handled by police forces at the national level. This excludes smaller cases, and the average benefit for all traffickers is therefore likely to be substantially lower. It is not likely however, that this difference would explain a gap of over 300,000 euro. The difference could further be explained by the finding that claims are often lower than the actual damage,

⁷² sd=43,917 euro

in order to prevent inadmissibility (see section 4.3.4). Lastly, the difference may be also caused by the fact that one trafficker can exploit more than one victim. In this study this was not evident; 114 traffickers and 113 claiming victims were registered. However, a case was also recorded in which a trafficker exploited five different victims⁷³. Furthermore, given the finding in previous studies that only a third of all victims identified in the criminal proceedings also claim compensation, it seems very likely that the average number of victims per trafficker is higher than one (Fairwork, 2013). This demonstrates the difficulty with using the estimated illegally obtained benefit to substantiate a claim; it is focussed on the income of the trafficker, not on the damage of the victim.

The estimate for immaterial damages as calculated in the UK is also out of proportion compared to data from the present study. The average immaterial proportion for sexual exploitation based claims, in both years, was 8,448 euro (n=108, sd=6,818), the highest claim being 25,000 (not shown in the table). There is a difference of almost 300,000 euro between the estimated immaterial damages and the average claim. There is no apparent explanation for this large gap, demonstrating the difficulty with expressing trauma in an amount of money.

5.7 Height of the claims: awarded amounts

Awarded amounts lie between 167 and 515,000 euro, as shown in tables 14, 15, 16 and 17. Across both years, all types of exploitation and both types of damages, the average awarded claim is 36,927 euro (n=189, sd=85,440). Sexual exploitation claims usually revolve around larger amounts, both in the claimed and awarded amounts. These claims were awarded for 70,469 and 39,204 euro in 2013 respectively 2014. In other exploitation cases, the average award is 9,311 euro in 2013 and 2,343 in 2014.

⁷³ ECLI:NL:RBOBR:2013:BZ9551

Table 14: Awarded claims sexual exploitation 2013

	Average	Min	Max
Awarded combined n=47	€ 91,666	€ 2,250	€ 515,000
Awarded immaterial damages n=5	€ 2,640	€ 2,000	€ 3,000
Awarded material damages n=6	€ 5,694	€ 1,529	€ 13,400
Unspecified n=4	€ 3,350	€ 1,200	€ 5,000
Total average n=62	€ 70,469 ⁷⁴		

Source: calculations based on verdicts from rechtspraak.nl

Table 15: Awarded claims sexual exploitation 2014

	Average	Min	Max
Awarded combined n=51	€ 45,857	€ 1,143	€ 360,000
Awarded immaterial damages n=9	€ 1,500	€ 1,500	€ 1,500
Total average n=60	€ 39,204 ⁷⁵		

Source: calculations based on verdicts from rechtspraak.nl

Table 16: Awarded claims other exploitation 2013

	Average	Min	Max
Awarded combined n=22	€ 9,709	€ 167	€ 50,828
Awarded material damages	€ 572	n=1	n=1
Total average n=23	€ 9,311 ⁷⁶		

Source: calculations based on verdicts from rechtspraak.nl

Table 17: Awarded claims other exploitation 2014

	Average	Min	Max
Awarded combined n=4	€ 2,457	€ 740	€ 5,890
Unspecified	2,000	n=1	n=1
Total n=5	€ 2,343		

Source: calculations based on verdicts from rechtspraak.nl

On average, respectively 45 and 39 percent of the claimed amount was awarded in both years. In 2013 and 2014, 47 respectively 46 percent of the material part, and 59 respectively 49 percent of the immaterial part, of a claim is awarded (both in combined and other claims). This indicates that immaterial proportions of claims are more often awarded than material proportions of claims. This could be explained by the difference in establishing the damages; while in the case of material damages, judges often make a calculation, immaterial damages are estimated more roughly, and often only motivated as being

⁷⁴ n=62, sd=98,188 euro

⁷⁵ sd=76,870 euro

⁷⁶ sd=14,366 euro

proportionate. Judges may therefore possibly award immaterial damages more easily. However, judges are at liberty to estimate material damages in the same way as immaterial damages are often estimated. This may be because immaterial damages can be more complicated to quantify. Judges may therefore be more liberal when acknowledging those damages, while they are stricter when measuring material damages.

Across both years, in sexual exploitation cases, 47 percent was awarded on average and in labour exploitation cases 45 percent (n=15). Compared to percentages from previous years, the portion of the claim that is awarded seems lower; in 2011 and 2012, between 49 and 54 percent of claimed material damages were awarded, and 66 to 69 percent was awarded for claimed immaterial damages. However, the difference between the present and previous studies may be due to the fact that higher amounts are being claimed in 2013 and 2014. For example, in 2010, the highest claim in a sexual exploitation case was 164,949 euro, while in 2013 and 2014 the highest claims are around one million euro. Additionally, the same issues with comparing these claims to previous years as described above apply. Therefore, no reliable conclusions can be made concerning trends.

It is important to note that these claims have been made in first instance. Therefore, there are claims shown in this chapter that have been appealed. An especially striking example is the highest amount awarded in 2013, 515,000 euro⁷⁷, that was appealed. The trafficker was acquitted from any offence against this victim, and the claim was declared inadmissible⁷⁸. This also means that some of the highest amounts awarded in the Netherlands so far are not shown in the data because they were awarded in Appeal Court, e.g. an amount of 843,500 euro that was awarded for a victim of sexual exploitation for a period of almost seven years⁷⁹.

One thing that is striking is that the highest amount that can be awarded by the State Fund is 35,000 euro (see 3.6). This is less than half of the average sexual exploitation claim, which shows the necessity of possibilities to claim compensation in another way than to the State Fund, so reimbursement can be received that is proportionate to the losses suffered.

⁷⁷ ECLI:NL:RBMNE:2013:2014

⁷⁸ ECLI:NL:GHARL:2014:2644

⁷⁹ ECLI:NL:GHARL:2013:4608

5.7.1 Obstacles: height of material damages

With regard to obstacles related to the height of the claim, some remarks can be made both on material and immaterial damages that were awarded. When determining the height of material damages, a calculation is made. This is based on amount earned per day and amount worked, from which living expenses or other costs such as rent for rooms are subtracted. For example, in a case in which several Romanians were forced to sell newspapers, an amount of ten euro for living expenses was deducted from the claimed amount⁸⁰. However, such expenses are not deducted consistently; some judges do not deduct these at all.

Furthermore, the amount awarded per day in prostitution cases still varies between 100 and 500 euro. These daily amounts are often only a minimum estimate of the actual money earned per day. In one case in which several Hungarian women were exploited, the victims stated that they had to earn 600 euro per day, while an amount of 400 per day was awarded⁸¹. Another trafficked woman stated in a different case that she had to earn a thousand euro each day and two thousand in weekends. She was awarded 500 euro per day, which was motivated as being the usual amount awarded per day in jurisprudence. The judge further states that the earnings would at least have been higher. The verdict shows that the judge is awarding a safe minimum, using an amount per day based mostly on other verdicts than this particular case. Given that the court reasoned that the victim's testimony was reliable, it is not clear why her testimony on the amounts she had earned is not taken as the guideline for awarding material compensation. This verdict also shows that the victim earned more in Amsterdam than in a different city. This demonstrates that not every sex worker has the same income, and that each case needs to be considered carefully in order to be able to award an appropriate reimbursement⁸². Compared to the testimonies of these victims, the estimate of 4,100 euro earned by traffickers per prostitute per month seems very low (Bottenberg, 2012). This could be related to a deduction of rent or other expenses, but given the lack of specification of the methodology for that estimate it is difficult to explain the discrepancy.

⁸⁰ ECLI:NL:RBNNE:2013:3919

⁸¹ ECLI:NL:RBNHO:2014:1051

⁸² ECLI:NL:RBAMS:2014:758

5.7.2 Obstacles: height of immaterial damages

Immaterial damages are difficult to establish. This type of damage is not easily visible, nor is there a fixed way to translate depression or other psychological suffering into money. The most important guidelines that do exist are previous rulings in similar cases, which are published in a guide on immaterial damages (*smartengeldgids*). Some lawyers explicitly refer to verdicts from this guide in order to support their claim⁸³. However, the awarded immaterial damages are inconsistent, and comprehensive motivations are rarely given. This becomes apparent when comparing cases, as described below.

Case: In one case, 15,000 euro was claimed for immaterial damages and 2,000 was awarded. This victim was exploited for three days in the sex industry. She was both threatened and beaten. From her testimony, it became clear she had sustained serious psychological injury⁸⁴. In another case, the same amount of immaterial compensation was acknowledged for two claiming victims. Both victims were involved in a relationship with the trafficker, who was aggressive and violent towards them, and coerced them into working in sex clubs in Amsterdam. The first victim was exploited from June 2009 to June 2011, the second between January and September of 2012. Both claimed 4,000 euro immaterial compensation and were awarded an amount of 2,000 euro⁸⁵.

In seven verdicts⁸⁶, no immaterial damages were claimed. The case below provides an example. From the verdicts, it is not clear why these victims did not claim compensation, especially given the fact that some of the other victims in the same cases did claim, and were also awarded, immaterial compensation.

Case⁸⁷: In one sexual exploitation case against several traffickers, four Bulgarian girls and two men were exploited. One of the girls had worked for a period of one month. She had to work in a nightclub in Amsterdam, and subsequently on a boat in Utrecht, where she worked seven days a week, from 9:00 to 21:00 hours. She only claimed material

⁸³ E.g. ECLI:NL:RBGEL:2013:2467

⁸⁴ ECLI:NL:RBAMS:2013:CA3742

⁸⁵ ECLI:NL:RBGEL:2013:1486

⁸⁶ This number may be higher, in 14 verdicts it was not specified whether immaterial damages were claimed

⁸⁷ ECLI:NL:RBNHO:2013:9110, ECLI:NL:RBNHO:2013:9518, ECLI:NL:RBNHO:2013:9657, ECLI:NL:RBNHO:2013:9105

compensation, which was awarded for 2,000 euro. Another girl did not claim immaterial compensation either. She was awarded 7,620 euro for material damages, and had worked for three months. The other victims did claim immaterial damages. One of them had worked for two months, and was awarded 1,000 euro immaterial compensation, in addition to 9,000 euro material compensation. A fourth victim was awarded 2,000 euro immaterial compensation, for an exploitation period of nine months.

One element that appears to be relevant for the rewarding of immaterial damages is the statement the victim has made regarding the damages they have suffered. That statement is often mentioned in the motivation for awarded immaterial damages⁸⁸.

5.8 Fully awarded claims

In 23 cases, the full amount that was claimed was awarded. The two fully awarded labour exploitation claims were on behalf of one victim, and for the amount of 740 euro. In the prostitution cases, which make up 21 of the 23 claims, the average claim is 16,197 euro⁸⁹. A closer look at these cases shows that the claimed amounts are on average lower than the claimed amounts in general. The average claim in sexual exploitation cases is around 100,000 euro. However, looking at the length of exploitation or the use of violence, these 23 fully awarded cases do not appear to be less serious than the other studied cases in any specific way. This points in the direction of the conclusion that measuring the success of a claim cannot be done by solely considering the percentage of the claim that has been awarded. The damages suffered by the claimant may not be fully claimed in the criminal proceedings in order to avoid inadmissibility, which results in a disproportionate compensation even if the claim is fully awarded⁹⁰.

Another cause that may explain why these cases were fully awarded and others were not, is the availability of records. Some traffickers force their victims to keep such records, which are then used as evidence. For example, in one fully awarded case, there were notebooks and texts available in which the victim had recorded the number of clients she had had and the amount of money earned⁹¹. In another case, bank statements were used to

⁸⁸ E.g. ECLI:NL:RBNHO:2014:5866

⁸⁹ This includes two large claims of 110,000 and 66,386.32; the median claim is 7,500 euro.

⁹⁰ ECLI:NL:RBAMS:2013:CA3399

⁹¹ ECLI:NL:RBNHO:2013:9110

substantiate that the trafficker had paid for their own living expenses with the earnings of the victim. Furthermore, the victim’s psychologist had made statements about the fear she still had ten years after the exploitation⁹². Other verdicts also specify that testimonies by witnesses had substantiated the claims.

5.9 Fully inadmissible claims

A total of 37 claims were fully inadmissible. Acquittal is the leading cause for inadmissibility in these claims, as presented in Table 18. When a large proportion of claims is inadmissible because of acquittal, it means that a smaller proportion of claims was dismissed because of the content of the claims. In other words, the more claims are inadmissible because of acquittal, the less claims are inadmissible because of issues with the claim itself. Therefore, it can be seen as a positive sign that acquittal was the leading cause for inadmissibility. Other causes for inadmissibility are ‘disproportionate burden on the criminal proceedings’, and ‘damages not caused directly by offence’. The number of cases that were dismissed on grounds of being a disproportionate burden was notably lower in the studied verdicts when compared to 2011 and 2012, when on average 53 percent of (partial) inadmissible claims⁹³ was due to ‘a disproportionate burden’ (Fairwork, 2013). This could be a sign that the new criterion for admissibility is leading to more rulings on the content of injured party claims than before.

Table 18: Causes for inadmissibility in fully inadmissible claims

Cause for inadmissibility	2013		2014		All	
Acquittal	8	47%	10	53%	18	50%
Disproportionate burden	2	12%	7	37%	9	25%
Insufficient causality	3	18%	2	11%	5	14%
Forms not filled out ⁹⁴	4	24%	0	0%	4	11%
Total fully inadmissible claims	17		19		36	

Source: calculations based on verdicts from rechtspraak.nl

⁹² ECLI:NL:RBMNE:2013:5594

⁹³ This figure for 2011 and 2012 is based on both partial inadmissibility and full inadmissibility. In the present study, reasons for inadmissibility were not reviewed for partially inadmissible claims. This is due to the finding that different reasons for inadmissibility are given for different parts of the claim; i.e. several reasons for inadmissibility can be found per claim. Presenting only one reason per claim would be misleading.

⁹⁴ One victim had submitted 4 different claims (ECLI:NL:RBNNE:2013:3921, ECLI:NL:RBNNE:2013:3918, ECLI:NL:RBNNE:2013:3919, ECLI:NL:RBNNE:2013:3920), but had not filled out the forms or signed them, which led to inadmissibility.

5.9.1 Obstacles: foreign and minor victims

While acquittal is the leading cause for inadmissibility, there is little that the claimant can do about this. Leaving out the acquittal cases, a few things can be noted about the fully inadmissible claims that may be useful to improve aid to claimants. Six of the inadmissible claims concerned labour exploitation, eleven where based on a sexual exploitation offence, and one claim concerned an unknown exploitation situation. Half of the inadmissible claims (9 out of 18) were made by victims from Eastern European countries and almost half (8 out of 18) were minors at the time of the exploitation. It seems that labour exploitation-, foreign and minor victims are overrepresented in the inadmissible claims, compared to the full number of claims. This could be a coincidence. However, with regard to the last two categories of victims, it could be argued that they are in need of more guidance in the criminal proceedings. For example, one claim submitted by a minor was declared inadmissible because no legal guardian had given their permission⁹⁵. One Romanian victim had submitted four claims in four different cases, without filling out the claimed amounts on the forms⁹⁶, which may have been caused by misunderstanding.

5.9.2 Obstacles: disproportionate burden

With regard to ‘disproportionate burden on the proceedings’ as a motivation to dismiss a claim, two important reasons were found. These are that the amount cannot be established sufficiently and that the victims’ statements are doubted. For example, in one labour exploitation case, the victim could not recall how many hours she had worked⁹⁷. She often had to work until the work was finished or she could no longer physically work, which could last up to 96 hours. Therefore, there was no reliable estimate of how many hours she had worked. Another example is a Hungarian victim who was exploited in the sex industry. She made differing statements about the timeframe in which she worked⁹⁸. In this case, another issue was that two different amounts had been claimed, and the claim was not explained by the victim or a representing party at the hearing. Another cause for disproportionately burdening claims is that the defendant is sentenced for only a part of the offence they were charged with. In case the defendant is considered only an

⁹⁵ ECLI:NL:RBNHO:2013:14050

⁹⁶ ECLI:NL:RBNNE:2013:3918

⁹⁷ ECLI:NL:RBLIM:2013:4158

⁹⁸ ECLI:NL:RBNHO:2014:1051, ECLI:NL:RBNHO:2014:8560

accomplice⁹⁹, or only convicted for transporting and not for exploiting¹⁰⁰, the complicated question arises which part of the claim is related to the proven offences, and which part to the acquitted. This may be considered too complicated and lead to inadmissibility. In this light, it is advisable to submit claims that are specified in such a way that when a certain part of the charges are acquitted, it is clear what part remains¹⁰¹.

Although the criterion has changed, and fewer cases have been dismissed because of ‘disproportionate burden’ than in previous years, in some of the inadmissible cases it is still difficult to explain why a claim was dismissed. In one case, the court did establish the amount of customers the victim had had, the amount that was paid per customer, and the amount of money that the victim had received from the trafficker. However, the court ruled that the claim made regarding ‘money from customers’ and ‘immaterial damages’ prompted too many questions¹⁰². Whether this can be explained by lack of expertise from the judge or other factors, remains fully unclear.

5.10 Partially awarded and partially inadmissible cases

More than half of all cases (116 out of 190, 61%) were partially awarded and partially inadmissible. Looking closer at the reasons for the awarded and inadmissible portions of the claims, several things appear to influence the success of a claim. Some of these observations were also made when analyzing the fully inadmissible cases or fully awarded cases.

Proof consistently appears to be extremely relevant. The efforts law enforcement has made to learn the details of a case are beneficial to the case; they help establish the period of exploitation and other details of the case that can be used for motivating a claim. This is especially relevant in cases in which other types of evidence are unreliable. Registration of rented rooms is not always accurate, for example¹⁰³. Although from the literature and interviews financial investigation reports appear to be relevant, they are not mentioned often in the verdicts. Some cases, however, have specifications of bank records that helped prove the relinquished amounts¹⁰⁴. When a victim makes differing statements about how much they have earned, this often leads to inadmissibility¹⁰⁵. Related to this, it seems that when

⁹⁹ ECLI:NL:RBNHO:2014:5864, ECLI:NL:RBNNE:2014:6193

¹⁰⁰ ECLI:NL:RBNHO:2014:5865, ECLI:NL:RBGEL:2013:3276

¹⁰¹ (Koopsen, personal communication, april 2015)

¹⁰² ECLI:NL:RBLIM:2014:10626 & ECLI:NL:RBLIM:2014:3742

¹⁰³ ECLI:NL:RBAMS:2014:758

¹⁰⁴ e.g. ECLI:NL:RBNHO:2014:5863, ECLI:NL:RBAMS:2014:1159

¹⁰⁵ e.g. ECLI:NL:RBNNE:2013:3919, ECLI:NL:RBNNE:2013:3920

witnesses or other sources of evidence, including statements from medical or social professionals, substantiate the victims' statements they are accepted more often¹⁰⁶.

Another thing that stands out is the large difference in the ways judges handle the claims. For some judges, simply the fact that a claim has not been refuted can lead to awarding it. This is especially the case with immaterial damages, which are often awarded without any further motivation than that it is 'sufficiently plausible'¹⁰⁷. Furthermore, some judges use their competence to estimate the damages, while others declare claims inadmissible when the damages or period of exploitation cannot be determined exactly¹⁰⁸.

All in all, no substantially different motivations or causes were found in the partially inadmissible cases that were not also found in the fully awarded or fully inadmissible cases.

5.11 Other notes

There are several other factors that may influence the success of a compensation claim based on the literature review, that have not been mentioned yet in this chapter.

5.11.1 Lack of expertise

Lack of expertise, on the side of law enforcement, judges or lawyers, was mentioned as an issue in the literature. The extent to which this has played a role in 2013 and 2014 is difficult to deduct from published verdicts. Lack of expertise from judges may have been the cause for inadmissibility in some cases, as mentioned above. Two findings deserve to be mentioned in light of lack of lawyer's expertise: in one case, the defendant's lawyer argued that the claim was not simple in nature in order to persuade the judge to declare it inadmissible¹⁰⁹. The new criterion is apparently still not fully integrated in the practice of law. Another finding is that in some cases, the form is not filled out correctly. This may not be related to lack of expertise, but to lack of careful attention or legal assistance to the claimant, which is disadvantageous to the victim as well.

5.11.2 Fear

Victim's fear for their traffickers is consistently mentioned in literature to be a reason to not submit a claim, or to not testify. Those victims remain unseen when studying verdicts. However, fear for the trafficker and for law enforcement did appear as relevant from the

¹⁰⁶ E.g. ECLI:NL:RBZWB:2014:6563, ECLI:NL:RBAMS:2014:1159

¹⁰⁷ ECLI:NL:RBLIM:2014:2757

¹⁰⁸ ECLI:NL:RBAMS:2014:327 & ECLI:NL:RBAMS:2014:453

¹⁰⁹ ECLI:NL:RBLIM:2014:2757

verdicts, confirming findings from the literature and interviews. One Hungarian victim for example feared that her family in Hungary would be hurt if she testified in the Netherlands¹¹⁰. Furthermore, she states that five year after the exploitation period, seeing the trafficker was still very difficult. Another case shows that the trafficker had intimidated his victims by saying he had bribed the police¹¹¹. Findings in this study therefore further support the importance of fear among the victims of human trafficking.

5.11.3 Time passed between offence and trial

In chapter 4, it was noted that the long period of time that sometimes passes between the offence and the trial may cause several complications: the victim may not remember the facts as well, other evidence may not be evident anymore, and the victim may have left the country. Furthermore, money may have been spent already, or hidden.

In order to evaluate this relationship, a random selection was made of 55 unique victims. The number of months passed between the last date of the proven period of the offence and the date of the trial was recorded. This is not an indication of the start of the investigation, which is relevant for the gathering of testimonies and other evidence. Research into the trial may have been going on for months or years before the trial date. However, this number may serve as a proxy, indicating to some extent the time passed.

The average number of months between offence and trial was 32, with a minimum of 5 and a maximum of 113 months. However, no apparent connection between success of a claim and times passed was observed. Interestingly, the claim in which the longest time had passed was nearly fully awarded; 194,437 out of 195,000 euro claimed were acknowledged. This loverboy victim was abused and threatened into prostitution in the Red Light district in Amsterdam by her trafficker. The verdict on this claim was substantiated by, among other things, bank statements¹¹². The relation between amount of time passed between offence and trial may be the opposite of the hypothesized relationship. A longer period of time passed indicates a more extensive investigation which may lead to more evidence to substantiate a claim, thus positively influencing the outcome. This example shows that the success of a claim can be influenced by many different factors that are hard to predict.

¹¹⁰ ECLI:NL:RBNHO:2014:1051

¹¹¹ ECLI:NL:RBNHO:2014:5863

¹¹² ECLI:NL:RBMNE:2013:2014

5.11.4 Compensation measure

Lastly, an observation can be made on the compensation measure. The compensation measure was applied in combination with all awarded human trafficking claims. It was also applied ex officio for one victim: one Romanian victim of labour exploitation had submitted a claim in four different traffickers' cases, but no amounts were filled out on the form. This led to inadmissibility. In two of the four cases¹¹³, the court decided to apply the compensation measure regardless of the lack of a correctly filed claim, because the victim had stated that she wanted compensation. In this case 10,320 euro was awarded. This shows the relevance of the compensation measure, but also that the competence of the judge to impose it when there is no claim is not always used.

5.12 Conclusion

This chapter presented a case file analysis that analysed factors that may influence the success of a compensation claim, and updated data on the number of claims. This number has not risen, but the proportion of claims that is awarded, has. Men and victims of labour exploitation appear underrepresented. Four hypotheses were evaluated. The second and third hypotheses can be confirmed. Inadmissibility was often caused by a lack of proof. Furthermore, availability of proof such as testimonies and bank statements was found to be a characteristic of awarded cases. However, in some cases where proof seemed sufficiently available, judges still decided to either dismiss the claim, or award a minimum. The first and last hypotheses, however, cannot be confirmed. It was found that the success of an injured party claim can be influenced by many different factors that can be hard to predict. This is partly related to the liberty of judges to estimate damages or dismiss claims, abilities that are both used unpredictably. A relation between 'time passed' and failure of a claim may in some way exist, but could not be established. Concerning claims on behalf of victims of labour exploitation, these appear in no way to be more successful than other claims. This further shows that claims are influenced by various factors, and that no single factor has a strong individual influence.

¹¹³ ECLI:NL:RBNNE:2013:3921, ECLI:NL:RBNNE:2013:3918

6 Discussion

6.1 Conclusion

This study has reviewed obstacles related to the right to compensation for victims of trafficking in human beings. This right to compensation has been established in both legally binding and guiding international documents. Victims have a right to appropriate compensation, as formulated by the UN General Assembly (2005, art. IX):

“Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case”.

Furthermore, victims have a right to legal aid, which can help them obtain compensation.

Both at the international and national level, three ways in which compensation can be obtained exist in practice: via a criminal court, via a civil court, and via a state fund. However, only a very small proportion of victims claim compensation and a small proportion of those claims are successful. The focus of this study was to evaluate which obstacles prevent victims from receiving the compensation to which they have a right. Two questions were asked:

- 1) *Which obstacles exist that prevent victims of human trafficking in Europe from receiving compensation?*
- 2) *Which obstacles exist that prevent victims of human trafficking in the Netherlands from receiving compensation?*

In order to answer these questions, a literature review, interviews and a case law analysis were carried out. In conclusion, these questions can be answered as follows:

At the European level, compensation is almost never received. The most important obstacles that were identified at this level are as follows:

- Non- or misidentification of victims;
- Lack of prosecution and convictions, related to lack of priority and/or lack of proof;
- Lack of information on compensation and lack of free legal aid;
- Lack of expertise among professionals who aid victims;
- Unwillingness to claim compensation, for example because of fear of retaliation or negative experiences with law enforcement;
- High costs and/or time-consuming character of claiming compensation, especially in civil courts;
- Lack of expertise among judges, leading to inconsistent awards (in criminal courts);

- Exclusion of foreign and undocumented victims, and victims of other forms of exploitation;
- Prejudice from judges and law enforcement towards victims, especially the victims of exploitation in the sex industry;
- It is difficult to enforce payment, resulting in no payment in most cases;
- Lack of criminalization of other forms of exploitation;

Focussing on the Netherlands, on average 53 victims claim compensation in criminal court yearly, and 52 victims apply to the State Fund (these victims partly overlap). Civil court is rarely used by victims of human trafficking. The average number of registered victims is 1,385, showing that a small proportion of victims pursue compensation. Furthermore, fully awarded claims are uncommon; claims are most often awarded for half of the original claim. While there is a large overlap between the European and Dutch level, some differences exist. Firstly, prejudice towards victims was mentioned in Dutch literature to a lesser extent. Furthermore, lack of payment is not an issue in Dutch criminal courts, because of the introduction of an advance payment system. Additionally, foreign victims are not excluded from claiming compensation in the Netherlands, and other forms of exploitation have been criminalized. Therefore, obstacles at the Dutch level are as follows:

- Non- or misidentification of victims;
- Lack of prosecution and convictions, related to lack of priority and/or lack of proof;
- Lack of information on compensation and lack of free legal aid;
- Lack of expertise among professionals who aid victims;
- Unwillingness to claim compensation, for example because of fear of retaliation or negative experiences with law enforcement;
- High costs and/or time-consuming character of claiming compensation, especially in civil courts;
- Lack of expertise among judges, leading to inconsistent awards (in criminal courts);

Furthermore, issues related specifically to the Dutch Criminal Injuries Compensation Fund are:

- The State Fund does not provide reimbursement to victims of non-violent crime;
- The State Fund pays low amounts compared to the suffered damages;
- Payment from the State Fund does not provide the satisfaction of payment from the trafficker;

At the level of the Netherlands, a sub question to the second question was formulated: *which factors influence the success of an injured party claim?* Factors that are of influence are:

- Difficulties with proving the damages. This can be caused by:
 - Conflicting or incomplete testimonies;
 - No priority of law enforcers to assess the damage to the victim in the (financial) investigation;
- Inconsistent decisions made by judges create a risk of inadmissibility. This may be related to lack of specialization among judges;
- Risk of inadmissibility causes a minimum amount to be claimed out of strategic consideration;
- Minimum amounts are awarded, creating a discrepancy between damages and awarded compensation;
- Lawyer is dependent on the public prosecutor, which means that the level of cooperation between lawyer and public prosecutor influences the success of a claim;

New findings related to injured party claims are:

- In chapter 4, it was hypothesized that substantiating a claim on behalf of victims of labour exploitation would be easier. This could not be confirmed. These claims were not more successful than other claims;
- Men and victims of labour exploitation are underrepresented in the claims;
- The number of inadmissible claims has diminished. The renewed criterion for admissibility ('disproportionate burden') appears to be effective;

All in all, numerous obstacles were observed both in the literature and case file analysis. The main area for improvement in the Netherlands seems to be the judicial practice, where more uniformity and more careful consideration of claimed amounts are needed. Additionally, there is much room for improvement concerning the low number of victims who claim compensation.

6.2 Issues with the present study and recommendations for future research

The present study has several limitations. Firstly, it has a strong focus on one specific way of obtaining compensation: the injured party claim. Although this is one of the most

important routes to compensation in the Netherlands, some routes remain un-discussed. Both civil claims and applications to the State Fund are potentially viable ways to claim compensation, and research into these routes may help improve their use and the success of that use. Secondly, the study uses case files. Although a literature review and interviews were also used, the main conclusions are based on information specified in the verdict. Lacking information in verdicts, such as no specification of the claimed amount or no motivation on the awarded amount, limited the number of cases that could be used to draw conclusions. Additionally, only two interviews were held; one with a lawyer and one with a social worker. Therefore, the experiences and motivations of the involved actors – judges, law enforcement, public prosecutors, lawyers, social workers and victims – remain largely unknown.

One very important question could not be fully answered; why do so few victims claim compensation? Many conclusions were drawn on the height of the claim and the admissibility of the claim, but one of the main issues with compensation is that a very small proportion of victims claim it. Although several possible explanations were described (lack of information and unwillingness), it is not clear to what extent those factors influence the number of claims. In order to know which of those obstacles deserve priority, research under victims who have not claimed compensation is an important next step. Furthermore, research under victims who have claimed compensation is also needed. The victims' experiences are extremely very relevant when looking at obstacles related to compensation, which is intended to benefit the victims. The victims point of view concerning the process towards the trial, and experiences after receiving the compensation, deserve more attention.

Prejudice on the side of law enforcement is reported to influence a claim, but the extent to which prejudice against trafficked persons who claim compensation is present among these actors is unknown. Lastly, studies into the reasoning of judges on human trafficking compensation claims are recommended, for example by use of a vignette study. This is expected to give insight in the importance that is given to certain characteristics of a claim, so lawyers can design their claims accordingly.

In addition to the limited focus of this study, comparing the claims to previous years was found to be complicated. The two previous studies did not use an identical methodology, and did not always present the same specifications of claims as the present study. This made signalling any trends problematic and future studies are therefore recommended to give as many details as possible on the claims and the methodology. Furthermore, a rise in claims

was not observed alongside a rise in registered victims and rise in prosecuted traffickers. In order to determine whether this rise is lagging or absent, a continuance of the research into injured party claims is needed.

Lastly, it should be noted that verdicts published on rechtspraak.nl were used. The actual number of claims may therefore be higher than the observed number of claims. It is unknown in which way this has influenced the results.

6.3 Relevance and recommendations

This study has implications both on the theoretical and practical level.

As described in the introduction, estimating the amount of damage suffered by a victim can be very complicated. The present study has also observed this. It has shown that both claimed and awarded immaterial and material damages are lower than the estimates of these damages in other studies. Furthermore, as described by this study, claimed damages under-represent the actual damages. In this sense, the present study does not provide an estimate for the average damages suffered by a victim of human trafficking. However, it gives new data that indicate at least the minimum damages suffered which can be used as a reference point for new estimates.

Concerning the compensation in practice, several recommendations can be made that can give direction to both NGOs such as La Strada International and other actors. From the observed obstacles, it appears that many impediments are related to legislation, which can exclude victims or place limitations on compensation. Furthermore, a number of obstacles are related to law enforcement. Room for improvement is therefore mostly found at improving the options for other exploitation victims in legislation, and increasing police efforts to prosecute and convict traffickers.

Recommendations that apply both to the Netherlands and Europe are as follows:

- It is necessary that victims are treated appropriately by all involved actors to prevent re-victimization and avoid discouragement to be or remain involved in the criminal proceedings. It is therefore recommended that law enforcement are trained to treat trafficked persons appropriately and to inform victims about the possible options to claim compensation;
- It is recommended that training is given to involved professionals so they can correctly inform all victims of human trafficking of their right to compensation;

- Stories of victims who have had a positive experience with claiming compensation should be collected in order to encourage other victim to consider claiming compensation;
- States are recommended to implement an advance payment system modelled after the Dutch situation (only applies to the international level);

Other recommendations apply mainly to Dutch legislation and obstacles observed in Dutch studies. Several recommendations can be made to judicial authorities:

- Judges should be more reluctant with declaring claims inadmissible because they are assumed to be a disproportionate burden;
- Judges specialized in human trafficking are necessary to ensure more consistency in the rulings on the claims in these cases;
- More compensation measures should be issued by judges, regardless of whether the victim has claimed compensation;
- Judges should keep in mind that claims are already a low estimate of the damages suffered, and should therefore be reluctant to only award a minimum amount of the claim;
- Guidelines for judges on deciding on an injured party claim are recommended to be established. This should include directions to estimate both material and immaterial damages. This is expected to lead to more uniformity on rulings, and to reduce the number of inadmissible claims because of a disproportionate burden;

A number of suggestions can be made concerning the information and aid provided to victims:

- Male victims of human trafficking are underrepresented in the number of claims. More attention should be given to making sure compensation is explained to these victims;
- Victims of other forms of exploitation, including labour exploitation, are underrepresented in the claims. Furthermore, lower amounts are claimed and rewarded to these victims. More attention should be given to these victims, making sure compensation, and especially the injured party claim, is explained to them;
- Victims that have not yet had to work should also be informed of their right to compensation;

- It is recommended that extra care is given when representing minors and foreign victims;
- It is recommended that victims are encouraged to seek professional aid, e.g. in the form of seeing a psychologist, as statements from professionals can help substantiate a claim;

Lastly, several recommendations can be proposed concerning lawyers, law enforcement and other issues:

- It is recommended that guidelines for lawyers for setting up an injured party claim are established;
- Lawyers are recommended to cooperate with public prosecutors when preparing an injured party claim;
- It is recommended that police forces and other involved authorities pay more attention to the damages suffered by the victim in the financial and regular investigation;
- The national referral system has only been set up recently, and needs to be evaluated in the future in order to determine whether it has been effective in clarifying how compensation can be claimed;
- The availability of legal aid and the option to apply to the State Fund should be expanded to include all victims of other forms of non-violent human trafficking;

6.4 Looking forward

Human trafficking greatly harms its victims, and in spite of some success stories, very few victims of human trafficking receive the money for which they have worked, or any other form of compensation for the harm they have suffered. Even if some compensation is awarded, a sense of justice will not be achieved when the compensation is not in proportion to the harm. This study has shown where impediments to compensation lie, and therefore gives direction to possible improvements. Hopefully, these obstacles will be tackled in the future, in order to give victims the compensation to which they have not only a legal, but also a moral right.

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