



The Place of Victims in "Exceptional" Criminal Proceedings: Compensation

Pierre-Louie Sutton,

PhD student in private law and criminal sciences at the Centre for Criminal Law and Criminology (*Centre de Droit Pénal and de Criminologie*) of University Paris Nanterre, former legal assistant at the personal injury compensation division/judge responsible for the compensation of victims of terrorism at the Tribunal Judiciaire of Paris.

In recent decades, victims have gained greater recognition within legal systems in European countries, with more account being taken of the rights. The Directive establishing minimum standards on the rights, support and protection of victims of crime published in the Official Journal of the European Union on 14 November 2012 gives victims of crime in the EU a specific status along with various rights related to access to information, support services and participation in criminal proceedings, including a right to compensation. However, in such "exceptional" criminal proceedings involving a substantial number of victims, respect for victims' rights can come under strain due to their large numbers and their nationalities, the multiple parties involved and the complexity of the cases to be examined.

The aim of this practical information sheet on the compensation of victims in criminal proceedings classified as "exceptional" is to propose good practices that can be applied to ensure the greatest possible respect for victims' rights in the crucial compensation stage.

Challenges

- To determine the steps prior to the compensation of the victims in "exceptional" criminal proceedings.
- **To establish a standard framework for the compensation of victims in "exceptional" criminal proceedings in the Member States of the European Union.**

1. The steps prior to the compensation of the victims in "exceptional" criminal proceedings.

Terrorist attacks, industrial and health disasters and mass accidents all involve numerous issues when it comes to taking account of the needs of the victims. This is explained by the large number of victims (the dead and injured and their families) that have to be identified and the need for coordination between different departments and authorities in order to guarantee consistency in the measures taken. These difficulties affect factors on the periphery of the issue of compensation, such as the efficient management of the scene of the accident or terrorist attack, the need to provide for victims' urgent material needs and to return their personal belongings to them or their families. These are all practical challenges that have to be met. In addition to these tasks which are peripheral to the compensation issue or not a direct part of the judicial process (A), there is also the task of identifying the liable parties for the needs of the judicial proceedings (B).

A. Outside of judicial proceedings

Challenges

- To guarantee effective crisis management.
- To identify all the victims (the dead and injured, those who suffered material loss or damage), both nationals and foreigners.
- To deal with the victims' most urgent material needs.
- To recover victims' personal belongings.

Good practices identified

Concerning crisis management

1. As a preliminary point, the participants pointed out **the need to preserve the scene of the accident or the act of terrorism** not only to preserve any evidence useful to the investigation, but also so that property can be returned to surviving victims and the families of the deceased. For this reason, it is important to clearly identify property placed under seal in order to facilitate its return when the investigation has been completed. Certain participants suggested that such property could only be returned after a final decision in the case.
2. To **determine the circumstances of the accident or act of terrorism precisely**, the participants considered that it is just as important to seek the input of the local police service as it is to check identities on the scene: close neighbours of the scene, eye witnesses of the accident or terrorist attack, everyone at the scene who has intervened in any way or capacity whatsoever. It will also be necessary to contact any witnesses who have filmed the scene in order to compare that evidence with any witness statements taken concerning the circumstances of the accident or terrorist attack and to establish the exact time of the accident or attack.
3. Finally, the participants put forward the idea of **setting up an international or European mutual assistance system** for the needs of the investigation and in order to guarantee both better protection for the victims on the site and better organisation of the seizing and returning of personal effects to victims or families, as the case may be. The presence of interpreters and

translators, given the potentially international nature of the incident, is imperative to ensure good coordination between the various active authorities and departments involved.

Concerning the identification of the victims of the accident or terrorist attack

4. With regard to **fatal casualties**, the participants suggested taking ante-mortem and post-mortem DNA samples from victims. **For all casualties**, the participants recommended using ID bracelets that are water, heat, abrasion resistant etc. to facilitate the process of identifying victims. This process could rely on passenger (domestic and foreign passengers) and crew lists when public transport (plane, car, train) is involved or lists of people present at events in venues receiving the public.
5. At a time when victims' families expect to be informed quickly and reliably, and in a context in which the media and social media constitute parallel sources of sometimes incorrect information, managing the provision of information to families and its content are aspects that are of the utmost importance. That is why, once the victims have been identified, **official announcements** must be made, potentially **by a specially appointed spokesperson**, in order to provide reliable information on the identity of the victims found whilst also **providing prompt information of the progress being made in the ongoing operations**. The participants suggested several communication channels: the traditional ones such as the press and television, but also more modern channels like social media for more effective dissemination of the information. However, it will be necessary to pay particular attention to maintaining the dignity of the casualties given the sensitive nature of the images likely to be posted, in particular by non-official sources. Concerning this issue, the participants proposed that the organisations and contact persons be identified which are competent to delete undesirable content posted on social media. **The creation of "reflex sheets"**, setting out the actions to take and how to behave in a crisis and containing with all the contact details for the social media, is a measure that was supported by the participants as being able to facilitate the reporting and subsequent deletion of contentious material. To prevent such content being disseminated, it will be necessary to communicate more widely on the fact that it is illegal. Finally, to ensure effective communication and reach as many people as possible, this information must be translated into the languages of the victims and their families.

(a) Modern official communication: the Dutch example

With almost 200 Dutch victims out of the 298 people killed, the MH17 plane crash was the biggest criminal investigation ever conducted in the Netherlands. Substantial resources were put into identifying the dead and informing families, and this was reflected in the efforts made on communication.

Thus, a spokesperson attached to the Dutch prosecution service was appointed to communicate officially on the identity of the victims, the progress of the experts' work and the return of personal effects.

This official information was communicated in several languages on social media and a dedicated website was set up which contained all the information concerning the accident and included a digitised catalogue containing photographs of all the objects seized.

Concerning material support for victims

6. The material support provided to victims takes several forms. The participants particularly insisted on the need to provide victims and victims' families with **emergency financial aid** (means of payment, a telephone) and ensure they have **accommodation**. Organising such material support therefore requires the **mobilisation of all the local authorities** (local services, public bodies) liable to provide practical material resources. It is also necessary to **assess hospital capacity** to ensure they can cope with injured casualties; to ensure there are **enough cold storage spaces at the mortuary**, for example, for bodies awaiting repatriation; and to ensure there is **enough accommodation available** for the victims and families. As regards child victims, given their extreme vulnerability, the participants suggested that other actors such as paediatricians and social workers should be involved so as to provide psychological counselling, but also to ensure that the material support provided, accommodation in particular, is appropriate. Another proposal was that **facilities be provided to host the parents of child victims**. Particular attention must also be paid to their personal belongings, especially in so-called transitional objects (comforters such as teddies), so that they can be returned to them immediately given the sentimental value they have for children. Finally, another issue that should be envisaged is the possible need to deal with pets present at the scene of the accident or terrorist attack.
7. In addition to the mobilisation of the public authorities, the participants also agreed that the need to **mobilise voluntary bodies and victim assistance services** should be recognised and suggested that a **crisis unit** be set up to effectively coordinate the material support provided to the victims by the various public and private bodies involved. The use of a **specialised communication agency** was also proposed, to set up a **protocol** for checking the correct conduct of the identification and victim assistance operations and well as the work of the experts.

B. Judicial proceedings

Challenges

- To ascertain the liability of institutions and private individuals.
- To check the involvement of insurance companies and third parties bearing civil liability.

8. Technical investigations conducted in accordance with a rigorous protocol will allow **the liability of any natural and/or legal persons** likely to be involved in the occurrence of the incident to be determined, thereby facilitating the subsequent compensation process.
9. Once the persons that are liable have been identified, the next step is to contact the insurance companies liable to cover the incident in question. Among other things, it was proposed that an **independent supervisory authority** be set up along the lines of the Romanian system, in order to guarantee the financial stability of the companies concerned given the potentially substantial amounts of compensation that may have to be paid out.

2. A European standard compensation framework for victims in "exceptional" cases

In order to harmonise victim compensation practices across different judicial systems in Europe in such exceptional proceedings, a European standard framework is needed to unify both the conditions (A) and the mechanisms for paying compensation (B).

A. Conditions of compensation

Challenges

- To identify the victims who are due compensation.
- To determine indemnifiable losses and damage.

Good practices identified

Concerning the identification of the dead and injured

10. The participants concluded that there should be **absolute equality of treatment between national, European or foreign victims** of a mass casualty accident or terrorist-type attack. Likewise, the participants also agreed that **migrants/or illegal or undocumented persons** were entitled right to full compensation regardless of their immigration status. To ensure that they are actually able to claim the compensation to which they are entitled, they must be put in contact with dedicated services.
11. However, differences arise when it comes to deciding who is **recognised as an indirect victim**. Indeed, it is necessary to establish a **standard definition of the notion of "family"** [*proches* in French, which has a potentially looser meaning: "those close to..."] as some countries use a wider definition of "family" to include more distant relatives, while others content themselves with a very restrictive definition, excluding certain forms of civil unions or partnerships from the entitlement to compensation. Finally, the participants discussed the possibility of compensating professional or volunteer first responders, such as members of the emergency services, neighbours and witnesses who came to victims' assistance, given the possibility of psychological trauma that may result for them. Without granting them the status of victim, the participants nevertheless acknowledged that these were persons exposed to the impacts of the incident and that as such they should at least benefit from proper psychological care.

Concerning the determination of the indemnifiable losses and damage

12. The participants suggested a harmonisation of the types of harm specific to mass casualty incidents, in particular concerning compensation for the pain and suffering of families due to waiting and worrying - namely the anxiety felt by a direct victim's family members when they learn that the person close to them is potentially exposed to a risk of grave injury – and pre-death terror - which compensates for the suffering of the victim between the occurrence of the incident and their death as a result of being aware of their imminent death. It was also proposed that a specific type of harm be created linked to the media coverage generated by this type of trial, and even specifically damage done to victims' image and dignity, for example when images of the immediate scene are posted on the internet, which would involve either compensating the victim

themselves for the harm done to them personally or even the cost of using an online reputation cleaning service to remove such images.

13. For **future material damage and losses** (future healthcare costs and expenses to adapt a vehicle and home to a disability) it must be possible to pay compensation in the form of an annuity or a lump sum. This is why the expert assessment of the damage incurred must be precise, detailed and evidence-based so as to anticipate this type of compensation as well as possible. A mechanism must be set up for awarding supplementary compensation if a victim's condition worsens.
14. Finally, it was proposed that a **Europe-wide personal injury assessment scale** be set up in order to harmonise judicial practices and prevent disparities between victims who have suffered similar damage.

B. Mechanisms of the compensation system

Challenges

- To identify a mechanism for out-of-court settlements.
- To reflect on the purpose and method of assessing loss and damage.
- To determine how to communicate on compensation to victims.
- To simplify access to the services of a lawyer.
- To determine what role victim support associations have.
- To reflect on the protection of vulnerable victims.
- To reflect on the supervision of the liable legal person.
- To activate any public compensation funds covering the compensation of the losses and damage.
- Identification of property to be seized to compensate victims.

Good practices identified

15. In the case of **amicable compensation settlements**, the participants concluded that there is a need for **convention-based mechanism overseen by a supervisory or transparency committee**, possibly led by a judge whose independence would necessarily be guaranteed, and systematically **subject to approval** in order to prevent the risk of abuse.
16. The **way in which expert assessments are carried out** is important for this is how the extent of the harm suffered by the victims is evaluated. Thus, to ensure the proper conduct of expert assessments, the participants insisted on **the independence of the experts**, drawing on the example of Spain, where the national experts are civil servants, and suggested that an **ethics charter be adopted for the amicable procedure**.
17. To inform victims of their rights to compensation, it was proposed that they be provided with an **information sheet** listing the assistance and compensation provisions and that this be translated into several languages, i.e. those corresponding to the nationalities of the victims involved in the incident. To implement this, it will be necessary to **identify, in advance, the appropriate means for circulating such information**: traditional media and social media.

18. To guarantee the effectiveness of the right to compensation and avoid disparities in the treatment of different victims, the participants recognised that it is necessary to **facilitate access to a lawyer** and suggested **legal aid to allow free representation by a lawyer**, regardless of the victims' social and occupational circumstances, given the particular type of incidents concerned.
19. **Victim support associations** also have a decisive role to play in the victim compensation process. That is why the participants insisted that **their existence be fully recognised** in "exceptional" proceedings, whilst nevertheless remaining vigilant on their representativeness and positioning to prevent divisions and internal conflicts which would adversely affect the compensation process.
20. Special care must be taken regarding **child victims and disabled victims** due to their particular vulnerability. It will therefore be necessary to envisage referring them to a **guardianship judge**, or even the setting up of a **special court or body to deal with this category of victims**, whilst protecting them from their parents if a conflict of interest arises.
21. The **appointment of a judicial commissioner/administrator** for property and/or activities involved in the incident is essential to ensure compliance with the rules and prevent conflicts of interest or the destruction/alteration of evidence, and to seize the assets of liable legal persons in order to avoid fraudulent bankruptcies.
22. The activation of **public compensation funds covering the losses and damage** in the event that it proves impossible to claim damages from one or more liable parties needs to be thought through. Thus, for example, after the MH 17 plane accident, perpetrators with Russian nationality were found liable, but they never compensated the many Dutch victims. That is why the participants have proposed an **amicable replacement compensation mechanism** to take over when the liable parties are insolvent, but also a **specific litigation process. Alternative reparation mechanisms** – restorative justice, for example – can be offered to victims, to encourage sympathetic and attentive listening to victims.

(b) Public compensation funds: the French example

In 1986, the French parliament set up an amicable compensation mechanism, the Guarantee Fund for Victims of Terrorist Acts (*Fonds de Garantie des Victimes d'Actes de Terrorisme*, FGVT), which has since become the Guarantee Fund for Victims of Terrorism and Other Crimes (*Fonds de Garantie des victimes d'actes de Terrorisme et d'autres Infractions pénales*, FGTI). This fund is responsible for compensating the victims of acts of terrorism in particular, but also those of mass casualty accidents.

Until 2019, the victims of acts of terrorism were compensated either by the FGTI or by the perpetrator of the terrorist attack following their joining the criminal trial as civil parties, the court ruling at the time on both the criminal prosecution and the civil action, according to the principles of ordinary law.

Since the 2018-2022 Programming and Justice Reform Law of 23 March 2019, a specialised court has been set up, the Court responsible for the Compensation of the Victims of Terrorism (*Juridiction d'Indemnisation des Victimes d'Actes de terrorisme*, JIVAT), which has exclusive jurisdiction to hear all civil litigation relating to the reparation of the damage incurred by all the victims of acts of terrorism

committed in France, whatever the nationality of the victim, and French victims of acts of terrorism abroad. It is able to rule on compensation without waiting for the verdict in the criminal trial concerning the accident, and it keeps a digitised catalogue containing photographs of all the objects seized.

Useful resources:

- [**European Directive 2012/29**](#)



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