

4 - Compensation

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

The legislation in force allows any person who considers themselves a victim:

- to apply to the investigating judge in charge of the case to be recognised as a civil party seeking damages (*constitution de partie civile*);
- to bring an action for interim relief (*action en référé*), or an action on the substance in the civil courts (*action devant le juge civil au fond*).

1) There are a number of ways in which a civil claim can be brought before the criminal courts:

- A prosecution (*action*) brought when a public prosecution has not been set in motion by the public prosecutor (this has the effect of triggering a public prosecution).

Two methods are possible:

- a direct summons to appear (*citation directe*), for minor offences (*contraventions*) or intermediate offences (*délits*);
 - an application for recognition as a civil party to the criminal proceedings (for intermediate offences or serious crimes (*crimes*)).
- Intervention (*intervention*), when a public prosecution has already been brought.
 - An application for recognition as a civil party to the criminal proceedings.

A victim can ask to join the proceedings as a civil party at the hearing, but also by sending an application to the presiding judge of the criminal court, by registered letter with acknowledgment of receipt or by fax, stating that the applicant wishes to join the proceedings as a civil party seeking damages and indicating the amount of damages claimed. This can also be done through a lawyer.

2) A civil claim can be brought in the civil courts under the ordinary law of civil liability.

If a victim brings an action for damages in the civil courts, he or she will not then be able to proceed in the criminal courts. But if a victim asks to be treated as a civil party in the criminal proceedings, he or she is not thereby prevented from bringing the matter before the civil courts.

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

If a victim has difficulty in recovering the value of compensation, he or she may resort to civil enforcement proceedings by engaging a bailiff (*huissier de justice*). The application must be sent by post to the presiding judge of the regional court (*tribunal de grande instance*) of the convicted person's principal residence (*domicile*) or, if he or she is in prison, of the regional court of the place where the prison is located. The following may be seized:

- a share of the remaining available salary of the convicted person;
- funds in his or her bank account;

- certain assets that may belong to him or her.

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

If the convicted person does not compensate the victim voluntarily, the victim may refer the matter to the Victims of Crime Recovery Assistance Service (*Service d'Aide au Recouvrement des Victimes d'Infractions* — SARVI). It is sufficient for the victim to show that he or she has been awarded damages by a final criminal judgment (against which there is no further appeal possible).

Taking the place of the person liable, SARVI pays the victim all the damages up to EUR 1 000; beyond that it pays an advance of 30 %, up to a ceiling of EUR 3 000. After paying an advance, SARVI pays the balance due as and when it collects money from the person convicted.

To apply to SARVI the victim should obtain a recovery assistance application form (*formulaire de demande d'aide au recouvrement*) from the regional court (for example from the court's single registry office (*guichet unique de greffe*), the registry of the judge delegated to deal with victims (*greffe du juge délégué aux victimes*), the enforcement office (*bureau d'exécution*) or the victim support office (*bureau d'aide aux victimes*)) or from a law centre (*maison de la justice et du droit*), a legal information desk (*point d'accès au droit*), a town hall or the like, which will also forward the completed form to SARVI.

An application to SARVI must be made no less than two months and no more than one year from the day the judgment awarding damages becomes final.

Am I entitled to compensation from the state?

The Guarantee Fund for Victims of Terrorism and Other Offences (*Fonds de garantie des victimes d'actes de terrorisme et d'autres infractions* — FGTI) compensates victims of terrorist acts in accordance with a special procedure. It also compensates:

- victims of rape, sexual assault, theft, fraud, breach of trust, extortion, or destruction of or damage to property;
- victims of an offence resulting in permanent disability or total incapacity for work;
- relatives of victims of murder or manslaughter.

To receive compensation from the Fund, a victim meeting certain conditions must make an application direct to the crime victims compensation board (CIVI) at the regional court of the applicant's principal residence or of the place of the criminal court trying the offence.

The application must be made to the board within three years of the date of the offence. This period is extended by one year from the date of the last criminal judgment.

If the offence was committed in France, compensation can be awarded to:

- holders of French nationality;
- nationals of a Member State of the European Union.

If the offence took place abroad, only French nationals can be compensated.

1) In cases of serious personal injury:

The victim may obtain full compensation for damage resulting from personal injury where the offence resulted in death, mutilation or permanent disability or in total incapacity for work equal to or greater than one month, or if the offence was one of rape, sexual assault, or trafficking in human beings.

The board will take account of benefits paid by social welfare bodies, mutual health insurance societies, insurance companies, etc. Clothing or material damage is not compensated.

2) In the case of minor personal injury and material damage resulting from theft, fraud, breach of trust, extortion or the destruction of or damage to property:

If the victim has suffered bodily injury resulting in total incapacity for work of less than one month or material loss as a result of one of these offences, the compensation available is subject to strict conditions and is limited by a ceiling.

To qualify for compensation of this kind the victim must meet the following additional conditions:

- the victim's resources must not exceed 1.5 times the ceiling set for partial legal aid (adjusted for family expenses);
- the victim must be unable to obtain effective and sufficient compensation for the damage caused from an insurance company, a social welfare body or any other body that might be liable;
- in the case of material loss only, the victim must be in a serious material or psychological situation as a result of the offence.

If these conditions are met, the victim may qualify for compensation capped at EUR 4 500.

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

If the accused is not convicted, you can bring a civil action claiming compensation for your loss in a civil court. You will have to show that the perpetrator is responsible for the harm you have suffered.

Proceedings before the crime victims compensation board (CIVI) are independent of any proceedings in the criminal courts, and a victim may apply to the board even if there is no judgment or ruling from a criminal court and even if the accused is acquitted.

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

In proceedings before the crime victims compensation board, you can claim an interim payment if your right to compensation is not contested and if your loss cannot be finally determined because you cannot calculate the total amount or because the social welfare bodies have not yet told you what sums they will repay. If you do not meet these conditions, an interim payment may nevertheless be granted to you at the discretion of the chair of the board.

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