

## 4 - Compensation

### What is the process for claiming damages from the offender? (e.g. court case, civil claim, adhesion procedure)

In most cases it is the court responsible for trying the offender which, if it finds the defendant guilty, sets the amount of the damages and interest awarded to victims as compensation for their loss.

In order for the court to be called on to give a ruling on compensation, it is imperative that victims intervene by joining a civil claim to the criminal proceedings. Victims can join a civil claim at any time during the investigation. Victims are not required to appear at the hearing. They can be represented by a lawyer and make their requests in writing before the hearing.

If victims do not join a civil claim or make any applications, the court will not be able to award damages and interest to victims of its own motion.

Victims who do not join a civil claim during the criminal hearing do not lose their right to compensation.

In fact, victims will still be able to bring an action against the perpetrator before the civil courts, provided that they act before the limitation period under civil law expires and that they demonstrate that the facts in question constitute a civil wrong.

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

The role of the criminal court is to quantify the harm that victims have suffered, but it does not intervene in the recovery of damages and interest awarded.

It is up to victims, once the final judgment has been delivered, to take steps to obtain payment of these damages from the offender.

Most often it is the lawyer who will take care of overseeing the recovery of damages and interest, amicably at first, by contacting the lawyer of the convicted person, or by applying to a bailiff to have the judgment enforced.

Where the convicting court imposes a suspended sentence entailing an obligation to pay compensation, the Public Prosecutor General, who is in charge of the carrying out of sentences, will check whether convicted persons are fulfilling their obligation.

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

During the trial, the court may grant an interim payment pending the outcome of an expert report for example. If the offender refuses to, or cannot make this payment, the Ministry of Justice may take over in a case of proven need.

## Am I entitled to compensation from the state?

The amended Law of 12 March 1984 on the compensation of certain victims of bodily injury resulting from an offence creates a right to compensation chargeable to the State budget in favour of certain victims of crime. This is an important measure for victims in the event that:

The perpetrator of the assault has not been identified; the perpetrator of the aggression, although identified, cannot be found; the offender is insolvent.

To assert this right, victims must apply to the Ministry of Justice, which will take a decision on claims for compensation within six months. Claims must be drafted in French, German or Luxembourgish and must indicate the date, place and exact nature of the facts. Documentary evidence of the facts and of the harm suffered by the victim must be attached to this letter in support of the claim.

The right to compensation is subject to certain conditions that victims must meet:

Victims must either reside regularly and habitually in the Grand Duchy of Luxembourg or be a national of a Member State of the European Union or of the Council of Europe. In addition, at the time of the offence victims must have had their papers fully in order in the Grand Duchy of Luxembourg or be victims of the offence referred to in Article 382(1) of the Criminal Code [*Trafficking in human beings*];

The damage suffered must result from intentional acts that are in the nature of an offence.

The damage must be bodily injury and not mere material damage (which excludes, for example, compensation in the case of simple theft).

The harm must result in serious disruption to living conditions, which may result from a loss of or reduction in income, an increase in exceptional expenses or expenditure, or incapacity to perform a professional activity, the loss of one year of schooling, bodily or mental harm or moral or aesthetic damage as well as physical or mental suffering. Victims of an offence under Articles 372 to 376 of the Criminal Code are exempt from providing proof of physical or mental harm, which is presumed to exist.

Compensation is payable by the State only if the victim cannot obtain effective and sufficient compensation in any way (*e.g. from the perpetrator, from social security or under personal insurance cover*) .

It is important to know that compensation may be denied or reduced because of the behaviour of victims at the material time or their relationship with the perpetrator.

If the State compensates victims, they may still join a civil action and claim additional sums from the perpetrator if they consider the compensation to be insufficient. In that case, victims must inform the court of the fact that they have submitted a claim for compensation to the State or that they have obtained such compensation from the State, as appropriate.

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

Victims are entitled to compensation if the perpetrator is not convicted provided that they are victims of a criminal offence and the perpetrator of the assault has not been identified, or if the perpetrator of the assault has been identified but cannot be found, or if the perpetrator is insolvent.

If there is no trial and hence no determination of compensation by the court, the Ministry of Justice may award a fixed sum and/or order an expert report at its expense to determine the amount of compensation to be awarded to the victim.

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

In the case of duly proven need, the Minister of Justice may award a payment while the application is being examined.

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