Fair compensation for victims of human trafficking? A case study of the Dutch injured party claim

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Abstract

Any person who has been a victim of human trafficking has a right to compensation. Compensation entails the reimbursement of material and immaterial damages a trafficked person has suffered. In spite of the internationally recognized right to compensation, the number of trafficked persons in Europe having actually received any reimbursement is very low. The present study identifies obstacles to compensation by analysing the Dutch injured party claim. It uses 190 case files covering the period 2013–2014. The empirical results show several issues. Only an estimated 4% of all registered victims claim compensation in the criminal court. A fifth of these claims are inadmissible. Admissible claims are on average awarded only half of the claimed amount. A major reason for this is how difficult it is to estimate damages accurately. This is, in many cases, related to a lack of proof, caused by for example lack of records, insufficient financial investigation, and incomplete testimonies, which result in only minimum amounts being awarded. Additionally, judges are often inclined to dismiss the claim or award a minimum, even in those cases where evidence is available. As a result, compensation is often not in line with damages that have actually been suffered.

Keywords

Human trafficking, victims, compensation, victimology

Trafficking in human beings is a globally relevant issue affecting nearly every country in the world. Regardless of country or means of exploitation, the main goal of human trafficking is the same: financial profit. Human trafficking is considered an important source of income for organized crime groups, grossing estimated annual revenues of €114 billion worldwide, and €36 billion...
in Europe (National Rapporteur on Trafficking in Human Beings, 2013; Savona and Riccardi, 2015). Large proportions of these amounts are earned at the expense of victims whose wages are withheld or taken from them. The total annual damages, including thus both financial and emotional damages, suffered by trafficked persons in the European Union is estimated at €30 billion (Levi et al., 2013).

Research into victims’ needs has shown that they often feel the need for financial compensation from the offender. Receiving compensation has been found to satisfy a need for justice, as well as to help victims on their road to recovery, and help prevent re-victimization (Geurts and Schrama, 2012; La Strada International, 2013; Rijken et al., 2013; Ruitenbeek-Bart and Schijns, 2014). Victims have also expressed a need to be acknowledged as such, and to be treated with respect during the judicial process (Ten Boom and Kuijpers, 2012).

According to various internationally acknowledged guidelines,1 victims of human trafficking have a right to be reimbursed for damage they have suffered. This right to compensation includes restitution of both material (i.e. objective damage to property and lost wages) and immaterial (i.e. subjective, physical, and psychological) damage. Victims wanting such compensation from perpetrators have little option at present in many countries but, where this is available, to ‘join’ the criminal proceedings.2 Previous research shows, however, that involvement in the criminal proceedings is often not only difficult for victims, but may also cause them to feel re-victimized. The perceived fairness – or unfairness – of how victims are treated and of the decisions taken is a matter relating to procedural justice (Barkworth and Murphy, 2016; Wemmers, 2013). While unfair or disrespectful treatment from authorities may cause a victim to experience negative emotions such as anxiety and shame, and victims treated unfairly may even be more likely to experience post-traumatic stress disorder symptoms (Wemmers, 2013), a victim whose experience of the criminal justice system is positive is more likely to feel empowered (Cattaneo and Goodman, 2010).

This article focuses on compensation: in other words, on the reimbursing of the costs of material and immaterial damages suffered by a trafficked person. Despite the internationally recognized right to compensation, the number of trafficked persons in Europe actually receiving any form of reimbursement is very low. The present study identifies obstacles to compensation by analysing 190 Dutch case files covering the period 2013–2014, specifically with regard to the injured party claim in Dutch legislation. The provisions for such claims are described below, followed by details of the research methods used in the study and the main findings.

**The injured party claim in Dutch legislation**

Victims in the Netherlands can choose to join the criminal proceedings against their perpetrator. If they choose to do so, they have the right to claim full or partial compensation for damages they have suffered.3 They can also produce a written or oral ‘victim impact statement’, in which they describe the emotional and financial impact that the crime has had on them.4 A compensation claim may be for either material or immaterial damages, or both. Such a claim is referred to as an ‘injured party claim’ and is a civil claim, embedded in the criminal procedure. This means that although the contents of the injured party claim are based in civil law, it is the criminal court that has to decide whether the claim is admissible and, therefore, eligible to be considered. Inadmissibility may be the result of a claim being considered too complex and thus extending beyond the criminal court’s expertise, while the assessment of a claim may also be considered too time-consuming for the criminal proceedings (Ruitenbeek-Bart and Schijns, 2014; Van Wingerden,
2008). An important condition for admissibility, therefore, is that the claim does not place a disproportionate burden on the criminal proceedings. A claim may also be partially rather than fully admissible. If a claim is admissible, whether partially or fully, the court will decide on the amount to be paid by the perpetrator. In doing so, it is at liberty to estimate the extent of the damage. The court may impose a compensation order, which is a criminal sanction and requires the offender to pay the amount awarded to the victim. Such an order may also be imposed ex officio. Even if a claim is ruled inadmissible in the criminal court, the victim can still claim damages in a civil court. However, a civil procedure in such circumstances is generally expensive and time-consuming, and there are no known cases of trafficking victims who have sought to be compensated through the Dutch civil courts (Fairwork, 2013).

Research into the injured party claim has shown that victims of human trafficking rarely claim compensation in Dutch criminal courts. Indeed, only 113 out of the 2,215 potential victims of human trafficking in 2010 and 2011 claimed such compensation (CoMensha, 2013; Fairwork, 2013; National Rapporteur on Trafficking in Human Beings, 2012); in other words, only 4% of registered victims. However, large numbers of human trafficking victims are not even registered (National Rapporteur on Trafficking in Human Beings, 2012). The actual share of victims who claim compensation is likely, therefore, to be even lower than 4%. Previous studies mention victims’ fear of their traffickers as a possible explanation for this low number claiming compensation. Other obstacles that prevent victims from claiming compensation include a lack of information and lack of free legal aid. Without a prosecution, a victim is also unable to submit an injured party claim (Fairwork, 2013; La Strada International, 2013; Thompson and Jernow, 2008).

Those victims who do claim compensation are rarely fully compensated. Indeed, only 8% of all claims in 2010 were awarded in full. This percentage increased slightly in 2011 to 16% of claims being awarded in full (Fairwork, 2013). Previous studies have not addressed the low percentage of injured party claims awarded in full, while factors influencing the outcome of a trafficking victim’s injured party claim also remain unexplored. Are victims’ claims unreasonable, or do other factors explain why victims rarely receive the amount they claim?

A related question arises when comparing studies estimating damages suffered by trafficking victims and the amounts such victims claimed. In cases that came before the courts in 2010 and involved claimants who were victims of sexual exploitation, the average amount claimed was €34,190 (National Rapporteur on Trafficking in Human Beings, 2012). A recent report based on police data estimated the average illegally obtained benefit per trafficking suspect in the Netherlands to be €410,000 (Savona and Riccardi, 2015), while the monthly income of a trafficker active in the sex industry in the Netherlands was estimated at €4,100 per prostitute (Bottenberg et al., 2012). Another report, focusing on damages suffered by victims of violent sexual exploitation in the UK, used victims of domestic abuse as a proxy. It found the total immaterial damages for one victim to be €307,062 (Dubourg and Prichard, 2008; Levi et al., 2013). This discrepancy prompts the second question discussed in this article: are trafficking victims who receive compensation being compensated fairly, that is, in proportion to the damage they have suffered? This is especially relevant in view of the negative outcomes that unfair treatment can have for victims.

This article presents the results of an analysis of recent Dutch case files in which an injured party claim was made by a victim of human trafficking. Its main focus is on determining the characteristics of injured party claims in the Netherlands, while it also discusses the implications of these characteristics for the fairness of the claims procedure.
Method

In order to conduct the analysis, a selection was made from judgments published on rechtspraak.nl. The criteria for selection were as follows:

- the judgment was issued between 1 January 2013 and 31 December 2014;
- the judgment was issued in a court of first instance;
- the defendant was indicted for human trafficking;
- the injured party claim was based on damage suffered as a consequence of human trafficking.

This resulted in a sample comprising 190 claims. For each claim, data were collected on the judgments on both the claim and the criminal charge, the levels of the claim and the award, the type of damage claimed, the reason for inadmissibility (if applicable) and the characteristics of the claimant (i.e. the sector of exploitation and the victim’s age, gender and nationality).

A sample from all the cases was taken in order to conduct an in-depth investigation of the characteristics that can be associated with the success or failure of an injured party claim. First, all ‘fully inadmissible’ \( n = 37 \) and ‘fully awarded’ cases \( n = 23 \) were selected. Next, a selection of 24 cases was made from the ‘partially inadmissible and partially awarded’ cases \( n = 116 \). As the partially inadmissible cases comprised the largest group of judgments, the issues most commonly encountered when making an injured party claim may be most evident in these cases. The sample of partially inadmissible cases was chosen on the basis of the amount of information available in the judgment. Some judgments specified only the amount awarded and provided little other information. The cases selected for the sample were, therefore, those providing the most information. Cases were also selected to include different types of exploitation and different types of victims, so that the possible influence of these factors could be examined. As a result, the sample was not representative of all the partially inadmissible cases. From this sample, information was collected on aspects such as the severity of the offence (generally reflecting the length of the exploitation and extent of violence used), the presence and type of evidence, and the grounds stated by the court in its judgment.

The injured party claims submitted in 2013 and 2014 are described below and then compared to claims in previous years. Several case characteristics and grounds given by courts for their judgments and that may influence the success of an injured party claim are then discussed. Based on the case file analysis, this article argues that victims of human trafficking who claim compensation are not proportionally compensated for the damage they suffer.

Injured party claims in 2013 and 2014

Between 2013 and 2014, a total of 190 claims was made on behalf of 114 victims. Tables 1 and 2 show the total numbers of claims and victims. As a victim exploited by several defendants may submit a claim in each individual court case, the number of claims is higher than the number of victims.

The sector in which the highest numbers of claimants were exploited was the sex industry, which accounted for 73% and 88% of all victims exploited in 2013 and 2014 respectively (Table 3). Sector of exploitation and gender are related as most of those exploited in the sex industry are women, while male victims of trafficking are usually found in other sectors (CoMensha, 2015). This distribution was also observed among the victims claiming compensation.
Each individual claim could result in one of four possible judgments: fully awarded; partially awarded and partially rejected; partially awarded and partially inadmissible; and fully inadmissible. The judgments on the claims are presented in Table 4, which shows that 19% of the claims were ruled fully inadmissible. This indicates that 81% of the victims submitting a claim were awarded at least some compensation, while no single claim was fully rejected.

A total of 37 claims were fully inadmissible. Acquittal in the criminal case was the leading cause of these claims being inadmissible, as shown in Table 5. Other causes included cases considered to place a ‘disproportionate burden on the criminal proceedings’, and where ‘damage [was] not caused directly by [the] offence’. If the acquittal cases are disregarded, 6 of the inadmissible claims involved labour exploitation, while 11 related to a sexual exploitation offence, and the exploitation underlying one claim was unknown. Half of the inadmissible claims (9 out of 18) were made by victims from Eastern European countries, and almost half (8 out of 18) were minors at the time of the exploitation.

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**Table 1. Number of claims.**

| Type of exploitation           | 2013 | 2014 | Total |
|-------------------------------|------|------|-------|
| Sexual exploitation claims    | 70   | 67%  | 78    | 91%  | 148  |
| Other exploitation claims     | 33   | 32%  | 5     | 6%   | 38   |
| Combined exploitation claims  | 0    | 0%   | 3     | 3%   | 3    |
| Number of claims              | 104  | 86   |       | 190  |

*Note: calculations based on verdicts from rechtspraak.nl; in one claim, the type of exploitation was not specified. This claim is not included in rows above, but was included in the total.*

**Table 2. Number of victims.**

| Type of exploitation           | 2013 | 2014 | Total |
|-------------------------------|------|------|-------|
| Sexual exploitation victims    | 45   | 73%  | 46    | 88%  | 91   |
| Other exploitation victims     | 16   | 27%  | 4     | 8%   | 21   |
| Combined exploitation victims  | 0    | 0%   | 2     | 4%   | 2    |
| Number of victims              | 62   | 0%   | 52    | 4%   | 114  |
| Number of alleged victims      | 1,437|      | 1,561 |      |

*Note: calculations based on verdicts from rechtspraak.nl; (CoMensha, 2014, 2015). In one claim, the type of exploitation was not specified. This claim is not included in rows above, but was included in the total.*

**Table 3. Gender distribution by type of exploitation.**

| Type of exploitation | Female n = 49 | Male n = 12 | Female n = 49 | Male n = 3 |
|----------------------|---------------|-------------|---------------|------------|
| Sexual exploitation  | 84%           | 33%         | 94%           | 0%         |
| Other exploitation   | 16%           | 67%         | 2%            | 100%       |
| Combined exploitation| 0%            | 0%          | 4%            | 0%         |

*Note: calculations based on verdicts from rechtspraak.nl*
Is there a lagged rise in claims?

The number of victims claiming compensation in 2013–2014 did not change substantively compared to previous years: 63, 50 and 3910 victims respectively claimed compensation in 2010, 2011 and 2012, while 62 and 52 victims claimed compensation in 2013 and 2014 respectively. However, the number of registered victims in the past few years did rise (Figure 1). So, too, did the number of traffickers prosecuted, as shown in Figure 2.

This rise in the number of registered victims could logically be expected to cause a rise in claims, with more victims becoming known and, consequently, more using the available aid and provisions to claim compensation. However, no increase was observed. This discrepancy could be attributable to a time lag. The numbers of victims registered each year cannot be directly compared to the numbers submitting a claim: a case against a trafficker may take a long time to prepare, and it may be a year or more before a victim is able to claim compensation in court. Consequently, a rise in claims should follow a rise in registrations, albeit not in the same but instead in subsequent years. In this study, the average length of exploitation was 19 months (\(n = 110\)), while the average time between the end of the offence and the date of the trial was 32 months (\(n = 55\)). This suggests that the time between a victim’s registration and his or her injured party claim may be close to five years. Given the data presented in Figure 1, it is possible that a lag between registration and trial exists, but it would be a lag that exceeds five years.

Future studies will have to evaluate whether there is indeed a delayed rise in claims, or whether other reasons explain why claims have not increased. However, the absence of an increase is not explained by a lack of prosecutions, given that Figure 2 shows a rise in the latter. A continuing absence of a rise in claims combined with an increase in prosecutions would suggest that lack of information and an unwillingness to submit a claim are important and persistent obstacles to compensation.

### Table 4. Verdicts on claims.

| Verdict                             | 2013 | 2014 | Total |
|-------------------------------------|------|------|-------|
| Fully inadmissible                  | 18   | 19   | 37    |
| Partly awarded and partly rejected  | 14   | 13%  | 0     | 0%    | 14    | 7%    |
| Partially awarded and partly inadmissible | 60   | 58%  | 56    | 65%   | 116   | 61%   |
| Fully awarded                       | 12   | 12%  | 11    | 13%   | 23    | 12%   |
| Total number claims                 | 104  | 86   | 190   |

Note: calculations based on verdicts from rechtspraak.nl

### Table 5. Causes of inadmissibility in fully inadmissible claims.

| Cause for inadmissibility            | 2013 | 2014 | All |
|--------------------------------------|------|------|-----|
| Acquittal                            | 8    | 47%  | 10  | 53%  | 18   | 50%  |
| Disproportionate burden              | 2    | 12%  | 7   | 37%  | 9    | 25%  |
| Insufficient causality               | 3    | 18%  | 2   | 11%  | 5    | 14%  |
| Forms not filled out                 | 4    | 24%  | 0   | 0%   | 4    | 11%  |
| Total fully inadmissible claims      | 17   | 19%  | 19  | 0%   | 36   |

Note: calculations based on verdicts from rechtspraak.nl; one victim had submitted four different claims (ECLI: NL: RBNNE:2013:3921, ECLI: NL: RBNNE:2013:3918, ECLI: NL: RBNNE:2013:3919, and ECLI: NL: RBNNE:2013:3920), but had not filled out the forms or signed them, which led to inadmissibility.
The average injured party claim submitted by a trafficked person in the cases examined was €68,657 ($147,119 standard deviation (SD) = €149,098, minimum = €740, maximum = €1,065,000). Most claims comprised a combination of material and immaterial damage, with material damage accounting for 64% of the combined claims ($n = 111, SD = 27\%$). Claims based on sexual exploitation were usually much higher; in both years, the average sexual exploitation claim exceeded €80,000, while the average in other exploitation cases was €25,682 in 2013 and €12,682 in 2014. Furthermore, the highest claim in a sexual exploitation case was for over €1,000,000, which was over seven times higher than the highest amount claimed – €145,719 – in other exploitation cases.

The amounts awarded varied between €167 and €515,000. In both years, the average amount awarded for all types of exploitation, and both types of damage, was €36,927 ($n = 189,$
The average amount awarded for sexual exploitation claims was €70,469 in 2013 and €39,204 in 2014, while the average amount awarded in other exploitation cases was €9,311 in 2013 and €2,343 in 2014. On average, 42% ($n = 152$, $SD = 38\%$) of the amount claimed was awarded. In sexual exploitation cases, including attempted sexual exploitation, an average of 45% of the amounts claimed was awarded ($n = 116$), while the average in labour exploitation cases was 40% ($n = 19$). If the reasons for claims (or portions of claims) being awarded or ruled inadmissible are examined more closely, several things appear to influence whether a claim succeeds.

**Evidence**

Evidence, and a recurring lack of it, consistently appeared to be extremely relevant. A lack of evidence often led to inadmissibility because establishing the damages in such situations was considered to place a ‘disproportionate burden on the proceedings’. Many of the claims awarded in full were thoroughly substantiated, with notebooks, text messages and bank statements used to evidence the claims, as well as testimonies from witnesses such as the victim’s psychologist. Victims’ own statements represented an important source of evidence, as did law enforcement investigations. Victims are permitted to state what the consequences of the crime have been for them in court. These statements were often mentioned in the grounds given for awarding compensation for immaterial damage. Testimonies from witnesses other than the victim, such as medical professionals or social workers, also played an important role in substantiating a claim.

In the case, however, of compensation claims for material damages, victims’ testimonies were more problematic. Victims had trouble recalling the details of the exploitation. In one labour exploitation case, for example, the victim could not remember how much pay the perpetrator owed her. When statements about the time frame during which a victim worked or the amount earned differed, claims were often declared inadmissible. Where evidence of the material damage suffered was scarce, claims benefited from efforts made by law enforcement authorities to establish the details of a case, such as establishing the length of exploitation, as well as other information that could be used to substantiate a claim. Some cases examined included bank records that proved the amounts that the perpetrator had taken from the victim. Although these kinds of financial records can be crucial and a strong indicator of damage suffered (Fairwork, 2013), they were not always available. Furthermore, police officers did not always investigate traffickers’ financial position, and information from such reports was not often mentioned in the judgments. This makes it more complicated to prove the damages claimed to be suffered, given that reliable information on exactly how often a victim worked was scarce. Details of rented rooms in which an exploited prostitute worked, for example, were not always accurate.

**Grounds for judgment: different judges, different decisions**

Another important finding regards the substantial differences in the ways the courts handled such claims. For some, the simple fact that a claim was not refuted could result in it being awarded. This applied especially in claims for objective damages, which were often awarded simply and solely on the grounds that they were ‘sufficiently plausible’. However, claims for immaterial damages were not always awarded so easily as this form of damage can be difficult to establish. It is not easily visible, and nor is there a standard way to translate depression, for example, or other psychological suffering into money. The most important guidelines in this respect are based on rulings in similar cases in the past, details of which are published in a guide on immaterial damage.
Although some lawyers explicitly referred to judgments from this guide in support of their claim, the amounts awarded for immaterial damage were inconsistent, and comprehensive grounds for such decisions were rarely given.

In the following examples, three separate victims were each awarded €2,000 as compensation for immaterial damage suffered. Each was exploited in the sex industry and the victim of violent coercion. In one case, a claim for €15,000 was submitted for immaterial damages, while an amount of €2,000 was awarded. This victim was exploited in the sex industry, both by being threatened and beaten, for three days. Her testimony showed her to have sustained serious psychological injury.

In another case, the same amount of compensation was awarded to two victims who had suffered immaterial damage. Both of these victims had been involved in relationships with the trafficker, who was aggressive and violent towards them and coerced them into working in Amsterdam sex clubs. The first victim was exploited from June 2009 to June 2011, and the second between January and September 2012. Both claimed €4,000 compensation for immaterial damages and were awarded €2,000. While the nature of these three victims’ exploitation was comparable, they had been exploited for very different periods: three days; nine months; and two years. Why the immaterial damage in these three cases was considered to be equally deserving of compensation remains unclear.

A calculation was usually made to determine the extent of material damage. This was based on the amount earned per day and the hours worked, less living and other expenses such as rent for rooms. In a case, for example, in which several Romanians were forced to sell newspapers, an amount of €10 per day for living expenses was deducted from the amount claimed. However, such expenses were not deducted consistently; indeed, some judges did not deduct them at all. Furthermore, the amount awarded in claims relating to prostitution varied between €100 and €500 per day worked. These daily amounts were often only a minimum estimate of the actual money earned per day. Although one trafficked woman stated that she had to earn €1,000 each day and €2,000 per day at weekends, she was awarded compensation of only €500 per day, which was stated to be the usual amount awarded per day in case law. This judgment shows that the judge awarded a ‘safe minimum’, set as an amount per day and based mainly on other judgments rather than on the specifics of this particular case. Given that the court found the victim’s testimony to be reliable, it is unclear why her testimony on her earnings was not taken as the guideline for awarding compensation for the material damage she had suffered. The victim in this case was shown to earn more in Amsterdam than would be usual in other cities. This demonstrates that not every sex worker has the same income, and that each case consequently needs to be considered carefully and individually in order to award appropriate compensation.

As mentioned before, a court is free to estimate the amount of damage suffered. A precise calculation, or irrefutable evidence, is not necessary. While some judges did attempt to estimate damage, many others declared claims to be inadmissible if the damage or period of exploitation could not be determined exactly. In one interesting case, the court established the number of customers, the amount paid per customer, and the amount of money the victim had received from the trafficker. However, it nevertheless ruled that the portions of the claim regarding ‘money from customers’ and ‘immaterial damage’ prompted too many questions.

Admissibility

The investigated claims that were fully inadmissible revealed an additional issue, and specifically the fact that labour exploitation victims, foreigners, and minors were overrepresented in the
inadmissible claims. The latter two categories of victims in particular would appear to need more guidance within the criminal proceedings, as in the case of the claim submitted by a minor that was declared inadmissible because no legal guardian had given permission for it.29 Another example involved a Romanian victim who submitted four claims in four different cases, without filling in the claimed amounts on any of the forms.30 In yet another claim, by a Hungarian victim, two different amounts had been claimed, and the claim was not substantiated by the victim or a representative at the hearing.31 However, a second victim in the same case was awarded compensation of €249,400, while she had claimed only €108,000.

Some cases were declared inadmissible on the grounds that they would create a disproportionate burden because the defendant was sentenced for only part of the charged offence. If the defendant is considered, for example, to be only an accomplice,32 or convicted only for transporting and not for exploiting a victim,33 the complicated question arises as to which part of the claim relates to the offence(s) of which the perpetrator was convicted, and which part to the acquittal. Courts may consider this aspect too complicated and, therefore, declare the claim to be inadmissible.

Proportional compensation?

Another issue relating to admissibility became apparent when the 23 claims that were awarded in full were analysed. These claims appeared to have been declared fully admissible mainly because they were substantially lower than the average claim. The only two claims awarded in full and relating to labour exploitation were made on behalf of the same victim and for the amount of €740, whereas the average claim in the sexual exploitation cases, which comprised 21 of the 23 claims, was for €16,197.34 Given that the average compensation claimed was €68,657, the average for those claims that were awarded in full was lower. Although claiming a lower amount would imply less damage was suffered, the 23 claims that were awarded in full did not appear to differ from other cases in any significant respect. Indeed, neither in terms of the length of the exploitation, nor in the use of violence, did they seem any less serious.

It seems, therefore, that even where a claim was awarded in full, the victim had not claimed the full amount of damages actually suffered and was consequently only partly compensated. A possible explanation for this is that the amount claimed was deliberately kept low so as to avoid the claim being declared inadmissible35. Being awarded a claim in full is consequently not necessarily synonymous with successfully obtaining compensation.

As mentioned before, the average illegally obtained benefit per trafficking suspect in the Netherlands is estimated to be €410,000 (Savona and Riccardi, 2015). Across both years and all sectors, the average material damages claimed was €61,148 (n = 134, SD = €151,158). This means that the average material damage claimed per victim is almost €340,000 lower than the illegally obtained benefit estimated per trafficker. When looking for an explanation, it should first be noted that the average of €410,000 is based on ‘serious’ cases; in other words, on cases handled by police officers at the national level. As this excludes smaller cases, the average benefit for all traffickers is likely to be substantially lower than this. This is unlikely, however, to account for a gap of over €300,000. Instead, the difference may possibly be explained by claims being submitted for amounts lower than the actual damage in order to avoid them being declared inadmissible. Lastly, the difference may also be attributable to the fact that one trafficker can exploit more than one victim. Although this was not evident in this study (where 113 traffickers and 114 claims by victims were registered), a case was also recorded in which a trafficker exploited five different victims.36 Furthermore, given that previous studies found that only a third of all victims identified
in the criminal proceedings also claimed compensation, the average number of victims per traf-
ficker is very likely to be higher than one (Fairwork, 2013). This demonstrates the difficulty of
using the estimated illegally obtained benefit to substantiate a claim; this focuses on the income of
the trafficker, not on the damage suffered by the victim.

The €307,062 estimate for immaterial damages calculated in the UK (Dubourg and Prichard,
2008; Levi et al., 2013) is also disproportionate compared to the data in the present study. For
claims based on sexual exploitation, the average for both years was €8,448 \( (n = 108, SD =
€6,818) \), with the highest claim being for €25,000. There is a difference of almost €300,000
between the estimated immaterial damages suffered and the average claim. There is no apparent
explanation for this large discrepancy, thus demonstrating the difficulty of translating trauma into
an amount of money. These differences prompt the question of whether victims receiving com-
pensation are compensated fairly for the damages they have suffered; however, they give no
obvious indication as to how this should be assessed.

Compared to the observed testimonies of the victims, the estimate of €4,100 earned by traffick-
ers per prostitute per month seems low (Bottenberg et al., 2012). Although this could be the result
of rent or other expenses being deducted, Bottenberg et al. (2012) do not specify the methodology
used to arrive at the estimate of €4,100, and this makes it difficult to use this figure as a basis for
comparing their findings with the findings in this article.

Discussion

One of the main findings of this study is that victims of human trafficking who submitted an
injured party claim received, on average, half of the amount they claimed. Claims were rarely
awarded in full, while those claims that were awarded in full were for substantially lower than
average amounts. One of the reasons for this may relate to the difficulty in proving damage caused
by human trafficking, while conflicting or incomplete testimonies, and lack of investigation, often
resulted in inadmissibility. Additionally, the way in which courts ruled on these claims seems to
have resulted in unpredictability, with judges issuing differing rulings on essentially similar cases.
As most cases were ruled to be at least partially admissible, a minimum amount was often being
claimed for strategic reasons. This creates a discrepancy between the actual damage and the
amount that is claimed. Consequently, even a fully awarded claim may not be proportional to the
damage suffered.

What are the implications of these findings? Courts’ decisions on the claims may seem random
because judges are at liberty to estimate damage, or to rule a claim inadmissible, and this may
cause uncertainty for victims. Furthermore, the high proportion of inadmissible claims may influ-
ence the perceived fairness of the injured claim legislation. Recalling that victims of labour
exploitation in particular have a strong need for financial compensation (Rijken et al., 2013), it
is striking that the claims these victims actually submitted were for lower amounts.

These issues relating to the injured party claim give cause to look beyond the criminal proce-
dure as a means to claim compensation. Many countries, including the Netherlands, have a state-
backed fund in place to offer compensation to victims. However, compensation by the state does
not serve as restoration between the offender and victim, and consequently may not fulfil the need
for compensation in the way a sentence would.\textsuperscript{37}

The number of victims claiming compensation is currently low at approximately 4\% of regis-
tered victims. Although there may be many reasons why victims decide not to claim compensation,
the low success rate of such claims may be relevant as victims share negative experiences of the criminal justice system with each other (Rijken et al., 2013).

Lastly, a victim impact statement appeared to influence the extent to which a claim was awarded. A judge may take the statement into account and use it as a basis for calculating immaterial damage. In addition to contributing to recognition of the damage suffered, such acknowledgement may help a victim to feel heard and empowered (De Mesmaecker, 2012). However, it can be difficult for victims to present their statements in court, and many consequently choose not to do so. This may be because they fear their statements will not be taken seriously, thus causing them to feel hurt and belittled (De Mesmaecker, 2012). This was also observed in cases where victims’ testimonies were deemed unreliable and their specification of the damage they had suffered disregarded. This aspect underlines the fact that the victim impact statement can have both positive and negative outcomes for the victim, depending on the court’s response.

The case file analysis method used in this study has several limitations. Not all verdicts included specific information on the characteristics of the submitted claim, and the grounds for the judgment on the claim. A substantial number of claims, and also judgments, lacked elaboration. This made it difficult to determine the extent to which the qualitative analysis of the cases was representative. Furthermore, the case files did not provide insight into the victims’ experience of claiming compensation. The present article argues that although the injured party claim may not be perceived as fair, this unfairness cannot yet be substantiated by victims’ accounts. Research on victims that focuses on satisfaction with and the perceived fairness – or unfairness – of the injured party claim procedure could corroborate or disprove this. This would represent an important step towards a better understanding of victims’ needs for compensation, and a better understanding of how and to what extent those needs are currently met.

Notes

1. See, for example, the ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (UN General Assembly, 2005) and the ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (UN Office of the High Commissioner for Human Rights, 2002).

2. In certain countries, it is possible for victims of crime to ‘join’ the criminal proceedings as a civil party. This is though not available in many common law jurisdictions, where a separate civil claim has to be made, or recompense sought through state compensation schemes.

3. Articles 51f-51 h Code of Criminal Procedure.

4. Articles 51e and 302 Code of Criminal Procedure

5. Articles 361(2,3) Code of Criminal Procedure.

6. Claimants exploited in other sectors claimed a lower average amount of €13,786.

7. The rechtspraak.nl website publishes most, but not all, judgments issued by courts in the Netherlands. The actual number of judgments may therefore be higher than presented here.

8. Keyword: mensenhandel (Art. 273f Criminal Code).

9. Although it is also possible for a claim to be partially awarded, partially rejected and partially inadmissible (Wijers, 2014), this was not observed in the cases considered.

10. Thirty-three victims before 25 October (Fairwork, 2013), and six after that date.

11. Not all judgments specified the damage claimed or awarded; these cases were consequently left out of the analysis.

12. ECLI: NL: RBNHO:2013:9110.

13. ECLI: NL: RBMNE:2013:5594.
14. See, for example, ECLI: NL: RBNHO:2014:5866.
15. See, for example, ECLI: NL: RBZWB:2014:6563, ECLI: NL: RBAMS:2014:1159.
16. ECLI: NL: RBLIM:2013:4158.
17. ECLI: NL: RBNHO:2014:1051, ECLI: NL: RBNHO:2014:8560.
18. See, for example, ECLI: NL: RBNNE:2013:3919, and ECLI: NL: RBNNE:2013:3920.
19. See, for example, ECLI: NL: RBNHO:2014:5863, ECLI: NL: RBAMS:2014:1159, and ECLI: NL: RBMNE:2013:2014.
20. ECLI: NL: RBAMS:2014:758.
21. ECLI: NL: RBLIM:2014:2757.
22. See, for example, ECLI: NL: RBGEL:2013:2467.
23. ECLI: NL: RBAMS:2013:CA3742.
24. ECLI: NL: RBGEL:2013:1486.
25. ECLI: NL: RBNNE:2013:3919.
26. ECLI: NL: RBAMS:2014:758.
27. ECLI: NL: RBAMS:2014:327, and ECLI: NL: RBAMS:2014:453.
28. ECLI: NL: RBLIM:2014:10626, and ECLI: NL: RBLIM:2014:3742.
29. ECLI: NL: RBNHO:2013:14050.
30. ECLI: NL: RBNNE:2013:3918.
31. ECLI: NL: RBNHO:2014:1051.
32. ECLI: NL: RBNHO:2014:5864, and ECLI: NL: RBNNE:2014:6193.
33. ECLI: NL: RBNHO:2014:5865, and ECLI: NL: RBGEL:2013:3276.
34. This includes two large claims of €110,000 and €66,386; the median claim, therefore, was €7,500.
35. Koopsen, April 2015, personal communication.
36. ECLI: NL: RBOBR:2013: BZ9551.
37. Koopsen, April 2015, personal communication.

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