

## Home>Your rights>Victims of crime>Compensation>Claiming damages from the offender

### Claiming damages from the offender

Luxembourg

#### How can I claim damages or other means of redress/satisfaction from an offender in a trial (criminal proceedings), and who should I address this claim to?

There are several ways of claiming damages from an offender.

In order for the criminal court to have cause to rule on compensation, the victim must sue for damages in the criminal proceedings as a civil party and claim fair compensation from the offender, where the latter is found guilty. The victim does not have to appear at the hearing. He or she can be represented by a lawyer and submit his or her claims in writing before the hearing.

In addition, the amended Law of 12 March 1984 on compensation for certain victims of physical injury resulting from crime entitles certain victims of crime to claim compensation from the State budget. This is an important measure for victims in cases where: the offender has not been identified; although identified, the offender cannot be found; the offender is insolvent. In such cases, the victim must submit a claim for compensation to the Minister for Justice, who will decide on it within six months.

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

Where the State compensates the victim, the latter can still sue for damages in the criminal proceedings as a civil party and claim additional sums from the offender if the victim believes that that compensation is insufficient. In this case, the victim must inform the court that a claim for compensation has been submitted to the State or that compensation has been obtained from the State.

#### At which point in the criminal proceedings should I present a claim?

The victim is entitled to sue for damages in the criminal proceedings by sending the investigating judge a letter informing the latter that the victim is suing as a civil party in order to claim compensation for the injury that has allegedly been suffered. This claim may be made at any point in the proceedings. The victim can also submit this claim at the time of the criminal hearing.

However, it should be borne in mind that, if the victim decides to sue for damages as a civil party before the hearing, he or she can no longer be heard as a witness.

If the victim does not sue for damages in the criminal proceedings or submit any claims, the criminal court cannot automatically award damages to the victim. However, the victim who does not sue for damages as a civil party at the time of the criminal hearing does not lose the right to compensation. The victim can still bring a legal action against the offender before the civil courts, provided that this action is taken within the applicable civil limitation period and it is proven that the acts in question constitute a civil wrong.

The claim for compensation submitted to the Minister for Justice can be made before the criminal proceedings have been decided. In addition, the claim must be submitted within two years of the date of the acts. If the offender is prosecuted and the victim sues for damages in the criminal proceedings as a civil party, the time-limit for submitting this claim is extended and expires two years after the final decision of the court hearing the criminal case. If the victim does not sue before the criminal court and the decision made in these proceedings becomes final, the victim can bring a legal action before the civil courts to obtain a decision on damages. In this case, the time-limit is extended and expires two years after the court decision on damages becomes final. However, if the victim is a minor, the limitation period does not start until the date on which the victim reaches the age of majority if the acts are punishable by criminal penalties or provided for and punishable under Articles 372, 373, 375 (*indecent assault and rape*), 3821 and 3822 (*human trafficking*), 400, 401bis, 402, 403 or 405 (*culpable homicide not classified as murder and intentional bodily injury*) of the Luxembourg Criminal Code.

#### What can I ask for in the claim and how should I present it (indicate a total amount and/or specify the individual losses, lost profits and interests)?

In the criminal proceedings, the victim must submit the claim containing his or her precise demands either in writing or orally during the hearing, although it can be submitted in writing before the hearing. In any event, the victim must prove the physical injury suffered by means of evidence (medical certificates, invoices, etc.). In practice, during the hearing, the court will first hear the witnesses and alleged offender before anyone suing for damages as a civil party. At that point, the victim, or the lawyer acting on behalf of the victim, states that he or she is suing for damages as a civil party and submits the document containing the precise demands to the court, prosecutor and parties to the proceedings. The victim does not have to appear at the hearing and can be represented by a lawyer.

The claim can be made on plain paper and contain a list of the various injuries suffered (physical injury/economic loss and/or moral damage) with precise amounts. If an injury cannot be quantified or the amount is not yet known, the amount is then indicated as being 'for the record'.

In most cases, it is the court responsible for trying the offender that sets the amount of damages awarded to the victim as compensation for the injury, if it finds the accused guilty.

The losses and expenses covered by the compensation are for the victim of the crime:

##### **physical (non-psychological) injury:**

medical costs resulting from the injury (medical treatment - inpatient and outpatient care, recovery);

additional needs or costs resulting from the injury (i.e. care and assistance, temporary and permanent treatment, prolonged physiotherapy, adaptation of housing, special equipment, etc.);

permanent injuries (e.g. disability and other permanent handicaps);

loss of earnings during and after the medical treatment (including loss of earnings and loss of earning capacity or reduction of benefits, etc.);

loss of professional opportunities;

expenses arising from legal proceedings connected with the event that caused the damage, such as legal fees and other costs;

compensation for stolen or damaged personal property;

##### **psychological (moral) injury:**

pain and suffering of the victim;

loss of enjoyment of life (where the victim can no longer lead the same life as before the crime);

disfigurement (scars, loss of a limb or something else);

sexual harm.

The court can order an expert to calculate the exact figure for the injuries suffered. This often happens, particularly in cases of serious bodily injuries.

In this case, the court can award an advance.

After the expert opinion is given, a judgment is made on the damages, setting the amount to be paid.

The maximum amount of compensation that can be awarded by the Minister for Justice cannot exceed a ceiling set each year by Grand-Ducal Regulation.

This ceiling was set at EUR 63 000 for 2017. The Minister can also grant an advance.

#### **Is there a specific form for such claims?**

There is no specific form in the Grand Duchy of Luxembourg for compensation claims.

Claims are made on plain paper.

Compensation claims submitted to the Minister for Justice must be written in French, German or Luxembourgish and must indicate the date, place and exact nature of the acts.

#### **What evidence do I need to present to support my claim?**

For a claim made before the court deciding the case, the claim for damages and any evidence proving the injury (see below for specific examples) must be submitted.

For a compensation claim submitted to the Minister for Justice, any supporting documents for the acts and injury that the victim has suffered must be enclosed with this letter, in support of the claim.

Non-exhaustive list:

copy of the complaint (police report) or evidence of the claim for damages in the criminal proceedings;

copy of the judgment deciding the criminal proceedings and the claim for damages as a civil party (if this was submitted);

decision on the claim for damages (for example, following an expert opinion);

evidence of the injury: medical certificates indicating the nature of the injuries suffered, duration of the incapacity for work and, where applicable, nature of the after-effects and permanent disability;

evidence of the medical costs resulting from the injury (medical treatment, inpatient and outpatient care, etc.);

evidence of membership of a social security organisation;

evidence of the amount of any compensation received through social security;

copy of the insurance policy;

evidence of the amount of any compensation received through the insurance company;

evidence of loss of earnings during and after the medical treatment.

#### **Are there courts fees or other costs linked to my claim?**

In criminal proceedings, each party must pay its own legal fees, regardless of the trial's outcome. However, a party in need can apply for legal aid. In this case, the State covers all costs.

The victim can also claim procedural compensation. Expert costs are normally covered by the accused.

There are no court fees for a compensation claim submitted to the Minister for Justice.

#### **Can I get legal aid before and/or during the proceedings? Can I get it if I'm not living in the country where the proceedings take place?**

A victim can get legal aid before and/or during the proceedings, as determined by Luxembourg law, by completing a national form that can be downloaded from the Luxembourg Bar Association (*Barreau de Luxembourg*) website:

<https://www.barreau.lu/le-barreau/assistance-judiciaire/formulaire-d-assistance-judiciaire>. This form must be accompanied by supporting documents proving that the victim does not have sufficient funds to assume the costs of his or her defence. The application must be sent to the president of the bar association in the judicial district where the applicant resides, who will decide whether or not legal aid should be granted.

Anyone can consult the bodies offering legal information and advice. You can access the Legal Reception and Information Service (*Service d'Accueil et d'Information juridique*) to obtain any legal information free of charge. <https://justice.public.lu/fr/aides-informations/accueil-info-juridique.html>

#### **When would the criminal court dismiss or refuse to adjudicate on my claim against the offender?**

Where the victim has submitted a claim for compensation and the offender is acquitted in the criminal proceedings because the acts do not constitute a crime, the court will still decide whether the accused's wrongdoing is at the root of the injury suffered by the victim. If it is, the accused will be ordered to pay damages. If, however, the victim has failed to prove the causal link between the accused's behaviour and the injury suffered, the court will dismiss the victim's claim.

#### **Can I appeal against such a decision or seek other means of redress/satisfaction?**

The victim can appeal against the decision of the criminal court.

In addition, the victim can submit a claim for compensation to the Minister for Justice and is entitled to compensation if the offender has not been convicted, provided that the victim is the victim of a crime, and if the offender has not been identified or, although identified, cannot be found or is insolvent.

If there is no trial, based on the compensation determined by the court, the Minister for Justice may award a fixed amount and/or order an expert opinion, at the Ministry's expense, in order to set the amount of compensation to be awarded to the victim.

#### **If I am awarded damages by the court, how do I ensure the judgment is enforced against the offender and what help can I get to ensure this?**

The role of the criminal court is to quantify the injury suffered by the victim, but not to get involved in ensuring payment of damages awarded and any interest. Once the final decision has been made, it is for the victim to take steps to secure payment of these damages and any interest from the offender.

More often than not, the victim's lawyer will take charge of supervising the recovery of damages, initially through amicable means, by contacting the convicted offender's lawyer, but subsequently by enforcement of the judgment through a bailiff.

Where the court convicts the offender and issues a suspended sentence with probation including the obligation to pay compensation, the Chief Public Prosecutor in charge of enforcing sentences will check whether the convicted offender is complying with that obligation.

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