Claiming damages from the offender

Franţa

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?

If you are the victim of damage caused by an offence, you can bring the matter before a court for the offender to be ordered to compensate the injury done to you. In this way, you will obtain damages. Your claim can be presented in civil proceedings or in criminal proceedings.

Civil proceedings

You can bring the matter before a civil court irrespective of whether or not the person responsible for the damage has committed a criminal offence.

The type and amount of the claim determines the competent court:

- for a claim of less than EUR 10 000, it is the district court (*tribunal d'instance*).
- for a claim of over EUR 10 000, it is the regional court (*tribunal de grande instance*) (Directory).

Criminal proceedings

If the person responsible for the damage has committed an offence, you can claim compensation in the criminal proceedings. You can ask to be recognised as a civil party to the criminal proceedings (*partie civile*) by making a request to the investigators, the public prosecutor (*procureur de la République*), the investigating judge (*juge d'instruction*) or the court.

You must have personally suffered damage caused directly by the offence that is to be tried.

A minor may not apply for recognition as a civil party to criminal proceedings in their own right; their parents must do so on their behalf.

Once the sum in damages has been awarded by the civil or criminal court, the victim has a claim on the person convicted, who becomes liable. The claim is a right that the victim can enforce.

In the event of difficulty in recovering sums, it is possible to:

petition the court to obtain an order for payment;

engage a bailiff who will be able to seize property.

The Victims of Crime Recovery Assistance Service (*Service d'aide au recouvrement des victimes d'infractions* - SARVI) of the Guarantee Fund for Victims of Terrorism and Other Offences (*Fonds de garantie des victimes d'actes de terrorisme et d'autres infractions* — FGTI) can help you to recover the damages awarded by the court only at the end of a criminal trial.

It is intended for victims who have suffered minor personal injury or certain kinds of material damage who cannot be compensated by the Crime Victims Compensation Boards (*Commissions d'indemnisation des victimes d'infractions* — CIVIs).

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

You may file your claim during the preliminary investigation led by a public prosecutor and then during the investigation by an investigating judge.

The claim can be filed prior to the court hearing in writing (the letter must arrive 24 hours before the hearing).

You may also present it directly at the hearing, during the trial before the court. In that case you can present your claim in writing or orally. You must do so before the prosecutor addresses the court to present the prosecution's view and propose a sentence.

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)?

Your claim should seek compensation for all of the damage that you have suffered. Three types of damage can be compensated:

personal injury, which is damage to a person's health or physical or mental integrity;

moral damage, which is damage to emotional well-being, honour or reputation;

material damage, which concerns damage to a person's property and financial interests.

Your damage must have been caused by a specific event (an accident, a delivery error, etc.);

the person from whom you are seeking compensation must be the person responsible for it and the damage must be real (the fault caused you unquestionable damage), direct (concerns you personally) and specific.

You must accurately define it and provide evidence of it (invoices, accident photos, etc.). Your claim must specify a figure, because there is no minimum or maximum. The court cannot order the party against which proceedings have been brought to pay an amount higher than what you are claiming.

Your claim can be presented in writing, with no specific formalities, or orally before the court.

Is there a specific form for such claims?

No.

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

You must provide any information proving your damage (photos, invoices, witness statements, etc.) and the liability of the person from whom you are seeking compensation.

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

In principle, there are no specific costs.

However, if the public prosecutor does not initiate an investigation even though the victim believes that an offence has been committed and wishes to obtain compensation, the victim may under certain conditions petition an investigating judge direct, by lodging a criminal complaint together with an application for recognition as a civil party to the criminal proceedings. This initiates criminal proceedings and the civil proceedings that make it possible to seek compensation from the offender.

The investigating judge may then ask the complainant to deposit a sum of money, the amount of which is set by the judge based on the complainant's income. The sum deposited is called a *consignation*. It must be paid by a deadline set by the judge under penalty of rejection of the complaint.

Likewise, if the public prosecutor does not bring court proceedings, the victim can issue a 'direct summons to appear' (*citation directe*) before the criminal court, and initiate criminal and civil proceedings against the defendant. In that case, a deposit may be required by the court.

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?

For people with limited means, legal aid may be granted, so that the legal fees and court costs incurred during the trial are paid in part or in full by the state. . For the most serious crimes legal aid is granted without means testing (see the list in Article 9-2 of Law No 91-647 of 10 July 1991 on legal aid (*Loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique*)).

You are entitled to legal aid if you are a French national or a European Union national even if you are not residing in France, or if you are a foreign national habitually and legally resident in France.

Certain bodies for access to legal services such as law centres (*maisons de la justice et du droit*) or legal information desks (*points d'accès au droit*) provide free consultations on legal matters and can help you, irrespective of your nationality, in completing any formalities with a view to the exercise of a right, and assist you in non-judicial procedures.

The same applies for the victim support associations, which provide free legal support in particular.

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

The court may rule the application for recognition as a civil party to the criminal proceedings inadmissible if the claim does not qualify, in particular if the court considers that the person has not been affected by the offence to be tried. It may rule on the criminal proceedings (guilt, prison sentence and/or fine) and on the civil proceedings (compensation) at the same time. The court may also rule on the civil proceedings at a later stage if it considers that it does not have all the facts.

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

If you are not satisfied with the court's decision, you may request re-examination by the court of appeal within whose jurisdiction the first court falls.

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?

Once the sum in damages has been awarded by the civil or criminal court, the victim has a claim on the person convicted, who becomes liable. The claim is a right that the victim can enforce.

In the event of difficulty in recovering the sums, it is possible to:

petition the court to obtain an order for payment

engage a bailiff who will be able to seize property.

The SARVI can help you to recover the damages and interest (and the sums in respect of legal costs) awarded by the court only at the end of a criminal trial. This service pays a sum to the victim (the amount of which depends on the level of the sentence handed down) and itself recovers the sums due from the convicted person. The SARVI is a free and confidential service.

It is intended for victims who have suffered minor personal injury, or certain material damage, who cannot be compensated by the CIVIs.

You may be entitled to the assistance of the SARVI if:

you are an individual and have obtained a judgment from the criminal court awarding damages and possibly the reimbursement of all or part of the legal costs;

you are not entitled to compensation from the CIVI; and

the person convicted has not paid the sums due within the two months following the final sentence.

What you can obtain:

If the amount of your claim is less than or equal to EUR 1 000: the entire sum.

If the amount of your claim is higher than EUR 1 000:

Ø 30% of the sum, with a minimum of EUR 1 000 and a maximum of EUR 3 000;

Ø assistance with recovery, i.e. the SARVI obtains the remainder due from the convicted person on your behalf. You will be notified every quarter of the outcome of the steps taken on your behalf. Consequently, this procedure precludes you from engaging a bailiff. The SARVI uses the legal tools given to it by law. Its activities nevertheless remain limited by the ability to pay of the convicted person, to whom it applies a penalty.

The portion paid by the SARVI is settled within two months of receipt of the complete file.

What are the deadlines for filing your claim?

You must file your claim no later than one year after the delivery of the final judgment.

If your claim for compensation has been rejected by the CIVI, you have one year, from the notification of the rejection, to contact the SARVI.

There is a form for recovery requests. Legal representation is not mandatory.

A list of the supporting documents to be enclosed with your claim is given on the form to be sent to:

Fonds de Garantie - SARVI

TSA 10316

94689 VINCENNES CEDEX

You can obtain additional details here.

The SARVI may reject your request for recovery against the convicted person, or refuse to take a decision on it, if you do not meet the necessary requirements.

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