



Towards fair and
effective
compensation
scheme to victims
of sexual violence

CONTEXT ANALYSIS

Fair and Appropriate?

Compensation of Victims of Sexual Violence in EU Member States:

Greece, Italy, Latvia, the Netherlands and Spain

Part I: A survey of State and Offender Compensation

31 January 2020



Financed by
The European Union
Justice Program
(2014-2020)

"847360 - FAIRCOM - JUST-AG-2018/JUST-JACC-AG-2018"

Project Partners



Authors

Nieke Elbers,¹ Arno Akkermans,¹ Helena Soletó Muñoz,² Anna Fiodorova,² Aurea Grané,² Josep Maria Tamarit,³ Antonia Linde García,³ Patrizia Patrizi,⁴ Gian Luigi Lepri,⁴ Ernesto Lodi,⁴ Iluta Lāce,⁵ Lelde Vaivode,⁵ Eleftheria Deligianni,⁶ Nancy Saripapa,⁶ Nicholas Spetsidis⁶

¹ Vrije Universiteit Amsterdam (VU) - The Netherlands

² University Carlos III of Madrid (UC3M) - Spain

³ Universitat Oberta de Catalunya (UOC) - Spain

⁴ University of Sassari (UNISS) - Italy

⁵ Association Marta Centre (MARTA) - Latvia

⁶ Union of Women Associations of Heraklion Prefecture (UWAH) - Greece

Table of Contents

Introduction	3
Method	6
Findings	8
a. State compensation.....	8
b. Offender compensation	15
Discussion	22
References	24
Appendix 1 - Table 1 State compensation	26
Appendix 2 - Table 2 Offender compensation	37
Appendix 3 – Original data sheets EU portal.....	44
Appendix 4 – Fact sheet	45

Introduction

The last 20 years, victims of crime have received increased attention in the criminal trial process. Various EU legislation, in specific the EU Directive 2012/29/EU,¹ has prescribed important victims' rights, as the right to receive information, respectful treatment, legal support, victim support and compensation. Most EU member states have implemented the legislation and the position of victims has clearly been strengthened. Now victims of crime in general are more in the spotlight, it is an opportunity to also focus on specific vulnerable groups of victims in criminal law. One of the groups that needs special attention are victims of sexual crimes. Victims of sexual crimes are considered to have a difficult status in the criminal process because of the nature of crime. Sexual crimes are still associated with a lot of shame and stigma and often mentioned in relation to secondary victimisation. About 25% of victims of sexual crimes do not dare to report the crime because of shame and 12% does not report because they think they will not be believed. Victims of physical violence may also not report because of shame or not being believed but the percentages are much lower, respectively 8% and 2% (FRA European Union Agency for Fundamental Rights, 2014). With this project, we aim to empower victims of sexual crimes in their search for justice.

Victims of sexual crimes suffer from high attrition rates in criminal law. It starts with low reporting rates. Only 14% of victims of sexual violence report offenses to the police (FRA European Union Agency for Fundamental Rights, 2014). Of those who report, about 46% of victims of sexual crimes are not satisfied with the treatment received by the police (FRA European Union Agency for Fundamental Rights, 2014). An international review on studies on sexual crimes from 2010 showed that only three in ten victims of sexual crime will proceed past the police to the next legal stage (Daly & Bouhours, 2010). Only one in ten will result in conviction (Daly & Bouhours, 2010). Attrition studies alert us to the fact that current police and court processes are poorly equipped to address the realities of sexual victimization; and for a large proportion of victims, the criminal justice system is not engaged at all (Daly & Bouhours, 2010). Attrition data from Spain are less big but still significant attrition rates: in 2017, the police registered 11.692 sexual offenses. In 8894 cases (76%), the police knew the identity of the offender, 6796 offenders (58%) were arrested and only 2270 (19%) were convicted (Soletto, 2019). The statistics should be considered in the light of the scale in which sexual violence occurs: an estimated 3.7 million women in the EU have experienced sexual violence in the course of 12 months (FRA European Union Agency for Fundamental Rights, 2014). In total 11% of women have experienced some form of sexual violence since they were 15 years old. 5% of women have been raped since the age of 15 (FRA European Union Agency for Fundamental Rights, 2014).

¹ Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, OJ 2012, L 315/57, ELI: <http://data.europa.eu/eli/dir/2012/29/oj>

Criminal law can provide justice to victims of (sexual) crime in several ways, such as bringing the offender to justice, and providing support and compensation to the victims. This report is about the extent to which victims of sexual crimes can access compensation. The right to fair and appropriate compensation to victims is one of the basic victims' rights and needs. Compensation serves different goals: it is needed to compensate the material and immaterial damages due to the crime. Compensation also is considered an acknowledgement of harm (e.g. Holder & Daly, 2018; Milquet, 2019). The right to compensation also brings a certain empowerment: it gives the victim a formal position in criminal and other proceedings or strengthens that position. In short: it serves as a vehicle to give the victim agency.

Various legal frameworks on compensation have been put into place to establish in all Member States that victims have access to compensation: European Convention on the compensation of victims of violent crimes in 1983,² Directive 2004/80/EC³ and Directive 2012/29/EU.⁴ The European Convention on the Compensation of victims of violent crimes aimed to introduce and develop compensation schemes, in particular when the offender has not been identified or is without resources. Directive 2004/80/EU is aimed at making sure that victims of whom the crime has been committed in another member state will have access to compensation. Directive 2012/29/EU, article 16, states that Member States shall promote measures to encourage offenders to provide adequate compensation to victims within a reasonable time. Although almost all member states have implemented the Directives, the practical application and efficiency is questionable in certain member states (EU parliament report by the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality, 2018). In the Council conclusions on victims' rights of December 2019⁵ the Council notes the improvements in the access to compensation, but also recognizes that measures to improve victims' access to justice and to compensation are required. A systematic approach to ensure victims' effective access to justice and compensation is needed. In some countries the percentage of victims of sexual violence that is claiming and receiving compensation is very low. In Spain, in 2018 only 11 victims received state compensation, and the amount they received was 690 euro on average (Soletto, 2019). To Spanish victims of sexual crimes who claimed compensation from the offender in a criminal procedure between 2012 and 2015, the median amount being awarded was 13.700 euro, of which only a median amount of 166 euro was paid to the victim (1.2%). Research in the Netherlands showed that only 4% of victims of human trafficking received compensation (Cusveller & Kleemans, 2018). Besides low percentages of victims that get a sum awarded, a

² European Convention on the compensation of victims of violent crimes, ETS No 116, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116>

³ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ 2004, L 261/14, ELI: <http://data.europa.eu/eli/dir/2004/80/oj>

⁴ Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, OJ 2012, L 315/57, ELI: <http://data.europa.eu/eli/dir/2012/29/oj>

⁵ Council conclusions on victims' rights, OJ 2019, C 422/05, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XG1216\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XG1216(01))

major problem is that the compensation granted is not actually paid, because the offender is not sufficiently solvent.

Given the high number of victims, the high attrition rates and the low chances of receiving justice, it is important to conduct research and create policy on how justice can be done. In this report, we explore the different routes to compensation in each of the participating countries.

Method

Data about the compensation schemes in the participating countries - Spain, the Netherlands, Italy, Greece, and Latvia - was collected by using the descriptions of the compensation schemes on the European justice portal.⁶ Each country has answered a same set of questions about state compensation and offender compensation. In the box below, the reader can find the list of questions.

We summarized the answers for the five participating countries in two tables: one table on state compensation (appendix 1) and one table on offender compensation (appendix 2). We compared the five countries and based on the differences, we derived good practices and recommendations.

We accessed the EU justice portal in October 2019 and downloaded the information of each country. At the time, the information had been updated in March 2019. The forms of each country can be found in Appendix 3.

In addition to the information on the EU portal, we contacted compensation experts in the participating countries to validate and complete the data. Furthermore, FAIRCOM partners have provided additional empirical data and explanations regarding their own jurisdictions.

State compensation questions

1. Which type of crime can I get compensation for?
2. Which type of injury can I get compensation for?
3. Can I get compensation if I'm a relative or dependent of a victims who has died as a result of a crime? Which relatives or dependants can get compensation?
4. Can I get compensation if I'm a relative or dependent of a victims who survived? Which relatives or dependants can get compensation in this case?
5. Can I get compensation if I'm not a national of an EU country?
6. Can I claim compensation from this country if I live here or am from here (this is country of my residence or nationality) even if the crime was committed in another EU country? Could I do this instead of claiming compensation in the country where the crime took place? If so, under what conditions?
7. Do I have to have reported the crime to the police first, to be able to claim compensation?
8. Do I have to await the outcome of any police investigations or criminal proceedings before I can claim?
9. Do I have to first seek compensation from the offender – if they have been identified?
10. If the offender has not been identified or convicted, can I still qualify for compensation? If so, what evidence do I need to present to support my claim?
11. Is there a time limit within which I have to claim compensation?
12. Which losses and expenses are covered by the compensation?
13. Is the compensation paid out in a single payment or monthly instalments?
14. In what way could my own behaviour in relation to the crime, my criminal record or failure to cooperate during the compensation proceedings affect my chance of receiving compensation, and/or the amount I receive?

⁶ https://e-justice.europa.eu/content_compensation-67-en.do Website accessed October 2019

15. In what way could my financial situation affect my chance of receiving compensation and/or the amount?
16. Are there any other criteria that could affect my chance of receiving compensation and/or the amount?
17. How will the compensation be calculated?
18. Is there a minimum/maximum amount that can be awarded?
19. Am I expected to quote the amount in the claim form? If so, do I get any instructions on how to calculate it or on other aspects?
20. Will any compensation I receive for my loss from other sources (such as my employer's or a private insurance scheme) be deducted from compensation paid by the authority/body?
21. Can I get an advance on the compensation? If so, under what conditions?
22. Can I get complementary or additional compensation (following e.g. a change in circumstances or worsening health etc.) after the main decision?
23. What supporting documents do I need to include with my claim?
24. Are there administrative or other charges to be paid when the claim is received and processed?
25. Which authority decides on compensation claims (in national cases)?
26. Where do I send the claim (in national cases)?
27. Do I need to be present during the procedure and/or when my claim is being decided?
28. How long does it take (approximately) to receive a decision on a claim for compensation from the authority?
29. If I'm not satisfied with the authority's decision, how can I challenge it?
30. Is there a special helpline or website I can use?
31. Can I get legal aid (help from a lawyer) when preparing the claim?
32. Are there any victim support organisations that can help me claim compensation?

Offender compensation questions

1. 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?
2. At which point in the criminal proceedings should I present a claim?
3. 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)?
4. Is there a specific form for such claims?
5. What evidence do I need to present to support my claim?
6. Are there courts fees or other costs linked to my claim?
7. 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?
8. When would the criminal court dismiss or refuse to adjudicate on my claim against the offender?
9. Can I appeal against such a decision or seek other means of redress/satisfaction?
10. 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?

Findings

There are two main routes to get/claim compensation: 1) state compensation and 2) offender compensation via a criminal trial. The most common route in most countries is that compensation is to be claimed from the offender through a criminal trial. The victim has to join the criminal trial as a civil party. Internationally, state compensation schemes have emerged in the seventies based on the view that the state should take responsibility not only for an offender's rehabilitation, but also for that of crime victims. The state has a duty to protect citizens from crime or to prevent conditions that cause victimisation. Payments are made in recognition of a sense of public sympathy and of social solidarity with a victim (Holder & Daly, 2018). In Europe, the 1983 Convention on the compensation of the victims of violent crimes considered that state compensation was particularly necessary when the offender has not been identified or is without resources.

Another route is to claim compensation via civil law. According to the FAIRCOM partners, victims can claim compensation via civil proceedings in their jurisdictions, but this route is hardly used. Empirical data on numbers is only available for the Netherlands. Dutch research has shown that in 2010, 483 victims of criminal offenses have claimed compensation from the offender in civil court (Schrama & Geurts, 2012). Of these 483 cases, 50 (13%) concerned a violent crime- or sexual offence⁷. It was noticeable that of all 483 cases, the majority of claimants were corporations (73%), only a minority were individual victims (27%). In 44% of all cases, compensation was fully awarded, 9% were rejected. No empirical data is available regarding the number of civil claims in Spain, Italy, Greece or Latvia.

In this report we focus on the two main routes, which are state and offender compensation.

a. State compensation

Below the differences and similarities are summarized based on the information that the participating countries have provided on the EU portal.

Type of crime and injury

State compensation systems are in place for victims of intentional criminal offenses. What constitutes a compensable crime and other eligibility requirements vary widely. For instance, the extent to which 'violence' is a constituent part of sexual offences varies from country to country. In the **Netherlands** state compensation is available in case of all violent or sexual crimes. For sexual crimes any kind of coercion is enough. In **Spain**, the Spanish Penal Code includes two main legal typologies: sexual aggression (which entails violence) and sexual abuse. It has been made explicit that financial aid is awarded to victims of sexual offences

⁷ It is not known how many of the 50 cases were sexual offences. No further specification was made about the percentage of sexual offences

also when these crimes are committed ‘without violence’. Injuries giving entitlement to financial aid are those which prejudice physical integrity or physical or mental health and which cause the victim temporary incapacity lasting more than six months, or at least 33 % permanent disability. The fund in **Italy** compensates all sexual crimes, but covers only therapeutic treatment up to a limit of 4800 euro. **Greece** lists a number of crimes that are eligible. The crimes related to sexual crimes are human trafficking, arranging travel for the purpose of participating in acts of sexual intercourse or other indecent acts involving a minor, sex tourism, rape of a minor, sexual abuse of children, child pornography, soliciting children for sexual purposes, pornographic representations of minors, procuring prostitution, trafficking for sexual exploitation and indecent acts involving a minor for payment. As a consequence, crimes such as rape and sexual assault committed against adults do not qualify. In **Latvia**, a victim is entitled to state compensation if the victim has been subjected to rape, indecent or sexual assault, or a victim of human trafficking. Chapter 16 of The Criminal Law⁸ involves a list of criminal offences against morality and sexual inviolability.

Eligible relatives of survivors

In the **Netherlands**, relatives of direct victims can get compensation if they suffer psychological damage due to witnessing a violent crime, including sexual violence, or being directly confronted with the consequences of a violent crime committed against a relative. In **Spain, Italy, Greece** and **Latvia**, relatives of survivors do not get compensation, only in case the primary victim died.

Availability non-EU nationals

In the **Netherlands, Greece** and **Latvia**, no distinction is made between victims from the EU or non-EU member states. In **Spain**, a non-EU national will receive compensation if the victim’s country of residence grants similar aid to Spaniards. In **Italy**, a non-EU national will receive compensation if the victim resides in an EU member state. In all five countries, victims are only able to claim compensation if the crime was committed in that country. If the crime was committed in another country, state compensation institutions in **Greece, the Netherlands** and **Latvia** will assist in the application process in the other country. **Spain** and **Italy** have not specified whether they provide such support.

Police report

In the **Netherlands** and **Italy**, a police report is recommended but *not* required when applying for state compensation, whereas in **Spain, Latvia** and **Greece** a police report is required. In the **Netherlands**, a police report is important but not always necessary, especially in the case of minor age victims. Other objective information can also be considered sufficient, such as a police ‘declaration’ (a ‘declaration’ is when a victim wants to inform the police of the crime, but does not want an official report being drawn up nor an investigation to be started) or a report of the Child Protection Service, or a report from a registered health care professional.

⁸ <https://likumi.lv/ta/en/en/id/88966>

Some sort of objective information has to be provided to substantiate the victim's claim that a crime was committed. The victim's statements alone are not sufficient. In **Greece** it is noticeable that there is a time limit for reporting to the police: the crime should be reported to the police or the public prosecutor within 5 days after the crime. This time limit is chosen to be able to locate the offender. In case major reasons have prevented the victim from reporting, the five-day limit starts to run once those reasons cease to apply.

Await outcome police investigation or court

In the **Netherlands** and **Latvia**, victims can apply for state compensation without having to await the outcome of a case. Eligibility is established independent from criminal prosecution. In **Spain, Italy** and **Greece** one has to await a final verdict of the court. In **Spain**, victims are only eligible to claim state compensation if there is a court decision ending the criminal proceedings against which no further remedy is available. In **Italy** and **Greece**, in case the offender is unknown, the criminal case needs to be archived as 'case with unknown offender'.

Seek compensation from offender first?

In the **Netherlands** and **Latvia**, it is not needed to seek compensation from the offender first. The procedure to claim state compensation exist independently. In **Spain, Italy** and **Greece** it is required to seek compensation from the offender first, through participation in the criminal trial. State compensation can be claimed only when recovering damages from the offender is impossible, because the offender is unknown, acquitted or insolvent.

If offender is not identified or not convicted

In the **Netherlands, Italy, Greece** and **Latvia** it is possible to claim state compensation if the offender is not identified or cannot be prosecuted. In **Italy** and **Greece**, the victim will need to show an official court order showing that the crime was committed by an unknown person. In **Greece**, victims are also eligible to state compensation if the offender does not have the resources to compensate. In **Latvia**, the victim also has the right to the State compensation if a perpetrator in accordance with the Criminal Law shall not be held criminally liable, for example, in case the offender has not reached the age from which criminal liability sets in. In **Spain**, it is not possible to claim state compensation in case the offender is unknown or not convicted.

Time to apply

The timeframe within victims have to apply in order to receive compensation ranges between 60 days after the criminal trial (**Italy**) up to 10 years after the offense (the **Netherlands**). **Spain** and **Greece** use a time limit of 1-year after the court decision. Since 2019, **Latvia** applies a 3 years timeframe.⁹

⁹ 3 years since the law on state compensation to victims was amended 1st January 2019

Average time to apply

*In the **Netherlands**, the average time between a sexual crime and application for state compensation is 6 years (Mulder, 2013). For that reason, the Netherlands extended the original 3-year time limit to 10 years.*

Losses/expenses

In all five countries, the funds state that the compensation they provide is to compensate pecuniary and non-pecuniary loss. The **Netherlands** and **Spain** use multiple fixed amounts categories. **Latvia** has two fixed amount categories. **Italy** pays one fixed amount, which can be lowered in case of lesser severity. **Greece** does not have fixed amounts: calculation of the amount is based on full compensation, including medical costs, psychological support, loss of earnings (in a reasonable time frame), change of environment and address and funeral costs.

The **Netherlands** applies six categories between 1.000 and 35.000 euro. 1) €1.000, 2) €2.500, 3) €5.000, 4) €10.000, 5) €20.000, 6) €35.000. These are all-in compensation categories, meaning that the amount includes both financial and non-financial loss. The categories relate to crime severity. Variations are on whether the crime involved penetration, the period of the abuse, what extent of violence, and the age of the victim. In **Spain**, the compensation in case of temporary or permanent incapacity is a number of months times the minimum daily amount (the so called 'IPREM'). For 2017, 2018, 2019 and 2020, the IPREM was established at € 537,84 per month.¹⁰ In case of sexual crimes, compensation is only paid for therapeutic treatment, covering harm to the mental health of victims. Compensation for therapeutic costs consists of monthly instalments of the IPREM, until the maximum (5*IPREM) is reached. The maximum is €2.689. In **Italy**, the compensation for sexual assault is a fixed amount of € 4.800, unless lesser gravity.¹¹ In **Greece**, compensation is calculated in accordance with Greek civil liability law, meaning full compensation in principle. There is no maximum. In **Latvia**, indecent or sexual assault is awarded a fixed amount of €1.075. Rape or sexual violence is awarded with a fixed amount of €1.935.¹² In case of death, the amount is 5 times the minimum wage, which would be €2.150.

State compensation amounts

*The variety in state compensation amounts is very big. In the **Netherlands**, the average state compensation amount paid in all (all criminal, so not only sexual) crimes in 2018 was about € 3.994 euro (Annual report Schadefonds Geweldsmisdrijven, 2018). For **Spain**, the average compensation amount awarded in state compensation for victims of sexual crimes was € 688 (Soletto, 2019b).*

¹⁰ www.irpf.eu/iprem.html

¹¹ The assessment of the presence of a lesser severity is a task of merit which must take into account a global assessment of the fact that it concerns the execution methods of the offender and the means used, the degree of coercion exercised on the victim, his/her physical and mental conditions and his/her psychological characteristics

¹² www.tm.gov.lv/en/news/the-state-compensation-to-victims-is-to-be-increased

Single/monthly payment

Payment mostly occurs in a single payment (**Netherlands, Italy, Greece and Latvia**) except for **Spain**, where a victim can apply several times, up to the maximum of €2.689 (see section above about losses/expenses). In practice, it often turns out to be a one-off payment. In **Italy**, in the event that there is insufficient financing available in the relevant year, then those entitled to compensation can access the fund for a proportion in that year, and in subsequent years for the remainder, which is distributed without any additional charges, interest or revaluations.

Victims' own responsibility

In all five countries, behaviour of the victim that has contributed to the crime, if such behaviour has occurred, is taken into account. The claim will be rejected or reduced. In addition to being considered partly responsible for the occurrence of the crime, two countries also take other factors into account. In **Italy**, it is taken into account whether the victim has been convicted of a violent crime or is subject to criminal proceedings regarding a violent crime. In **Greece**, the claim is rejected if the victim failed to cooperate with the authorities (e.g. to testify).

Victims' financial situation

In the **Netherlands, Italy, Greece and Latvia**, the victims' financial situation is not relevant to the amount received. In **Spain**, in case of violent crimes, the victim's income is taken into account, but in case of sexual violence, the victim's income is *not* taken into account.

Advance payment

Advance payment is possible in the **Netherlands** and **Spain**, but not in **Italy, Greece and Latvia**. In the **Netherlands**, provisional payment is possible in case the victim has insufficient funds to undergo treatment for the injury. A difficult financial situation does not constitute sufficient grounds. In **Spain**, advance payment (called interim aid, meaning aid before the final court decision is received) is possible in case of a precarious financial situation, that is, only if the victim's income is not more than the minimum wage. €900 of treatment costs is payable in advance.

Evidence

In the **Netherlands** and **Latvia**, victims only need to include a court decision or police report if one is available. If not available, victims should provide other objective evidence about the plausibility that the offence occurred. In **Spain, Greece and Italy**, one needs to include the court decision with the application. In **Spain**, the court decision needs to involve that the offender was convicted. Additionally, in order to claim therapeutic costs, mental health damages must be proven by a report from the judicial medical examiner. In **Greece and Italy** one needs a court decision, but this could also involve a decision that the offence was committed by an unknown person. In all countries one needs to send a proof of identity.

Number of applications

*In the **Netherlands**, the number of applications for state compensation in 2018 for sexual crimes was $n=1210$ (Annual Report Schadefonds Geweldsmisdrijven, 2018). In **Spain**, the total number of state compensation requests for sexual crimes in 2018 was $n=85$ (Soletto, 2019b). Related to the size of the population of both countries, the difference is about a factor 38 ($47,7 \text{ m}/17,8 \text{ m} \times 1210/85 = 38,15$)*

Award/rejection rate

*In the **Netherlands**, the overall percentage of applications who received compensation was 60%; that means that 40% of applications was rejected. NB: This percentage applies to all state compensation applications, not specifically related to sexual crime applications (Annual Report Schadefonds Geweldsmisdrijven, 2018). In **Spain**, 11 of the 85 victims (13%) received compensation, the others were rejected. The main reasons for denial was that no therapeutic costs were made (Soletto, 2019b).*

Administrative charges

The funds in the **Netherlands**, **Spain**, **Italy** and **Latvia** do not charge for applying for state compensation. **Greece** charges an administration fee of €100.

Institution

The five participating countries all have a state compensation fund in place. In the **Netherlands**, the fund is called the Dutch Violent Offences Compensation Fund. In **Spain** compensation is provided by the Directorate-General for Personnel and State Pension Costs. In **Italy** the fund is the Revolving Fund for the Support of Victims of Mafiastyle crime, Extortion, Usury and Intentional Violent Crimes. In **Greece**, the fund is called The Compensation Authority. **Latvia** has the Legal Aid Administration.

The state compensation funds in the participating countries fall under different ministries. The state compensation funds in the **Netherlands**, **Greece** and **Latvia** fall under the Ministry of Justice. The state compensation fund in **Spain** under the Ministry of Finance, and the **Italian** state compensation fund under the Ministry of the Interior.

It could make a difference which ministry is involved with the compensation. Being part of the Ministry of Justice, instead of for example the Ministry of Finance, would express that compensation is about justice, rather than about money.

Do victims need to present themselves in person?

In **Netherlands**, **Spain**, **Italy**, **Greece** and **Latvia**, applications can be made in writing and the victim does not need to present himself in person.

Time until decision

The maximum duration until decision between the participating countries ranged between 1 month in **Latvia** to 6 months in the **Netherlands, Greece and Spain**. In **Italy** no time frame has been specified other than that the decision has to be reached ‘without delay’.

Timeliness and satisfaction

In the Netherlands, 93% of applications reach a decision within the maximum timeframe (Annual report Schadefonds Geweldsmisdrijven, 2018). Victims’ satisfaction with the compensation was found to be related more to the timeliness of the decision, and information provided, rather than to the actual amount they received (Kunst, Koster, & Van Heugten, 2017; Mulder, 2013).

Can victims challenge the decision?

In **Netherlands, Spain, Greece and Latvia**, victims can challenge the decision. In **Italy**, no specific procedure is in place, but would be possible in accordance with the standard rules of administrative law.

The time limit for challenging the decision ranges between one month (**Spain, Latvia**), 6 weeks (the **Netherlands**) until four months (**Greece**) after the decision. In **Greece**, both victim and state are entitled to lodge an appeal before the Administrative Court of First Instance.

Legal aid or victim support available?

In the **Netherlands**, no state funded lawyer is available to apply for state compensation, but trained volunteers or professionals of Victim Support the Netherlands, a state funded NGO, can assist.¹³ In **Spain**, victims can request free legal aid if they have low income. Victims of gender-based violence, meaning victims battered or raped by their partner or ex partners, are entitled to receive free legal advice immediately before filing the complaint, and to free defense and representation by a lawyer and representative in all proceedings and administrative procedures resulting directly or indirectly from the violence suffered. Applicants can go to the relevant Crime Victim Support Offices. In **Italy**, there is no legal aid to support with applying to state compensation. However, victim support organizations do exist.¹⁴ In **Greece**, a state-funded lawyer is provided in civil (or commercial) cases if your

¹³ Victim Support the Netherlands is an NGO organization, state-funded, run by both paid employees and volunteers. In case of severe crimes, specialized case managers (paid employees) are put on a case. National coverage: 26 locations spread across the country. Their services include practical and emotional support (N=43.622), accompany at criminal trial (N=5.801), support in substantiating the damages (N=18.720), to inform and to advise (N=144.532), support in writing a victim impact statement (N=4.276), and referral to medical support (N=959).

¹⁴ Victim support organisations in Italy are private and state-founded organisations. There is national coverage: 18 organisations exist across the country. Bigger regions offer a major number of services. Run mainly by volunteers, but in case of severe crimes, specialized case managers (employees) are put on a case. Support for all sorts of victims (victims of crime, sexual crimes, property crimes, traffic accidents, organized crime).

residence or habitual residence is in another EU Member State. Persons who have their residence or habitual residence in Greece but seek legal aid for a trial or procedural step in another EU Member State are also eligible for the services of a lawyer pending receipt of an application for the provision of legal aid by the competent authority of the foreign Member State. A state funded lawyer regardless of income is provided for victims of human trafficking and gender-based violence such as domestic violence and victims of sexual crimes. **Latvia** reports that there no need for legal aid to apply for state compensation. The Legal Aid Administration provides the necessary assistance in the process of claiming State compensation.

b. Offender compensation

How and at which time during the trial can one file a compensation claim

In all countries except Greece, an adhesion procedure¹⁵ is available to victims of crime, allowing them to file a claim for compensation against the offender as part of the criminal trial. In **Greece** this option no longer exists since the adoption of the new Code of Criminal Procedure.¹⁶ Consequently, victims have to resort to civil proceedings. In the other four countries one needs to file a compensation claim before the beginning of the oral proceedings of the criminal trial. Only in **Italy**, the declaration can also be submitted at the hearing. The way in which one needs to file the claim varies between a written form (the **Netherlands**), both oral and written (**Spain** and **Latvia**), written and only by a lawyer (**Italy**). The Public Prosecutor will not claim compensation only in case the victim wants to start a civil procedure, which in practice does not occur.

In Spain, the law on the standing of victims of crime in practice provides that public prosecutors are obliged to request compensation for the victim from the defendant regardless of the victim's role in proceedings, unless the victim waives this right (La Strada International, 2018).

What compensation can be claimed

In **Netherlands, Italy, and Greece**, one can claim compensation for economic loss such as damaged goods, medical costs, travel costs, loss of income, legal costs, and non-pecuniary

¹⁵ Adhesion procedure, adhesive procedure or ancillary proceedings is a procedure through which a court can rule on compensation for the victim of a criminal offence. Rather than pursuing damages in a separate civil action, the victim files a civil claim against the offender as a part of a criminal trial. See the DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU, footnote 39, https://ec.europa.eu/info/sites/info/files/13_12_19_3763804_guidance_victims_rights_directive_eu_en.pdf.

¹⁶ <http://www.greeklawdigest.gr/topics/judicial-system/item/299-procedure-before-criminal-courts>.

harm such as pain and suffering. In **Latvia**, victims usually ask for compensation of medical treatment, legal costs, material damage and moral injury; compensation for loss of income is not common. **Italy** mentions technical advice to be compensated. Technical advice is necessary, especially when claiming physical damage, the to ascertain the presence of a causal link and to quantify the amount. Italy makes a distinction between patrimonial damage i.e. (future) loss of earnings, and non-patrimonial damage, being physical damage, moral damage and damage to relationships and existential life. In **Spain**, compensation includes economic compensation of physical injury, loss of income and pain and suffering. Legal costs can be included but is a separate art of the resolution, not a part of compensation. No limitations in the amount that can be claimed. In **Greece**, compensation for pain and suffering, moral damage or material (economic) damage, can only be sought via civil court action.

Compensation amount awarded

*Research in the **Netherlands** showed that until 2012, the maximum amount of compensation that was paid in criminal trials on sexual offenses was € 949.929 euro (Lunnemann, 2013). The highest paid cases are mostly cases of human trafficking and forced prostitution, because in those cases the loss of income is calculated as the minimum wage of €500 per day. Awarded compensation for pain and suffering ranged between €300 and €3.000. Sexual crime to children: €10.000, forced prostitution €17.500, violent rape with permanent physical injury €30.000 (Lunnemann, 2013). Research in **Spain** on 2763 criminal proceedings between 2012 and 2015 showed that the median amount that was awarded in sexual violence cases was 13.700 euro (Soletto, 2019). A study by Tamarit and others of 2345 resolutions of sexual violence against minors between 2011 and 214 showed that the mean amount that was awarded was 13.532 euro (Tamarit, Guardiola, Hernandez Hialgo, Padro-Solanet, 2014).*

Compensation amount paid

*Research in **Spain** shows that the amount awarded is far from the amount paid. Median amount awarded was 13.700 euro; median amount paid was 166 euro (1,2%). One third of the cases did not receive any compensation, 33% did get their compensation awarded, and 33 % got part of it paid (Soletto and Grane, 2018).*

Form needed?

The **Netherlands** has a specific compensation/damages form that victims can use to substantiate their damages. **Spain, Italy, Greece** and **Latvia** do not have a form. **Italy** and **Greece** indicate that the application should include specific kind of information (administrative details mainly).

Standard form increases likelihood of award

Research in the Netherlands on awarded financial compensation in the criminal court for crime offenses showed that using a standard form increases the likelihood of compensation getting awarded (Kool et al., 2016)

Evidence needed

In all five countries, one needs to specify economic losses with receipts, and income support by providing evidence of income. **Italy** also mentions medical certificates and witnesses to be provided. In **Latvia**, economic damages should be supported by evidence, but for pain and suffering, only the amount needs to be indicated.

Court fee

Criminal courts in the **Netherlands, Spain, Italy** and **Latvia** do not charge a fee. In **Greece** a civil action is needed to claim compensation. The civil court fee is proportionate to the amount of compensation claim. It is 8 ‰ = 0.8% (eight per thousand) of the compensation claim. Plus to this amount (compensation claim X 0,8%) there are surcharges approximately 32% (i.e. compensation claim X 0,8% X 32%). Also, there is lawyer fee.

Legal aid

In all five countries, legal aid is available for victims with low incomes. Additionally, in all five countries, specific arrangements are in place for victims of sexual crimes, regardless of income. In the **Netherlands**, victims of severe crimes and sexual crimes have access to state-funded victim lawyers up to 11 hours. In **Spain**, legal aid is usually only available for low incomes, however, an exception is made for gender violence¹⁷ and trafficking of human beings, allowing these exceptions to access state funded victim lawyers regardless of income. The legal aid includes lawyer assistance for the case until two years after the resolution. In **Italy**, state funded legal aid is in place for victims of sexual violence, abuse and stalking, regardless of income. The adhesion procedure (filing a compensation claim in a criminal procedure) can only be used with a lawyer, legal representation is obligatory. **Greece** lists a number of crimes for which state funded legal aid is available, that is, victims of trafficking in slaves, human trafficking, sex tourism, abduction of a minor, corruption of a minor, child pornography, indecent acts with minor for payment, minor victims of rape, sexual abuse, indecent acts, and incest. Domestic violence cases, including sexual crimes, also receive state funded legal aid. **Latvia** provides free legal aid 2 state programs that offer social rehabilitation including legal assistance for victims: 1) adult victims of violence can receive up to 20 consultations – legal, psychological based on individual need. 2) for victims of trafficking – where social rehabilitation program includes also legal assistance. The victim can receive support 6 months, including legal support – consultations, preparation of documents, when

¹⁷ Gender-based violence is when a victim is a current or former spouse or child of the offender, or a minor or limited ability person living together with the offender.

needed – support in litigation. If the criminal process is initiated then the person can have legal support up to 3 years. The victim chooses a service provider and based on this the chosen NGO can request money for legal consultations from the state. It does provide free legal aid to minors and poor or disadvantaged adults. The other countries also state that legal aid is available for low incomes.

Lawyer involvement and compensation amount

*In the **Netherlands**, lawyer involvement did not increase the chances of compensation being awarded (Kool et al., 2016). It has not been investigated whether the amounts are higher if a lawyer is involved, nor what happens in case of more complex claims such as future loss of income. In understanding this outcome one should keep in mind, however, that in the **Netherlands** assistance by trained volunteers of victim support is easily available and much used.*

*Empirical research in **Spain** shows that lawyer involvement increases the awarded amount of the compensation, but does not increase the received compensation amount (Soletto & Grane, 2018).*

*Other research in the **Netherlands** has suggested that, lawyers may be able to prevent victims of sexual crimes from secondary victimization, especially when they are involved early in the process, during the interrogation (Elbers, Meijer, Becx, Schijns, Akkermans, 2019).*

*In **Spain**, victims can be a **party** if they hire a lawyer. As a party they have full powers to claim for compensation, penalties to be imposed to the defendant and also to appeal the judgement.*

Reasons for dismissal or refusal of the claim

In all five countries, the main reason for dismissal of the claim is acquittal of the case/defendant. In the **Netherlands**, the judge can declare the claim inadmissible if the claim forms a disproportionate burden to the trial, i.e. if it is too complicated. In **Spain**, a claim is dismissed if the perpetration of the crime is not duly proven, or if it is concluded that a crime was committed but there are not sufficient reasons to accuse particular person(s) as perpetrators. In **Italy** a claim is also refused if parties already agreed on a penalty, or if the trial includes a minor. In **Greece** a claim is also refused if civil action has not been lawfully filed or claim is not founded by law.

Can one appeal against the court decision?

In the **Netherlands**, **Spain**, **Italy** and **Greece**, one can appeal in case of (partly) dismissal of the claim. In the **Netherlands**, the amount of compensation cannot be higher in the court of appeal than the amount that was claimed in lower court. In the **Netherlands**, a distinction is made between denial of the claim or inadmissibility of the claim. In case the claim is

considered inadmissible, the victim cannot appeal to the criminal court, but has the option to go to the civil court. In **Spain**, a requirement for appeal is that the victim has appeared in person at the proceedings. The victim can appeal as private prosecution, as an individual party. This can be done, for example, in if the Public Prosecutor has decided not to start the trial. In that case, the victim lawyer can try to proceed and start a trial, if the judge agrees that there is enough material to proceed. The final decision of the criminal proceedings may be appealed against in a short timeframe. In **Italy**, one can appeal in respect to the claim for damages. However, an appeal on the item of damages does not impact on the findings concerning the criminal liability of the defendant. This can lead to a conflict between a judgment at first instance that acquits the defendant and the judgment on appeal that orders the reparation of injury. In **Greece**, the compensation amount sought should exceed a certain amount (€100/250/500, depending on at which court the judgement is appealed against).

Enforcement of the judgement against the offender?

In all countries, except the **Netherlands**, the victim has to see for himself how to actually collect the compensation that was awarded by the court from the offender. In **Spain**, if the offender has been declared partially insolvent, the state will pay all or part of the aid awarded, for which the victim has to apply to state compensation. However, with a limitation that state compensation is capped to 2.689 euro and only compensates for therapeutic treatment. The state may pursue the offender if the offender does not pay. However, in practice, this does not happen. In **Italy**, **Greece** and **Latvia**, state compensation is also in place, which can (partly) pay for the compensation awarded, but additionally it is mentioned that the victim can enforce the judgement in accordance with the ordinary rules of civil procedure, e.g. by confiscating assets via a court ordered bailiff. In **Latvia**, victims with personal injury are exempt from the enforcement fees of court registered bailiffs.

The **Netherlands** has a special judgement enforcement procedure in place for all damages awarded by the criminal courts, to which an advance payment scheme is added. Both are carried out by the Central Judicial Collection Agency (CJIB; *Centraal Justitieel Incasso Bureau*), the administrative body that collects all court-ordered fines, state fines and penalties (e.g. traffic fines). When a criminal court orders an offender to pay damages to a victim, this is considered to be a special kind of criminal fine. Consequently, the CJIB will take care of the collection of the money from the offender, not for the benefit of the state as normally is the case with criminal fines, but to the benefit of the victim whose damage it is that the court has ordered to be compensated. Non-payment of compensation can result in (additional) detention. In addition to this, when the sum is not collected from the offender in full within 8 months after the verdict became irrevocable, the CJIB will make an advance payment of the awarded sum to the victims, and will try to take recourse on the offender. In the case of violent and sexual crimes, there is no maximum to the amount of the advance payment and the full award will be paid, for other crimes, the maximum is 5.000 euros.

Another instrument that allows enforcement of the judgement in the **Netherlands** is that, for certain crimes that meet specific criteria of severity, the police can place a preservation order on bank accounts and other assets of the suspect during the police investigation in order to guarantee payment of any compensation that may be awarded by the court later on.

Dutch Central Judicial Collection Agency recovers 70% from the offender

*Research in the **Netherlands** showed that the success of the Central Judicial Collection Agency in recovering the money from the offender is strongly dependant on the height of the amount. For sexual crimes, about 70% is recovered from the offender (Kuipers & Van Rij, 2018). Most damages (95%) is recovered in the lowest category (€ 0 - 1.100); in the highest category (€ 31.000 – € 850.000), 10% is being recovered within 6 years (Kuipers & Van Rij, 2018). Annually, the Central Judicial Collection Agency advances on average a total of € 8.9 million euro to all victims of crime (not specifically sexual crimes). Taken into account that 35% in total is not recovered, the annual costs for the taxpayer are about € 3.1 million (Kuipers & Van Rij, 2018) which is about € 0,17 per inhabitant (3.1 million / 17.9 million inhabitants in the Netherlands)*

Below it is calculated how much it would cost per country to have a government agency, such as the CJIB in the Netherlands, advancing the compensation awarded to the victims of all crimes and recovering the money from the offender in a similar way as is done in the Netherlands. This calculation is based on Gross Domestic Product (GDP), at purchasing power parity (PPP) per capita, i.e., the purchasing power parity (PPP) value of all final goods and services produced within a country in a given year, divided by the average (or mid-year) population for the same year, per country.¹⁸ Using GDP PPP is useful when comparing differences in living standards between nations as it takes into account the relative cost of living and the inflation rates of the countries. We have used the GDP PPP and the CJIB costs from the Netherlands as a starting point to calculate the potential costs of a CJIB advance payment scheme if it would be implemented in the other countries. According to the International Monetary Fund, the GDP (PPP) of the Netherlands is 56.838 and the costs of the CJIB is 3.1 million euro costs after 6 years (for all crimes). To calculate the potential costs per country of a CJIB for the other countries, we have looked up the GDP (PPP) for each country and calculated the costs by calculating 3.1 times GDP (PPP) of the country, divided by the GDP (PPP) of the Netherlands.

¹⁸ [https://en.wikipedia.org/wiki/List_of_countries_by_GDP_\(PPP\)_per_capita](https://en.wikipedia.org/wiki/List_of_countries_by_GDP_(PPP)_per_capita)

	GDP (PPP) per capita	Costs after 6 years (million euro)
Netherlands	56,383	3,1
Spain	40,139	2,2
Italy	39,637	2,2
Greece	29,123	1,6
Latvia	29,901	1,6

Discussion

State compensation

With respect to state compensation, there is immense diversity between the five countries in many aspects: in what constitutes a compensable crime, in the required level of involvement or collaboration with the prosecution, in the number of applicants, in compensation amounts, and in the apparent compensation paradigms behind the systems, ranging from the clear social security elements in **Spain**, to the symbolic all-in amounts in the **Netherlands**, and the principle of full compensation in **Greece**.

Three of the five countries (**Spain**, **Greece** and **Italy**) seem to consider state compensation as a last resort, to be accessed only after offender compensation has been unsuccessfully sought. The **Netherlands** and **Latvia**, however, allow victims to access state compensation regardless of criminal proceedings, and it is irrelevant whether any take place or not. Most countries allow victims also to claim state compensation when the offender is unknown or acquitted or not convicted.

It seems difficult to justify the existence of such a large variety between EU Member States in the interpretation of what constitutes ‘fair and appropriate compensation’ as required by Directive 2004/80/EU.

Offender compensation

The main issue with respect to offender compensation is that, in four out of five countries involved in this project, compensation that has been awarded in criminal court cannot be enforced against the offender, only via a civil law procedure. A civil law procedure is a long and costly procedure, at the risk of finding the offender unable to pay, which is not an option for (most) victims. The lack of enforcement combined with the problem that offenders are often insolvent, causes that a significant proportion of victims get less than or none of the compensation awarded, even though it has been awarded in court. For example, empirical data from **Spain** shows that on average of the 13.700 euro awarded only 166 euro was paid. In case of insolvent offenders, it is possible for victims to claim state compensation. However, state compensation in four out of five countries studied was capped to a limit.

This significant gap between money awarded and actual payment is in direct conflict with the EU directive stating that victims should have access to fair compensation. Only in the **Netherlands**, a system was in place that guarantees payment by the offender for victims of severe crimes and sexual crimes, as there is a Central Judicial Collection Agency in place, which advances the amount awarded to the victims and recovers 70% from the offenders.

In all five countries, legal aid for victims of sexual crimes is state-funded, regardless of income. Some countries specified specific groups within the category of sexual crimes who

get access to state-funded lawyers regardless of income, such as **Spain**, that has state-funded legal aid for victims of gender violence specifically, for which a relation between victim and offender is needed (spouse, ex-spouse, child from victim or from spouse of the victim).

Two more minor but relevant differences with respect to the access to compensation were that four out of five countries do not have a standard form to claim compensation, whereas it was found in the **Netherlands** that a standard form increases the likelihood of the compensation being awarded. Another difference is that only one of the five countries (**Greece**) did not have an adhesion procedure in place for compensation matters in criminal proceedings. Instead a victim has to claim compensation in the civil proceedings, where victim bears the burden of proof and pays court fees.

References

- Jiménez-Becerril Barrio, T., Mlinar, A. (2018) EU parliament report by the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality.
- Cusveller, J., & Kleemans, E. (2018). Fair compensation for victims of human trafficking? A case study of the Dutch injured party claim. *International Review of Victimology*, 24(3), 297-311.
- Daly, K., & Bouhours, B. (2010). Rape and attrition in the legal process: A comparative analysis of five countries. *Crime and justice*, 39(1), 565-650.
- Elbers, Meijer, Becx, Schijns, Akkermans (2019). *Slachtofferadvocatuur*.
- FRA European Union Agency for Fundamental Rights. (2014). *Violence against women: an EU-wide survey. Main results report*.
- Holder, R. L., & Daly, K. (2018). Recognition, reconnection, and renewal: The meaning of money to sexual assault survivors. *International Review of Victimology*, 24(1), 25-46.
- Kool, R. S., Backers, P., Emaus, J. M., Kristen, F. G. H., Pluimer, O., van Uhm, D., & van Gelder, E. (2016). *Civiel schadeverhaal via het strafproces: Een verkenning van de rechtspraktijk en regelgeving betreffende de voeging benadeelde partij*: Boom Juridische Uitgevers.
- Kuipers, J., & Van Rij, C. (2018). *Evaluatie voorschotregeling voor zeden- en geweldsmisdrijven en de daaraan gerelateerde inning m.b.t. schadevergoedingsmaatregelen*. Retrieved from
- Kunst, M., Koster, N., & Van Heugten, J. (2017). *m. Journal of interpersonal violence*, 32(19), 3027-3044.
- La Strada International (2018) *Legal Assessment: compensation practices, Justice at Last Working Paper*, Amsterdam, the Netherlands, p. 17
- Lunnemann, K. (2013). Hoe groot is de schade na seksueel geweld. In M. S. Groenhuijsen, T. Kooijmans, & J. Ouwerkerk (Eds.), *Roosachtig strafrecht*. Deventer: Kluwer.
- Milquet, J. (2019). *Strengthening victims' rights: from compensation to reparation*. Retrieved from <https://www.europeansources.info/record/strengthening-victims-rights-from-compensation-to-reparation/>
- Mulder, J. D. W. E. (2013). *Compensation: The victim's perspective*.
- Schrama, W., & Geurts, T. (2012). *Civiel schadeverhaal door slachtoffers van strafbare feiten*.

Soletto, H. & Grané, A. (2018) La eficacia de la reparación a la víctima en el proceso penal a través de las indemnizaciones: Un estudio de campo en la Comunidad de Madrid.

Soletto (2019a) La ineficacia del sistema español para reparar económicamente a las víctimas de violencia sexual. Presentation to the Ministry of Interior

Soletto, H. (2019b) La ineficacia del sistema español para reparar económicamente a las víctimas de violencia sexual, *Teoría y Derecho Revista de Pensamiento Jurídico*, 26 (2), 321-340.

Tamarit, J. M., Guardiola, M. J., Hernández Hidalgo, P., & Padró Solanet, A. (2014). La victimización sexual de menores de edad: un estudio de sentencias. *Revista Española De Investigación Criminológica*, 12, 1-39.

EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

Council conclusions on victims' rights, 2019/C 422/05 Official Journal of the European Union

Schadefonds Geweldsmisdrijven (2018) Annual Report www.schadefonds.nl/jaarverslagen

Appendix 1 - Table 1 State compensation

	Netherlands	Spain	Italy	Greece	Latvia
Type of crime & injury	All sexual crimes. For sexual crimes any kind of coercion is enough	All sexual offences even when these crimes are committed without violence. The Spanish Penal Code includes two main legal typologies: sexual aggression (which entails violence) and sexual abuse.	All sexual crimes, but covers only therapeutic treatment up to a limit of 4800 euro	Human trafficking, arranging travel for the purpose of participating in acts of sexual intercourse or other indecent acts involving a minor, sex tourism, rape of a minor, sexual abuse of children, child pornography, soliciting children for sexual purposes, pornographic representations of minors, procuring prostitution, trafficking for sexual exploitation and indecent acts involving a minor for payment	Rape (art.159), Sexual violence (art. 160), Acts of Sexual Nature with a Person who has not Attained the Age of Sixteen Years (art. 161), Leading to Depravity (art. 162), Violation of Provisions Restrictive of Prostitution (art. 163), Involvement of a Person in Prostitution and Use of Prostitution (art. 164), Living on the Avails of Prostitution (art 165), indecent or sexual assault, or a victim of human trafficking
Are relatives of survivors eligible?	Yes, in case of trauma due to witnessing violence against relative	No, only when victim died	No, only when victim died	No, only when victim died	No, only when victim died
Are non-EU nationals eligible?	Yes	Yes (if country of victim grants similar aid to Spaniards in its territory)	Yes (if non-EU-national victim resides in an EU Member State)	Yes	Yes



	Netherlands	Spain	Italy	Greece	Latvia
Eligibility if crime committed in other country?	No Crime has to be committed in the Netherlands	No Crime has to be committed in Spain	No Crime has to be committed in Italy	No, compensation authority will assist	Yes entitled to claim compensation from the EU Member State in which the criminal offence was committed directly or through the Legal Aid Administration
Police report required?	No	Yes	No	Yes Report should be within five days after crime or five days after major reasons, which have prevented the victim from reporting, cease to apply. The court may be flexible in the time limit only in case the delay in reporting didn't block the identification of the offender	Yes
Await outcome criminal process?	No Criminal process does not need to be started or finalised	Yes All indemnification means have to be exhausted, meaning that a victim has to await a final verdict of the court	Yes	Yes	No

	Netherlands	Spain	Italy	Greece	Latvia
Seek compensation from offender first?	No	Yes Apply for state funding only in case that claiming damages from the offender was unsuccessful, that is, when offender is insolvent	Yes Apply for state compensation must be accompanied by documentation demonstrating that proceedings to recover damages from offender have failed. Documentation should demonstrate that the offender could not compensate the damage	Yes Apply for state compensation only in case that offender does not have the resources or is not known or is not prosecuted or is incapable of condemnation	No Victims <u>are not obliged</u> to claim compensation from the offender in order to claim state compensation.
Apply in case of offender is unknown or unconvicted?	Yes	Yes	Yes If offender is insolvent, unknown, or acquitted In case of an unknown offender, court order is needed that crime was committed by person unknown	Yes If offender is insolvent, unknown, or acquitted In case of an unknown offender, the case needs to be archived in record of unknown offenders	Yes The victim has the right to the State compensation also if a perpetrator of a criminal offence or a joint participant thereof has not been identified or he/she in accordance with the Criminal Law shall not be held criminally liable (for

	Netherlands	Spain	Italy	Greece	Latvia
					example, person has not reached the age from which criminal liability sets in)
Time limit for applying	10 years after the offence	year after the court decision	Within 60 days following the order finding that the offence was committed by a person unknown, following the last step in enforcement proceedings undertaken without success, or following the date that criminal conviction becomes final	1 year from the date on which the claim arose (= court decision)	3 year from the day the victim has been recognised as a victim, or after the victim has become aware of that the fact that he is entitled
Losses/expenses covered	The payment is a fixed, one-off amount intended to compensate for pain and suffering and for any medical expenses you incur for treatment of the injury sustained during the crime or for any loss of earnings due to resultant incapacity for work	<ul style="list-style-type: none"> • Material damage: only in case of serious injury (physical injury or harm to physical or mental health with permanent disablement or temporary incapacity > 6 months) • Psychological damage: if the crime has caused harm to the victims' 	<ul style="list-style-type: none"> • Material damage: medical treatment, care and assistance, loss of earnings, loss of opportunity, legal fees and court costs, stolen or damaged property • Psychological damage: pain and suffering 	<ul style="list-style-type: none"> • Material damage: medical costs, loss of earnings • Psychological damage: mental and psychological support, change of environment and address (meaning relocation in order not to be close to the offender or reunion with family, based on Istanbul convention) 	<ul style="list-style-type: none"> • Moral injury, • physical suffering • loss of property, determined based on the consequences



	Netherlands	Spain	Italy	Greece	Latvia
		mental health, the aid will be the costs of therapeutic treatment			
Single/monthly payment	Single payment	One or several payments	Single payment (unless there is not enough money left in the fund for that year, then multiple payments)	single payment	single payment
Impact of victims' own behavior / contribution to the crime	Application may be rejected	Application will be rejected or reduced	Application will be rejected if victim has been convicted of a violent crime or is subject to a criminal trial regarding a violent crime	Application will be rejected if victim failed to cooperate with authorities	Amount can be reduced by 50% if victim has showed intense mental agitation
Impact of victims' financial situation	No	No Compensation for incapacity is reduced in relation to financial income, but therapeutic costs are not corrected for financial income	No	No	No

	Netherlands	Spain	Italy	Greece	Latvia
Amounts (categories, min/max)	<ul style="list-style-type: none"> 6 categories: €1.000 - €35.000; Categories are all-in amounts, including a lump sum of material and moral damage in one Symbolic payment, no compensation 	<ul style="list-style-type: none"> Victims of sexual offences can only claim financial compensation for therapeutic treatment to compensate the harm caused to the mental health of victims. Payment is done providing receipts or other documents, until max 2.689€ is reached which is the equivalent of 5 times the IPREM 900€ are payable in advance, before the victim submits the required report to the State's Treasury Department about the treatment chosen 	<ul style="list-style-type: none"> Sexual assault: fixed €4800 (unless lesser gravity) In case of murder, the amount of compensation is fixed to €7.200 and to €8.200 for the children of the victim 	<ul style="list-style-type: none"> Calculated in accordance with Greek law, meaning compensation amount is not standardised and case specific, reflecting actual damages, decided by compensation authority No maximum 	<ul style="list-style-type: none"> Indecent or sexual assault other than above, or infected with HIV, Hep B or C: 50% of 5 * minimum monthly wage. Since 2019, the fixed amount is EUR 1,075 Rape or sexual violence, indecent or sexual assault: 70% of 5 * minimum monthly wage. Since 2019, the fixed amount is EUR 1,935 Rape or sexual violence, or morality or sexual inviolability of the minor victim has been violated, or the victim is a victim of trafficking in human beings with severe bodily injuries: 90%, fixed amount 1935 euro death: 100% 2150 euro
Advance payment	Yes	Yes	No	No	No



	Netherlands	Spain	Italy	Greece	Latvia
	Provisional payment in case you have insufficient funds to undergo treatment for the injury	Interim aid may be granted before the legal ruling ending criminal proceedings against which no further remedy is available is handed down, provided a precarious financial situation (i.e. < IPREM).			
Supporting documents / evidence needed	<ul style="list-style-type: none"> • Application form • Identity document • If available: police report, judgement • Medical information • In case of sexual offenses, the Fund automatically assumes mental harm • Victim statement only is not enough Objective information needed (e.g. report Child Protection Service) Plausibility of offense	<ul style="list-style-type: none"> • Circumstances violent crime, date, place • Identity document • Report to the authority • Declaration on compensation and aid received • Copy of legal ruling ending criminal proceedings against which no further remedy is available • Information about the fact, complaint, other compensations received and the judicial decision must be provided (Law 35/95). 	<ul style="list-style-type: none"> • Court judgement convicting or order finding offence was committed by unknown person • Documentation that damages claimed against offender have been without success • Medical certificate of health costs • A copy of the judgment of conviction for one of the offences or a final decision concluding the trial because the 	<ul style="list-style-type: none"> • Identity card • Residence permit • Proof of medical expenses • Yearly income • Report offence • Court judgement <ul style="list-style-type: none"> • Insurance payments 	<ul style="list-style-type: none"> • If final judgement has not been reached, than add reference of proceedings, with time and place offence, guilt, initiation proceedings, information of the victim, representative, injury, expert findings, • If proceedings have ended, add final ruling

	Netherlands	Spain	Italy	Greece	Latvia
	<ul style="list-style-type: none"> An offender does not have to be convicted. However, the court motivation is important in the Fund's decision <p>Severity of injury</p> <ul style="list-style-type: none"> Medical information is helpful to determine the severity of the injury. Medical service providers need to be registered professionals. For rape or sexual assault, it is assumed that people have psychological injury and no proof is needed. The Fund can ask a medical assessor to assess the injury. 	<ul style="list-style-type: none"> The State's Treasury Department might also gather further information in order to decide about the compensation. 	<p>perpetrator of the crime is still unknown;</p> <ul style="list-style-type: none"> documents certifying that an action has already unsuccessfully been brought against the perpetrator of the crime to claim damages; statement replacing an affidavit of the consolidated text; medical records showing the costs incurred for treatment or a certificate of death of the victim of crime. 		



	Netherlands	Spain	Italy	Greece	Latvia
Administrative charges?	No	No	No	100 euro	No
Institution / which ministry	Dutch Violent Offences Compensation Fund Ministry of Justice	Directorate-General for Personnel and State Pension Costs Ministry of Finance State's Treasury Department	Fondo vittime di reati violenti intenzionali Ministry of the Interior	The Compensation Authority Ministry of Justice	The Legal Aid Administration Ministry of Justice
Victim needs to be present?	No	No	No	No Victim may be interviewed, either by relevant authority in member state of residence or by Greek Compensation Authority	No
How long until decision	Within 26 weeks (6 months)	<ul style="list-style-type: none"> For disabling injuries, worsening of injuries, or death: <u>6 months</u>; For temporary incapacity: <u>4 months</u>; For therapeutic treatment following sexual offences and for 	decision 'without delay'	<ul style="list-style-type: none"> Examine within 3 months Final decision within 3 months after examining 	Within one month after the decision is notified to the victim

	Netherlands	Spain	Italy	Greece	Latvia
		funeral costs: <u>2 months</u> .			
Can victims challenge the decision	<p>Yes</p> <ul style="list-style-type: none"> • Within <u>6 weeks</u> • With the Violent Offences Compensation Fund Committee 	<p>Yes</p> <ul style="list-style-type: none"> • within <u>one month</u> following notification. • First with the National Commission for Aid and Assistance for the Victims of Violent Crimes and Crimes against Sexual Liberty, later with the Ministry of Finance 	<ul style="list-style-type: none"> • There are no specific mechanisms in place • In accordance with the standard rules applying to domestic administrative measures taken by the same authority 	<p>Yes</p> <ul style="list-style-type: none"> • Within <u>four months</u>. • Both victim and the Greek State are entitled to lodge an appeal • With the Administrative Court of First Instance (Dioikitikó Protodikeio). 	<p>Yes</p> <ul style="list-style-type: none"> • Within <u>one month</u> from its entry into force • With the Legal Aid Administration which will be forwarded to the Ministry of Justice.
Legal aid / Victim support?	<ul style="list-style-type: none"> • Helpline 070-4142000 • No subsidised legal aid is available • Victim Support the Netherlands 	<p>Applicants can go to the relevant Crime Victim Support Offices</p>	<ul style="list-style-type: none"> • No helpline • No legal aid • No victim support • Rete Dafne and Anti-violence Centres offer legal assistance. Also the Association 'Avvocati per niente'. • The Ministry also provides online guideline with help how to lodge 	<ul style="list-style-type: none"> • For cross-border disputes, state-funded lawyer is provided in civil (or commercial) cases if your residence or habitual residence is in another EU Member State. • Legal aid may also take the form of the appointment of a lawyer to provide legal advice with a view to settling the dispute before it is brought to court. 	<ul style="list-style-type: none"> • No need for legal aid to apply for State compensation • The Legal Aid Administration provides the necessary assistance for the process of claiming State compensation • Toll-free helpline 116006 "Helpline for victims of crime" every day from 07:00 to 22:00 providing emotional and



	Netherlands	Spain	Italy	Greece	Latvia
			a state application	<ul style="list-style-type: none"> • Persons who have their residence or habitual residence in Greece but seek legal aid for a trial or procedural step in another EU Member State are also eligible for the services of a lawyer pending receipt of an application for the provision of legal aid by the competent authority of the foreign Member State. • State funded lawyer <i>regardless of income</i> is provided for victims of human trafficking and gender based violence such as domestic violence and victims of sexual crimes 	psychological support to victims of criminal offences

Appendix 2 - Table 2 Offender compensation

	Netherlands	Spain	Italy	Greece	Latvia
How / At which point	<p>Before beginning of oral trial</p> <p>Written application Using a form</p>	<p>Before beginning of oral trial</p> <p>In person or in writing.</p> <p>Prosecutor always asks for compensation</p>	<ul style="list-style-type: none"> filed with the registry of the relevant court or submitted at the hearing civil party must have capacity to sue, so must have a lawyer (until completion of preliminary steps) 	<p>At the pre-trial stage, or in court as long as the court has not begun to hear the evidence</p> <ul style="list-style-type: none"> Pain and suffering: oral statement is sufficient Material damage: written statement 5 days before hearing 	<p>Before beginning of oral trial</p> <p>Written or oral</p>
What can be claimed	<ul style="list-style-type: none"> No limit to amount Damaged goods, medical costs, travel costs, loss of income, legal costs, pain and suffering 	<p>Material damage (physical injury, loss of income) and psychological damage (pain and suffering).</p> <ul style="list-style-type: none"> Physical damages: valued according the tables included in law 35/95. Patrimonial damages: valued according the loss suffered. Moral damages: decided by case law criteria. 	<p>Material and non-material, medical costs, legal costs, technical advice</p>	<ul style="list-style-type: none"> Material damage: <ul style="list-style-type: none"> Lodge 5 days before hearing Give a breakdown into individual items Pain and suffering: for 44 euro (!) no written procedure needed. For the remainder, a civil court action is needed 	<ul style="list-style-type: none"> Material damage (medical treatment costs, legal costs, damaged goods): evidence needed Pain and suffering: indicate amount

	Netherlands	Spain	Italy	Greece	Latvia
		<ul style="list-style-type: none"> Not specified whether loss of income is compensable 			
Form needed?	Yes	No	No But the declaration needs to contain the following: a) particulars of the civil party and their legal representative; b) particulars of the defendant against whom the civil action is being brought, c) the full name of the lawyer representing the civil party and details of their authorisation to act; d) a statement of grounds for the claim; e) the lawyer's signature	No The declaration must comprise a summary of the case, the reasons why the victim is entitled to join the proceedings, and the appointment of a representative ad litem at the place where the court sits	No
Evidence needed (besides national identity document)	<ul style="list-style-type: none"> Victim has to submit a form in which the damages are specified and substantiated 	<ul style="list-style-type: none"> relevant invoices or quotations supporting your claim If you have applied for legal aid, you will be required to provide 	<ul style="list-style-type: none"> The civil party may play a part in the evidentiary process, especially with regard to evidence of the type of injury suffered, the 	<ul style="list-style-type: none"> Medical certificates statements Witnesses Any other evidence 	<ul style="list-style-type: none"> Material damages: evidence needed Pain and suffering: indicate amount

	Netherlands	Spain	Italy	Greece	Latvia
	<ul style="list-style-type: none"> Receipts of economic costs and expert calculations of 	evidence of your income and assets.	<p>magnitude of the injury, etc. In civil proceedings, on the other hand, it is the victim who generally bears the burden of proof when it comes to providing evidence (e.g. medical certificates) showing the magnitude of the injury suffered, though the burden of proof may be discharged by showing that there is a legal presumption in the victim's favour.</p> <ul style="list-style-type: none"> Victim has to submit a form in which the damages are specified and substantiated The criminal judgment has become final, recognizing the offender guilty Judge sentences to pay legal charges and civil liability 		
Court fee	No	No	No	Yes	No

	Netherlands	Spain	Italy	Greece	Latvia
				The civil court fee is proportionate to the amount of compensation claim. It is 8 ‰ = 0.8% (eight per thousand) of compensation claim. Plus to this amount (compensation claim X 0,8%) there are surcharges approximately 32% (i.e. compensation claim X 0,8% X 32%). Also, there is lawyer fee.	
Free (state-funded) legal aid for victims of sexual violence	<p>Yes</p> <ul style="list-style-type: none"> State-funded legal aid is available for victims with low incomes AND a special arrangement is in place for victims of severe crimes and sexual offenses: they have access to state-funded victim lawyers, regardless of income. 	<p>Partly</p> <ul style="list-style-type: none"> State-funded legal aid is available for victims with low incomes, AND a special arrangement is in place for victims of gender based violence to have access to state funded legal aid regardless of income. Gender based violence is when a 	<p>Yes</p> <ul style="list-style-type: none"> State-funded legal aid is available for low incomes, AND a special arrangement is in place for victims of sexual violence, abuse and stalking, to have access to state funded victim lawyers regardless of income 	<p>Yes</p> <ul style="list-style-type: none"> State- funded legal aid is available for victims with low income AND state funded legal aid is also available for victims of trafficking in slaves, human trafficking, sex tourism, abduction 	<p>Partly</p> <ul style="list-style-type: none"> State- funded legal aid is available for minor victims and poor or disadvantaged adults. AND also 2 state programmes that offer social rehabilitation including legal

	Netherlands	Spain	Italy	Greece	Latvia
	<ul style="list-style-type: none"> About 11 hours of legal aid is funded. 	<p>victim is a current or former spouse or child of the offender, or a minor or limited ability person living together with the offender. Free legal advice immediately before filing complaint, and free lawyer in all proceedings</p> <ul style="list-style-type: none"> The legal aid provided is active until two years after the conviction, if the victim has not changed his economical need situation. 	<ul style="list-style-type: none"> A lawyer is obligatory 	<p>of a minor, corruption of a minor, child pornography, indecent acts with minor for payment, minor victims of rape, sexual abuse, indecent acts, incest etc regardless of income</p>	<p>assistance for victims:</p> <ol style="list-style-type: none"> 1) adult victims of violence can receive up to 20 consultations – legal, psychological based on individual need. 2) for victims of trafficking – where social rehabilitation program includes also legal assistance. The victim can receive support 6 months, including legal support – consultations, preparation of documents, when needed – support in litigation. If the criminal process is initiated then the person can have legal support up to 3 years.
Reasons for dismissal / refusal of claim	<ul style="list-style-type: none"> If it is not sufficiently proven that the offence The judge can declare the claim inadmissible if the claim forms a disproportionate burden 	<ul style="list-style-type: none"> If the perpetration of the crime is not duly proven, or if it is concluded that a crime was committed but there are not sufficient reasons to accuse a particular 	<ul style="list-style-type: none"> If the defendant is acquitted If parties already agreed on a penalty (richiesta di applicazione di pena) If the trial includes a minor 	<ul style="list-style-type: none"> If the criminal prosecution does not proceed If civil action has not been lawfully filed or 	<p>Acquittal of the case</p>

	Netherlands	Spain	Italy	Greece	Latvia
	to the trial, i.e. if it is too complicated.	<p>person(s) as perpetrators</p> <ul style="list-style-type: none"> If the act has not been committed, if the act did not constitute a crime or if those tried as perpetrators, accomplices or accessories appear to be exempt from criminal liability 		claim is not founded by law	
Appeal?	<p>Yes,</p> <ul style="list-style-type: none"> In case of (partly) denial of the claim, the victim can appeal. The amount of compensation cannot be altered in the court of appeal. In case the claim is considered inadmissible, the victim cannot appeal to the criminal court, but has the option to go to the civil court. 	<p>Yes</p> <ul style="list-style-type: none"> In case of dismissal of the case. Victim can appeal if they have participated as a formal part of the procedure (acusación particular - private prosecution). 	<p>Yes</p> <ul style="list-style-type: none"> In case the victim does not agree with the final decision about the compensation. Only appeal in respect to the claim for damages. The appeal to the civil damages does not impact on the findings concerning the criminal liability of the defendant There can be a conflict between a judgment at first instance that acquits the defendant and the judgment on 	<p>Yes</p> <ul style="list-style-type: none"> In case of acquittal In case the claim is dismissed 	<p>Yes</p> <ul style="list-style-type: none"> In case the court did not examine claim, the victim can start a civil law procedure

	Netherlands	Spain	Italy	Greece	Latvia
			appeal that considers the reparation of injury.		
Judgement enforcement	<p>Yes</p> <p>By the Central Judicial Collection Agency. The Central Judicial Collection Agency pays victims the awarded compensation within 8 months after verdict has become irrevocable. Severe violent and sexual crimes receive the full amount, less severe crimes receive maximum of €5.000. Then the Central Judicial Collection Agency will take recourse on the offender. Non-payment by the offender can result in detention</p>	<p>No</p> <p>The State can subrogate itself to the victim's rights against the party civilly liable for the crime, up to the full amount of the provisional or final aid you have been granted as victim or beneficiary (law 95). This is a very limited amount. In practice, this does not occur</p>	<p>No</p> <p>At the request of the civil party, and provided there are proper grounds, the court will declare its order to make restitution and compensate for injury to be provisionally enforceable. An order to make a provisional first payment (provvisionale) is always enforceable immediately. Once the judgment becomes enforceable, the party can enforce it in accordance with the ordinary rules of civil procedure. It is unclear to what extent the civil route is used because there is no empirical data</p>	<p>No</p> <p>Only enforced by the enforcement process for civil judgements, meaning that victims can ask a bailiff to confiscate the offender's salary or assets. However, in practice, this is not used</p>	<p>No/Yes?</p> <p>Free court registered bailiffs (= Debt collection agencies) initiate enforcement.</p>

Appendix 3 – Original data sheets EU portal



State compensation
- All.pdf



Offender
compensation - all.pdf

Appendix 4 – Fact sheet

<p>Background</p> <ul style="list-style-type: none"> • In total, 11% of women have experienced some form of sexual violence since they were 15 years old. 5% of women have been raped since the age of 15 • Victims of sexual crimes are considered to have a difficult status in the criminal process because of the nature of crime, associated with shame and stigma • Victims of sexual crimes suffer from high attrition rates in criminal law. There are low reporting rates and even lower number of victims receiving limited amount of compensation 	
<p>Aim</p> <p>The main objective of FAIRCOM is to establish and promote an efficient and effective model for fair and appropriate compensation to victims of sexual crimes in the EU</p>	
<p>Method</p> <ul style="list-style-type: none"> • Participating countries are Spain, the Netherlands, Italy, Greece, and Latvia • Data about the compensation schemes in the participating countries was collected by using the descriptions of the compensation schemes on the European justice portal • Similarities and differences between i) state compensation and ii) offender compensation between the five participating countries are analysed 	
<p>Findings</p>	
<p style="text-align: center;"><u>State compensation</u></p> <ul style="list-style-type: none"> • There is immense diversity in what constitutes a compensable crime, level of involvement or collaboration with the prosecution, number of applicants and compensation amounts • There is also a difference in the apparent compensation paradigms behind the systems, ranging from the clear social security elements in Spain, to the symbolic all-in amounts in the Netherlands, and the principle of full compensation in Greece • Three of the five countries seem to consider state compensation as a last resort, to be accessed only after offender compensation has been unsuccessfully sought. The Netherlands and Latvia, however, allow victims to access state compensation regardless of criminal proceedings. 	<p style="text-align: center;"><u>Offender compensation</u></p> <ul style="list-style-type: none"> • Compensation that has been awarded in criminal court often cannot be enforced against the offender, only via a civil law procedure. A civil law procedure is a long and costly procedure, at the risk of finding the offender unable to pay, which is not an option for (most) victims. • Four out of five countries do not have a standard form to claim compensation • In all five countries, legal aid for victims of sexual crimes is state-funded, regardless of income. • Not all countries have an adhesion procedure in place for compensation matters in criminal proceedings. Instead a victim has to claim compensation in the civil proceedings, where victim bears the burden of proof and pays court fees.

