



IAP Meeting Copenhagen, Denmark - 2005

Workshop “Witnesses, Experts and Victims”

3. Compensation for victims

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1. What provisions does the Swedish jurisdiction have for compensating victims?

A person who has committed a crime is, in principle, obliged to pay for any injury or damage occurring as a result of that crime. According to the Compensation Act, compensation is paid for personal injury and in some cases for violation of personal integrity suffered by the victim. The victim may also receive compensation for loss or damage to property.

The Crime Victim Compensation Act entitles the victim to compensation if the offender is unable to pay the damages that the victim has been awarded by the court. Criminal injury compensation may also be granted even in cases where the offender has not been identified and where, consequently, there has been no conviction. The compensation is paid by the state under the condition that the victim reports the crime to the police and that there is no private insurance that covers such damages. The level of compensation is set by the rules stipulated in the Compensation Act and thus follows the same rules as if the compensation was ordered by the court.

2. Is it possible to obtain compensation through the criminal justice process or does the victim have to sue in a civil court?

The victim has several possibilities to obtain compensation:

- Compensation from the offender in the criminal court
- Suing the offender in the civil court
- Claiming Criminal Injuries Compensation

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Usually the claim from the victim will be assessed by the court simultaneously with the indictment.

There are two possibilities:

- The prosecutor presents the claim for damages against the offender in conjunction with the prosecution
- The victim presents the claim for damages him/herself in connection with the prosecution

The prosecutor is under obligation to prepare and present the claim for damages together with the prosecution. The prosecutor may refuse to do so if this cannot be done without inconvenience and the claim is found to be devoid of merit.

If the victim presents the claim the court may decide that the claim should be handled by the Civil Court and thus should be separated from the criminal procedure. There is also the possibility for the victim, when the criminal procedure has been completed, to claim for damages separately in the Civil Court.

3. Can the victim be separately represented in the criminal court in relation to compensation?

Legal counsel appointed by the court

Someone who has been sexually assaulted or abused may be entitled to their own legal counsel. Such a counsel may also be appointed to a victim of domestic violence. This legal counsel is appointed by the District Court. The request is made by the prosecutor (or more seldom by the victim) to the District Court as soon as the criminal investigation has been started.

The main duties of the counsel are to look after the victim's interests, give guidance and support during the investigation and the trial and help the victim to claim charges. For example the counsel usually assists the witness during police interviews during the investigation. The counsel can also be of assistance if the victim wishes to support the prosecution. This counsel's fees are paid by the state.

Private Legal Counsel

There is always a possibility for the victim to be represented in court by a private legal counsel paid by the victim. If the case is complex the witness may be granted legal aid, provided that a means test shows that the victim is eligible for such aid.

Reimbursement for legal expenses

If the accused is sentenced to pay compensation to the witness he/she will normally also be ordered to pay the witness' legal expenses.

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4. What is the level of proof which is required in compensation claims? Do criminal courts make compensation payments at an equivalent level to orders made in a civil court?

The level of proof in compensation claims against the offender is related to the fact that offender is found guilty of the crime. The compensation is, so to speak, linked to the issue if it is beyond reasonable doubt that the offender has committed the crime.

If the defendant is acquitted on the grounds of lack of intention the victim may be able to claim for damages on the grounds of negligence.

It makes no difference if the compensation claim is handled in a criminal court or in a civil court. The legal grounds for the court's decision level are the same when a private claim is instituted in the manner of civil action or if the prosecutor - or the victim him/herself - claims for compensation against the suspect in conjunction with the prosecution of the offence.

5. What rights do defendants have to challenge orders for payment of compensation either in the court of first instance or on appeal?

The defendant must, within the criminal procedure, state his/her position concerning the charges and the claim for compensation. This means that the defendant is able to present his/her action concerning the charges and the claim of compensation using any argument that he/she wishes. The court will take this argument into consideration when deciding on the claim in the final ruling. The ruling of the District Court may be appealed to the Court of Appeal. If the Court of Appeal orders that the case must be determined at a main hearing, the procedures will, in most of the cases, be the same as in the district court.

6. What role does the prosecutor play here?

The role of the prosecutor depends on whether he/she presents the injured party's action in conjunction with the prosecution. If that is the case he/she will play an active role in the procedure and also has the possibility to appeal the District Court's decision to the Court of Appeal, concerning the compensation claim.

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7. Are there any specialised authorities within your jurisdiction which deal with these issues?

In Sweden the Crime Victim Compensation and Support Authority is responsible for three areas:

1. Criminal Injuries Compensation

A person who has been a victim of a crime may be entitled to financial compensation, in particular if the victim has been subjected to a personal injury. The condition is that the offender is unable to pay the damages. Another condition is that the injuries are not covered by any private insurance policy.

2. The Crime Victim Fund

The resources of the Fund are made available to both non-governmental organisations and public bodies that provide help for the victims of crime, as well as for research in this sphere. The Fund is financed through a special fee of SEK 500 (about 50 €) which everyone convicted of crime punishable by imprisonment must pay. The Fund also accepts gifts and donations. The Fund distributes SEK 25 million (2.5 million €) annually.

3. The Centre of Competence

The Authority is responsible for gathering and distributing information and the results of research with a view to improving the way in which victims of crime are cared for and treated. This is done, for example, by sending information to authorities, non-governmental organisations and victims of crime. The Authority also organises courses and seminars in order to disseminate information and research findings on the practical experience of victims of crime.