

4 - Compensation

What is the process for claiming damages from the offender? (e.g. independent lawsuit, civil claim, joint civil and criminal proceedings)

As private prosecutor, you can claim compensation for damages by means of a civil action within the same criminal proceedings or defer this claim until the criminal proceedings have ended. If the two actions are separate, the civil action must wait until the criminal proceedings have ended.

You can also only appear in the proceedings as civil party that will not have any capacity in the proceedings. If you do not appear as civil party to seek the compensation, the public prosecutor will claim the civil action on your behalf. If the court declares the accused not guilty or does not award you the compensation, you can always claim damages through a civil procedure.

The civil liability of the accused covers the restitution of the property, the making good of the damage and the compensation for damages, including those caused to your partner and children.

You can also obtain compensation from the State.

The Crime Victim Support Offices are the crime victim assistance authority in cross-border situations, in cases where the crime you have suffered was committed in a European Union Member State other than Spain and you are ordinarily resident in Spain. In cases of crimes of terrorism in cross-border situations, the Ministry of the Interior is the assistance authority, via the Directorate-General for the Support of Victims of Terrorism.

In general, except for crimes of terrorism, the assistance authority will cooperate in initiating and handling the procedures for the award of aid by the European Union Member State where the crime was committed, so that you, as claimant, can access, from Spain, the compensation from the State in whose territory the crime was committed.

To this end, the Crime Victim Support Offices will provide you, as aid claimant, with the following information:

- information about the possibilities of claiming financial aid or compensation, the procedures or forms required, including the way in which these must be completed, and the supporting documentation that may be necessary;
- general guidance about how to fill out requests for additional information.

Moreover, as assistance authority, the Crime Victim Support Offices must do the following:

- forward your claim and supporting documentation, as well as any documentation that may be required subsequently, where applicable, to the decision-making authority appointed by the State in whose territory the crime was committed;
- cooperate with the decision-making authority where, in accordance with its national legislation, this authority decides to hear the claimant or any other person.

The decision-making authority is the Ministry of Economy and Finance's Directorate-General of Personnel Costs and State Pensions when the claim for the legally established State aid is dealt with via the assistance authority of the State where the claimant is ordinarily resident.

The decision-making authority must communicate the following both to you as aid claimant as well as to the assistance authority:

- receipt of the State aid claim, the body that opens the proceedings, the timeframe for handing down a

- decision and, if possible, the anticipated date when the decision will be taken;
- the decision closing the proceedings.

For crimes of terrorism, the Ministry of the Interior (Directorate-General for the Support of Terrorism Victims) will act as the assistance authority in cases in which the place where the crime is committed is a European Union Member State other than Spain and you as aid claimant are ordinarily resident in Spain, so that you can access, from Spain, the appropriate compensation, where applicable, from the State in whose territory the crime was committed. The actions that must be undertaken by the Directorate-General of Support for Victims as the assistance or decision-making authority are equivalent to those pertaining to the Ministry of Economy and Finance's Directorate-General of Personnel Costs and State Pensions.

The court ordered the offender to pay me damages/compensation. How do I make sure the offender pays?

The State will pay all or part of the aid where the offender has been declared partially insolvent.

The State will be subrogated, up to the full amount of the provisional or final aid you have been granted as victim or beneficiary, to your rights against the party civilly liable for the crime.

The State may bring an action for recovery against the party civilly liable for the criminal act to demand the full or partial reimbursement of the aid granted.

This action will be carried out, where appropriate, by means of the administrative recovery procedure and will apply in the following cases, among others:

- where the final judicial decision finds that no crime has been committed;
- where after payment, both you as victim as well as your beneficiaries obtained, on any grounds, full or partial compensation for the damages suffered in the three years following the granting of the aid;
- where the aid was obtained based on the provision of false or deliberately incomplete information or by any other fraudulent means, as well as the deliberate omission of circumstances that would lead to the refusal or reduction of the aid claimed;
- where the compensation awarded in the judgement is less than the provisional aid.

This action will be brought by the appearance of the State in the criminal or civil proceedings being conducted, without prejudice to the civil action that may be brought by the public prosecutor.

If the offender does not pay, can the state pay me an advance? Under what conditions?

The State will pay all or part of the aid where the person convicted of the crime has been declared partially insolvent.

Provisional aid may be granted before the final judicial decision ending the criminal proceedings is handed down, so long as the precarious economic situation in which you were left as victim or beneficiary has been demonstrated.

Provisional aid may be claimed once you have reported the events to the competent authorities or where criminal proceedings are conducted ex officio based on these events.

Am I entitled to compensation from the state?

You can obtain compensation from the State.

In Spain, there is a system of aid for victims of intentional and violent crimes, committed in Spain, resulting in death, serious bodily injury or serious damage to physical or mental health. Aid is also awarded to victims of crimes against sexual freedom, even when these crimes are committed without violence.

In general, you can access the legally established financial aid if, at the time the crime is committed, you are

Spanish or a national of any other European Union Member State, or, if neither of the above applies to you, you are ordinarily resident in Spain or a national of another State that grants similar aid to Spanish nationals in its territory.

In the event of death, the above-mentioned nationality or residence requirements must be met by the beneficiaries, not the deceased person.

In the event of serious bodily injury or serious damage to physical or mental health, the direct victims, i.e. those who suffered the injuries or damages, will be the beneficiaries.

In the event of death, the beneficiaries are the indirect victims, who would be the following:

- The spouse of the deceased person, if they were not legally separated, or the person who lived with the deceased on a permanent basis in a relationship akin to marriage for at least two years before the death, unless they had children together, in which case mere cohabitation will suffice. The children of the persons mentioned are also included, even if they were not the children of the deceased person, so long as they were financially dependent on that person and there was cohabitation.

Beneficiaries will not in any case include anyone convicted for intentional homicide in any of its forms, where the deceased was their spouse or the person with whom they were or had been in a stable relationship akin to marriage.

- The child of the deceased person, who was dependent on that person and there was cohabitation, assuming that children who are underage or disabled adults are financially dependent.
- The parent of the deceased person, who was financially dependent on that person, so long as there is no one in the above situations.
- The parents of a minor who dies as a direct consequence of the crime are also considered indirect victims for the purposes of the financial aid established by Spanish law.

The injuries that entitle victims to receive financial aid are those that damage bodily integrity or physical or mental health and that temporarily disable, for longer than six months, or permanently disable, with a degree of disability of at least 33 %, the person who suffered them.

As a general rule, the granting of aid is conditional on the handing down of a final judicial decision ending the criminal proceedings. Taking into account the timeframes for deciding on criminal cases, before a final judicial decision ending the criminal proceedings is handed down, the law provides for the possibility of granting provisional aid, taking into consideration the precarious economic situation of the victim of the crime or their beneficiaries. Provisional aid may be claimed once the victim has reported the events to the competent authorities or when the criminal proceedings have been initiated by the competent bodies without the need for a report.

The amount of aid may not in any case exceed the compensation set in the judgement.

In the event of the death of a minor or disabled person as a direct consequence of the crime, the parents or guardians of the minor will be entitled only to aid consisting of compensation for the funeral expenses they have actually paid up to the legally established limit.

In cases of crimes against sexual freedom that cause the victim damages to his/her mental health, the amount of aid will cover the costs of the therapeutic treatment freely chosen by the victim, with a maximum established by law.

In general, the time limit for claiming the aid is one year counted from when the crime was committed. This time limit will be suspended when the criminal proceedings begin, and will resume when the final judicial decision has been handed down and notified to the victim.

The receipt of aid is incompatible with the following:

- compensation established by means of the judgement. Nonetheless, all or part of the aid will be paid where the offender has been declared partially insolvent;
- compensation or aid from private insurance, as well as with the Social Security subsidy that might apply due to the victim's temporary disability. Nonetheless, the aid would be paid to the beneficiary of private insurance where the amount of the compensation to be received under this insurance was lower than the

amount established in the judgement;

- the receipt of this aid will not in any case be compatible with the compensation for damages to victims of armed groups and terrorists.

The receipt of aid is compatible with the following:

- in cases of permanent disability or death of the victim, with the receipt of any State pension the beneficiary is entitled to receive;
- the social assistance provided for in Article 27 of Organic Law 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender-Based Violence (Ley Orgánica 1/2004 de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género).

The aid for permanent disability will be incompatible with the aid for temporary disability.

The competence to process and decide on claims for the legally established State aid lies with the Ministry of Economy and Finance's Directorate-General of Personnel Costs and State Pensions, for victims of any crime except for victims of terrorism, in which case the Ministry of the Interior (Directorate-General for the Support of Victims of Terrorism) will be competent.

If you are a victim of terrorism, there is a series of State aid intended for victims of terrorism to compensate them for the damages caused by these kinds of crimes, provided there is a full connection between the terrorist act and the damages suffered.

The following are damages eligible for compensation:

- bodily injuries, both physical and mental, as well as expenses for medical treatment, prostheses and surgery.

These expenses will be paid to the person affected only in the event they are not fully or partially covered by a public or private welfare system;

- material damages caused to the homes of natural persons or those occurring in commercial and industrial establishments, headquarters of political parties, trade unions and social organisations;
- the costs of provisional accommodation while repair work is carried out on the ordinary residences of natural persons;
- damages caused to private vehicles, as well as those suffered by vehicles used for ground transport of people or goods, except publicly-owned vehicles.

Compensation for the damages indicated, except for bodily injuries, will be subsidiary to that established for the same cases by any other public body or those arising from insurance agreements. In these cases, any amounts that might result from the difference between what was paid by these public administrations or insurance entities and the official valuation will be compensated.

The amount of compensation will be determined according to the damage produced (severity of the injuries and type of disability they cause, death, etc.).

Other aid:

- for study: where a terrorist act results in personal injuries of particular significance to a student, their parents or guardians, or these injuries render them unfit for the exercise of their regular profession;
- immediate psychological assistance and counselling, both for victims as well as for family members;
- extraordinary aid to mitigate, exceptionally, situations of personal or family need of the victims, who are not covered or are covered in a markedly insufficient way by ordinary aid.

Aid beneficiaries:

- if there are injuries, the injured persons;
- if there was death:
 - the spouse of the deceased person;
 - the unmarried partner with whom the deceased had cohabited for at least two years;
 - the unmarried partner with whom the deceased had children;

- the parents of the deceased person if they were financially dependent on that person. In the absence of parents and in this order, the grandchildren, siblings and grandparents of the deceased person who were financially dependent on that person;
- if there are none of the above persons, the children and, in their absence, the parents who were not financially dependent on the deceased person.

In general, the time limit for submitting claims for compensation for personal or material damages will be one year, counted from the date on which the damages occurred.

The National High Court's Terrorism Victim Information and Assistance Office (Oficina de Información y Asistencia a Víctimas del Terrorismo de la Audiencia Nacional), in collaboration with the Ministry of the Interior's Directorate-General for the Support of Victims of Terrorism, will help you as a victim of terrorism through the process of claiming compensation: obtaining certificates of the final judgements, of orders not to enforce civil liabilities and other documents required to process the aid.

Am I entitled to compensation if the offender is not convicted?

The final judgement in the criminal proceedings, which cannot be appealed, must prove that the death, bodily injuries and serious damage to physical or mental health constitute an intentional and violent crime and, consequently, the judgement will have to determine the appropriate compensation.

To submit the claim for financial aid, you must attach to the claim a copy of the final judicial decision ending the criminal proceedings, whether it is a judgement, default judgement or decision to close the case due to death of the offender, or decision to dismiss the case.

The amount of aid granted may not in any case exceed the compensation set in the judgement.

Am I entitled to an emergency payment while I wait for the decision on my compensation claim?

Provisional aid may be granted before the final judicial decision ending the criminal proceedings is handed down, so long as evidence is provided of the precarious economic situation in which you as the victim or your beneficiaries have been left.

Provisional aid may be claimed once you have reported the events to the competent authorities or where criminal proceedings are conducted ex officio based on these events.

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