



Policy manual Schadefonds Geweldsmisdrijven

Caribbean Netherlands

1 April 2019

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Introduction

What does the Schadefonds Geweldsmisdrijven do?

The Schadefonds Geweldsmisdrijven is an independent component of the Ministry of Justice and Security and provides non-recurring payments to people who suffered serious physical or psychological injuries due to a violent crime. The Schadefonds also provides payments to surviving relatives of victims who deceased due to a violent crime or criminally negligent homicide and to surviving relatives of victims with serious and permanent injuries resulting from an intentionally committed violent crime.

Up to 1 April 2019 the Schadefonds could only offer compensation to victims and surviving relatives violent crimes that were committed in the European Netherlands. From 1 April 2019 it is also possible to pay compensation to people who were the victim of a violent crime that was committed on Bonaire, St. Eustatius and Saba after 1 January 2017. This policy manual is only applicable to victims, surviving relatives and next of kin of crimes that took place on Bonaire, St. Eustatius and Saba.

For violent crimes that took place in the Netherlands reference is made to the Manual Schadefonds Geweldsmisdrijven.

What is the objective of the financial compensation?

The payment is a social expression of solidarity and a sign of acknowledgement by the government on behalf of society of the injustice and suffering that happened to a victim, surviving relative or close relative. This compensation is paid from tax resources and does not intend to cover all damages. The compensation is meant to slightly recover the damaged trust and help the victim, the surviving relative or the close relative (financially) in order that they can look ahead to the future again. The recipient can freely spend it. The compensation amounts to a maximum of € 35,000 (about \$ 39,500).

How is the level of the compensation for victims determined?

The Schadefonds uses six injury categories to which six increasing amounts are linked. On the basis of a list of injuries the Schadefonds determines in what injury category the injuries suffered belong. The associated amount is then the compensation that is paid to the victim for the experienced suffering (the immaterial damages) and the potential financial damages that were consequently incurred, e.g. costs for medical assistance and reduction of income.

How is the level of the compensation for surviving relatives and close relatives determined?

The compensation for a surviving relative and close relative always consists of a fixed amount of € 5,000 for the suffering of the surviving relative or the close relative and the potential further financial damages. Think about therapy costs or reduction of income. The compensation for the surviving relative can be supplemented with compensation for the funeral expenses and damages due to the loss of the income of the deceased. To qualify for supplementary compensation, these damages must be substantiated with documentary evidence, e.g. invoices, insurance specifications, payslips or annual statements.

Schadefonds Geweldsmisdrijven Act and policy

In pursuance of section 20 of the Wet schadefonds geweldsmisdrijven (Schadefonds Geweldsmisdrijven Act, hereinafter referred to as: the "Act"), the Act applies to the Public Entities of Bonaire, St. Eustatius and Saba. To qualify for payment from the Schadefonds, all requirements imposed by the Act must be met. The Schadefonds adopted policy that gives substance to the said statutory requirements. In this policy manual you receive information about the manner that the Schadefonds assesses requests from victims, surviving relatives and close relatives. On the basis hereof you can verify if you qualify for payment from the Schadefonds.

For more information about the Wet schadefonds geweldsmisdrijven (Schadefonds Geweldsmisdrijven Act) and the submission of a request you can also go to the website of the Schadefonds www.schadefondscn.com.

Who qualifies for compensation?

In pursuance of section 3 subsection 1 of the Act the Schadefonds can pay compensation to:

- a) victims who suffered serious physical or psychological injuries due to a violent crime intentionally committed in the Caribbean Netherlands; or
- b) victims who suffered serious physical or psychological injuries due to a violent crime intentionally committed on board an aircraft or vessel of the Caribbean Netherlands; or
- c) surviving relatives and close relatives of a person as intended under a or b if he or she passed away or suffered serious and permanent injuries due to the violent crime, as intended in section 107 subsection 1 under b of Book 6 of the Civil Code, or surviving relatives of a person who passed away following violation of section 320 of the Criminal Code BES; or
- d) people other than those mentioned under c who paid the funeral expenses of a person as intended under a or b, if he or she passed away due to the violent crime.

It therefore regards the following groups:

1. victims of intentionally committed violent crimes;
2. surviving relatives of victims of intentionally committed violent crimes;
3. surviving relatives of victims of criminally negligent homicide within the meaning of section 320 of the Criminal Code BES;
4. close relatives of victims with serious and permanent injuries resulting from an intentionally committed violent crime.

To qualify for compensation from the Schadefonds the groups mentioned above must comply with the various requirements imposed by the Act. In chapters 1 up to and including 4 it is discussed per group how the request is assessed. The other statutory criteria are explained in chapters A up to and including D. How the Schadefonds determines the level of the compensation is elaborated in chapter E. In chapters F up to and including K the various procedures at the Schadefonds are described. Chapters L up to and including R contain some other matters.

1. Victims of intentionally committed violent crimes

1.1 Intentionally committed violent crime

A request can only be submitted for a violent crime intentionally committed on Bonaire, St. Eustatius or Saba as a result of which a victim suffered serious injuries (section 20 of the Act). For this purpose a violent crime is understood as a crime punishable pursuant to the Wetboek van Strafrecht BES (Criminal Code BES) (or a relevant punishable attempt) in the course of which violence was used or violent threats were made against a person. If an event is not punishable as a crime pursuant to the Wetboek van Strafrecht BES (Criminal Code BES, hereinafter referred to as: the “CC BES”) then this consequently does not result in a violent crime within the meaning of section 20 of the Act.

Violence can consist of physical and psychological violence. Assault (section 313 of the CC BES), an act of violence in a public place (section 147 of the CC BES), threat of violence (section 289 of the CC BES), human trafficking (section 286f of the CC BES), stalking (section 313a of the CC BES), rape (section 248 of the CC BES), robbery (section 325 of the CC BES), murder (section 302 of the CC BES) and manslaughter (section 300 of the CC BES) are crimes that are always qualified as violent crimes. Arson (section 163 of the CC BES) is only qualified as a violent crime if arson is committed intentionally and this causes mortal danger or danger of serious injuries to the victim.

There may also be question of a violent crime if a victim is put under considerable psychological pressure. The violent aspect can then, for instance, consist of the creation of a certain situation or the abuse of circumstances. Think about sex crimes. A considerable age difference, a relationship of authority or a dependent position compared to the perpetrator are examples of circumstances that can be put on par with violence.

Violence committed against property (e.g. destruction), theft and cursing or humiliation (without using violence or threatening violence against people) are not qualified as a violent crime.

1.1.1 Intent

The violent crime must have been committed intentionally. 'Intent' is a legal term from criminal law and implies, briefly put, that the perpetrator acted knowingly and deliberately. In case of an intentionally committed violent crime the perpetrator must have inflicted injuries on the victim knowingly and deliberately. A request can also be submitted in case of 'conditional intent'. For this purpose conditional intent means that the perpetrator consciously accepted the considerable chance during his actions that the victim would consequently suffer injuries.

The Schadefonds assumes that injuries as a result of a game between children, a traffic accident or a normal sports game are generally not inflicted intentionally. This is often referred to as 'culpable' injuries. Victims cannot submit a request for these kinds of events.

Surviving relatives of victims of criminally negligent homicide within the meaning of section 320 of the CC BES can submit a request. More information about this is available in chapter 3.

1.1.2 Plausibility of the violent crime

General

A violent crime does not need to be proven (as before the criminal court) but must be rendered plausible. This assessment consists of the following elements. First of all, the actual act of violence is important. This is the act as a result of which the victim suffered injuries: for instance, delivery of a blow, shooting of a firearm or cutting with a knife. In addition, for the plausibility the facts of the violent crime, the reason for it and the circumstances under which it took place must be sufficiently clear.

Underlying idea

The Schadefonds performs this assessment because the legislator gave the Schadefonds Geweldsmisdrijven the duty to give substance to the special responsibility of society for victims of violence. The payment from the Schadefonds is an expression of solidarity of society with the victim and a sign of acknowledgement of his victimhood. This is important, if only because the perpetrator quite often remains unknown. Through this acknowledgement a contribution is, hopefully, made to the recovery of the confidence of the victim. Exactly on account of this social solidarity it must be sufficiently clear what the facts of the violent crime were, what the reason for it was and under what circumstances it took place. A payment is only fitting if social solidarity is appropriate.

The victim pressed charges

A personal statement of a victim is – if this is the only thing available – not enough to determine the plausibility. Pressing charges with the police is not a requirement for the handling of the request by the Schadefonds. In practice, an official report and the subsequent criminal investigation are important for the substantiation of a request. That is also why it is important that a victim presses charges as soon as possible after the violent crime. If charges are not pressed then the plausibility should be determinable on the basis of so-called objective other statements. For this purpose objective is understood as information from reliable and unbiased sources.

Charges are not pressed if a victim deceased. Usually the police then conduct an ex officio investigation of what happened. The Schadefonds then uses this or other objective information to determine whether it is sufficiently clear what happened. Hence, the Schadefonds assesses the facts of the violent crime, the reasons for it and the circumstances under which it took place. That is also why the Schadefonds expects of the victim (or the surviving relative) that he lends his full cooperation in the investigation of the police.

Judgment of the criminal court

If the criminal court passed sentence in the criminal case against the accused then the Schadefonds always takes this judgment into account in its assessment. A convicting judgment can form an objective indication for the substantiation of the request of the victim. The accused must, however, have been convicted of a crime that can be qualified as a violent crime intentionally committed against the victim. This can regard a judgment in the first instance, on appeal or in cassation.

Additional information

Hence, it may be that the Schadefonds requires additional information. This is also the case if charges were pressed but if the official report of the victim is also insufficiently clear about what happened exactly. It may be that the statement of the victim raises questions or that his statement raises, for certain reasons, doubts.

Also if these elements do not derive from the police investigation or a ruling of the criminal court, or not sufficiently, then the request is basically rejected.

In these instances allocation of compensation is only possible if additional information is available. This also applies if the official report was not followed by criminal prosecution (the charges were dismissed). Additional information can, for instance, consist of the complete official report of the police investigation (with the witness statements), an elaborated ruling, a report of a hearing or an extract from the judicial documentation of the victim, the perpetrator and/or other people concerned.

The Schadefonds can also consult open sources (available online). The victim is free to also provide an additional substantiation of his request. If the said substantiation is insufficient then the plausibility cannot be determined and the request shall be rejected. The said rejection does not imply that the Schadefonds does not believe the victim: the request is then rejected because the specification of the victim was substantiated insufficiently with objective indications.

The request is also rejected if the victim withholds or fails to provide additional information that is, however, in his possession. A request can, for instance, also be rejected because the police investigation is still pending or did not lead to a definitive answer yet. Sometimes clarity arises years after the event; the victim or the surviving relative can then again submit a request for payment to the Schadefonds.

The victim did not press charges

If charges were not pressed and a criminal investigation consequently did not take place then the violent crime can only in exceptional instances be substantiated in another manner. The mere statement of the victim about what happened is not enough. Objective indications must support the statement of the victim. An objective indication is information that originates from a source other than the victim. It must also be an objective source. As the occasion arises, the Schadefonds determines on the basis of this additional information whether the violent crime is plausible.

Medical information

Medical information can help to determine if injuries were inflicted by violence. The fact that somebody has certain physical or psychological injuries can, however, not give a definitive answer to what happened. Hence, medical information can basically not be used to render the facts of the violent crime, the reason for it and the circumstances under which it took place plausible. Medical information can usually only support a statement of the victim about the plausibility to a (very) limited extent. That is why the Schadefonds uses medical information cautiously when assessing the plausibility of a violent crime.

If so required it is, however, examined in the individual case whether the medical information is suitable for substantiation of the plausibility of what happened. It goes without saying that medical information is also required to determine the seriousness of the injuries.

1.2 Serious physical or psychological injuries

To qualify for compensation the violent crime must have caused serious physical or psychological injuries (section 3 of the Act). The seriousness of the injuries is determined on the basis of the nature and the consequences of the injuries. The Schadefonds considers injuries to be serious if they have prolonged or permanent serious medical consequences.

As in civil law, the Schadefonds departs from the victim at the time of the crime. As a consequence it may be that serious injuries are assumed faster if at the time of the crime a person had already been physically or psychologically weaker than if he had been perfectly healthy at that time.

1.2.1 Medical information

The Schadefonds requires medical information in order to be able to assess the injuries. To this end it exclusively uses medical information of care providers who made a diagnosis. It is moreover important to the Schadefonds that these diagnoses were made by authorised and competent care providers. That is why the Schadefonds imposes the requirement on the said care providers that they hold a BIG registration, NIP service mark or concluded an agreement with the Health Insurance Office (e.g. GZ psychologists or psychotherapists or doctors (general practitioners) for physical injuries). By imposing the said requirement the Schadefonds is of the opinion that the quality and reliability of the diagnosis made is guaranteed best. It can be retrieved via www.bigregister.nl, www.psynip.nl and www.rijksdienstcn.com/gezondheid-zorg/zorgverleners/gecontracteerde-zorgaanbieders if a care provider complies with this requirement. If a diagnosis was made by a care provider who *for the making of the said diagnosis* does not comply with the aforementioned quality requirements then the Schadefonds does basically not assess the injuries. This may imply that a request is (partly) rejected or that certain injuries do not qualify for compensation.

1.2.2 List of injuries

The Schadefonds developed a list of injuries for the classification of the injuries suffered in an injury category. This list of injuries can be consulted on www.schadefondscn.com and provides guidelines as to what physical and psychological injuries can, according to the Schadefonds, be qualified as sufficiently serious within the meaning of the Act in order to justify compensation.

In the list of injuries a distinction is made between six injury categories to which six fixed compensatory amounts are linked. On the basis of the seriousness of the injuries suffered and the circumstances under which the violent crime was committed, the Schadefonds determines in what injury category the injuries are classified and what the associated compensatory amount is (see section E).

1.2.3 Presupposition of serious injuries

With several violent crimes the Schadefonds can presuppose serious physical injuries without assessment of medical information. It does this on the basis of the facts of the violent crime. It regards violent crimes that are by nature so serious that they shall almost always have a considerable impact on the victim.

In case of the following violent crimes the Schadefonds can presuppose serious injuries: house robberies, sex crimes, threats with knives and firearms, systematic domestic abuse, human trafficking, stalking and arson.

Below it is described per violent crime when serious injuries are presupposed. In part 2A of the list of injuries it is indicated what injury category is associated with it. The level of the injury category depends on the seriousness and the consequences of the violent crime. If the actually suffered injuries are more serious than the relevantly appropriate injury category is observed.

House robberies

The Schadefonds presupposes serious injuries if there is question of a robbery in the personal home of the victim in the course of which the perpetrator gained access to the said home through violence, deception or forcible entry. Violence must also have been used against the victim (hitting, pushing, tying up or threatening language).

Sex crimes

When a sex crime is also a violent crime (see section 1.1) then serious psychological injuries are always presupposed.

Direct threat with a knife or firearm

The Schadefonds presupposes serious injuries if a victim was directly threatened with a knife or firearm. A threat with a knife or firearm is direct if the threat is directed against the person of the victim (the victim is then aware of the weapon) at a distance reasonably usable for the weapon. At the time of the threat the victim must assume that it is a real weapon.

If a threat is not direct or if threats are made with a different kind of weapon then serious psychological injuries are not presupposed. This may, however, still result in a violent crime. As the occasion arises the Schadefonds examines if serious injuries were suffered due to the threat.

Systematic domestic violence

If frequent and prolonged physical violence is used or violent threats are made in the relational atmosphere then the Schadefonds qualifies this as systematic domestic violence. In case of systematic domestic violence serious psychological injuries are always presupposed.

If the domestic violence is not systematic then serious psychological injuries are not presupposed. However, this may still result in a violent crime. As the occasion arises the Schadefonds examines if serious injuries were suffered due to the violence.

Human trafficking

If the victim is sexually exploited on Bonaire, St. Eustatius or Saba or if one or more organs were removed on Bonaire, St. Eustatius or Saba then the Schadefonds presupposes serious injuries. Also if frequent and prolonged physical violence was used or violent threats were made on Bonaire, St. Eustatius or Saba the Schadefonds presupposes serious injuries. In all other instances of human trafficking the Schadefonds examines whether serious injuries were suffered on Bonaire, St. Eustatius or Saba.

Stalking

If stalking is associated with frequent and prolonged physical violence or violent threats then the Schadefonds presupposes serious injuries. In all other instances of stalking the Schadefonds examines whether the victim suffered serious injuries.

Arson

The Schadefonds presupposes serious injuries in case of arson if the arson caused a direct mortal danger or danger of serious physical injuries to the victim.

1.2.4 Examination by medical adviser

The Schadefonds can rely on its medical adviser to assess the injuries. It shall do this if, for instance, the injuries are complex or obscure. The medical adviser then conducts a (dossier) examination regarding the nature and seriousness of the injuries. If a care provider made a diagnosis then it may be that the medical adviser wants to request the said care provider for (additional) medical information. The medical adviser shall only do this with consent of the victim. When the medical adviser concludes his examination he issues an opinion to the Schadefonds. The Schadefonds then assesses whether the injuries suffered are serious within the meaning of the Act as well as the associated injury category.

The Schadefonds can also ask its medical adviser to issue an opinion in certain cases if there is question of obscurity about the relationship between the injuries and the violent crime, or the plausibility of the violent crime. On the basis of this opinion the Schadefonds then determines whether a claim can be filed in respect of the relevant subject.

In case of obscurity about the psychological injuries of the victim the Schadefonds can ask Mental Health Caribbean to make a diagnosis. This usually takes place at the instigation of the medical adviser further to information obtained from the treating physician / therapist. In highly exceptional instances it may be decided in the objections procedure to have Mental Health Caribbean make a diagnosis, if a victim refers to psychological injuries, but is (was) not treated for it. The costs of the diagnosis and reporting are then at the expense of the Schadefonds.

1.3 Psychological injury by being a witness

1.3.1 General

The Schadefonds also awards compensation for psychological injuries that someone suffers by being a witness of a violent crime or by being confronted directly with the consequences of a violent crime. If someone observed a violent crime or unexpectedly found a victim at a crime scene then this kind of 'observer' is qualified as a victim within the meaning of section 3 subsection 1 of the Act.

To qualify for compensation as an observer there must be question of serious psychological injuries as a result of the violent crime within the meaning of the Act. This requires a diagnosis that was made by a treating care provider who holds a BIG registration or a NIP service mark or who concluded an agreement with the Health Insurance Office for this diagnosis.

The Schadefonds does not award compensation for psychological injuries that someone suffers by being a witness of a criminally negligent homicide or by being confronted directly with the consequences of a criminally negligent homicide. Namely, an 'observer' of the death of a close relative following a criminally negligent homicide cannot be qualified as a victim within the meaning of section 3 of the Act. Section 3 subsection 1 under c of the Act explicitly determines that compensation is only possible for the surviving relatives in case of these culpable offences.

1.3.2 Systematic observation of domestic violence

The Schadefonds also qualifies children who systematically observe domestic violence as victims within the meaning of section 3 subsection 1 of the Act.

In case of children up to the age of 12 who systematically observe domestic violence the Schadefonds presupposes serious psychological injuries, regardless of the seriousness of the injuries of the actual victim (father, mother, carer). It is therefore not required that the actual victim also actually submitted a request to the Schadefonds.

In case of children aged between 12 and 18 who systematically observe domestic violence the seriousness of the psychological injuries must be established objectively. Hence, this requires that the child is treated for his complaints by a therapist with a BIG registration or a NIP service mark and that the said therapist made a diagnosis.

On the basis of the said diagnosis the Schadefonds determines if the child suffered serious psychological injuries and if

compensation can be provided. In case of children aged between 12 and 18 it is neither required that the actual victim also personally submitted a request to the Schadefonds.

In all other instances where someone observes domestic violence the rules in section 1.3.1 apply.

1.3.3 Certified first responder

The Schadefonds also awards compensation for psychological injuries that someone suffers by assisting a person known or unknown to him or her who has become the victim of an intentionally committed violent crime, without personally having been a witness of the said crime. It must then involve a certified first responder, hence not a professional care provider. The certified first responder is qualified as a victim within the meaning of section 3 subsection 1 of the Act.

To qualify for compensation as a certified first responder there must be question of serious psychological injuries within the meaning of the Act due to the violent crime. This requires a diagnosis, which is made by a treating care provider who holds a BIG registration or a NIP service mark or who concluded an agreement with the Health Insurance Officer for the said diagnosis.

1.4 Crime on or after January 1, 2017

Compensation for victims of violent crimes that were committed in the Caribbean Netherlands prior to January 1, 2017 is not possible. If a violent crime started before January 1, 2017 and came to an end after January 1, 2017 then it is possible to submit a request. The Schadefonds then assesses if compensation can be awarded for the facts that were committed on or after January 1, 2017.

2. Surviving relatives of victims of intentionally committed violent crimes

The Schadefonds also awards compensation to surviving relatives of victims who passed away as a result of an intentionally committed violent crime.

2.1 Surviving relatives within the meaning of the Act

The following people are qualified as surviving relatives within the meaning of section 3 subsection 2 of the Act:

- a) the spouse, not legally separated, and the registered partner of the deceased;
- b) other relatives by blood or affinity of the deceased, provided that at the time of the demise the deceased provided, either in full or in part, for their maintenance or was held to do so pursuant to a judicial ruling;
- c) those who prior to the demise already lived with the deceased in a family context and for whose maintenance he fully or partly provided, to the extent that it is plausible that this would have continued without the demise;
- d) those who lived with the deceased in a family context and to whose maintenance the deceased contributed by running a joint household;
- e) relatives by blood of the deceased in the first degree and in the second degree in the collateral line (parents, children, (half) brothers, (half) sisters).

2.2 Plausibility of the violent crime

If a victim passed away then no report is filed. The police do usually investigate ex officio what has happened. The Schadefonds uses the information that derives from the said police investigation or other objective information to determine if it is sufficiently clear what happened. The assessment of the plausibility moreover takes place as described in chapter 1.1.2.

2.3 Crime on or after January 1st, 2017

Compensation for surviving relatives of victims of violent crimes that were committed in the Caribbean Netherlands prior to January 1, 2017 is not possible.

3. Surviving relatives of victims of a wrongful death

The Schadefonds also awards compensation to surviving relatives of victims who passed away as a result of a criminally negligent homicide within the meaning of section 320 of the Criminal Code BES.

3.1 Surviving relatives within the meaning of the Act

The same people as mentioned in chapter 2.1 are qualified as surviving relatives.

3.2 Relevant section of the law

Section 320 of the Criminal Code BES (criminally negligent homicide):

He who is guilty of the death of another person is punished with a prison sentence or detention of at most nine months.

If the death, on the occasion of a collision, crash or run-over with a vehicle driven by the guilty person, or on the occasion of an act to avoid a collision with or run-over by the said vehicle, is caused by the collision, crash or run-over or by the act to avoid the same then the person who is guilty of the said death is punished with a prison sentence or detention of at most two years.

3.3 Guilt

Guilt is understood as a considerable degree of reproachable negligence. The Joint Court of Justice determined with regard to traffic offences that the determination of the degree of guilt boils down to the whole of conduct of the suspect, the nature and seriousness of it and the other circumstances of the case. This implies that it cannot be indicated in general whether in case of traffic cases one traffic offence is enough for the judicial finding of guilt. After all, various factors then bear relevance, e.g. the nature and specific seriousness of the traffic offence and the circumstances in which the said offence was committed. This is about the conduct of the suspect.

3.4 Plausibility of guilt

Compensation from the Schadefonds is basically possible if it is plausible that there is question of the death of a victim as a direct result of a violent crime as intended in section 320 of the Criminal Code BES, regardless of the gradation of guilt.

Hence, compensation is possible for every gradation of guilt that fits the description of the offence of section 320 of the Criminal Code BES.

3.5 Assessment of 'guilt'

To assess whether it is plausible that there is question of 'guilt' within the meaning of section 320 of the Criminal Code BES the Criminal Fund follows the following steps.

1. Establish the circumstances;
2. Establish the causality;
3. Establish the regulatory framework:
 - a) Establish the foreseeability;
 - b) Establish the illegality;
 - c) Establish the qualification;
4. Reproachability is assumed, unless it is rendered plausible that this is out of the question.

3.6 Objective information

In connection with the usually factual complexity the Schadefonds can basically only assess the plausibility if there is a concluded police investigation or if a decision was reached about prosecution (e.g. a decision not to prosecute or a decision to serve). A competent authority has then already assessed the correctness of the facts. Namely, the assessment can only take place if the body of facts of the incident is clear on the basis of objective information. Only on the basis of clear facts can it be assessed whether there was question of considerably negligent *conduct*. The Schadefonds does not have the possibility and expertise to conduct an independent investigation. The assessment of the body of facts can moreover also be of a highly technical nature.

If the police investigation has not been concluded yet or if a decision has not been reached about the prosecution then the Schadefonds assesses the request on the basis of the objective information that is (already) available. This information may not be enough to reach a decision yet because the facts are not clear (yet).

In case of traffic offences a traffic accident analysis is part of the police investigation. The Schadefonds also assesses the request on the basis of this analysis. Per request it is examined if there are other sources of information that the Schadefonds could use for the assessment of the plausibility (e.g. expert opinions and claim forms).

3.7 Court judgments and decisions of the Public Prosecution Service

On the basis of the objective information the Schadefonds basically assesses independently whether there is question of a crime as intended in section 320 of the Criminal Code BES. Basically, to arrive at compensation a suspect does not need to have been convicted. The judgment of the court and the decision of the Public Prosecution Service (PPS) do, however, play an important role. Depending on the considerations and conclusions of the PPS or the court, the Schadefonds follows the decision or the judgment. The Schadefonds does have its own degree of discretion: if a suspect is acquitted then in some instances the Schadefonds may still decide to award compensation to the surviving relative(s).

3.8 Crime on or after January 1, 2017

Compensation for surviving relatives of victims who passed away due to a criminally negligent homicide is possible if the crime was committed on or after January 1, 2017.

4. Close relatives of victims with serious and permanent injuries

The Schadefonds also awards compensation to close relatives of victims who suffered serious and permanent injuries due to an intentionally committed violent crime.

4.1 Plausibility of the violent crime

The assessment of the plausibility of the violent crime takes place as indicated in chapter 1.1.2.

4.2 Close relatives within the meaning of the Act

The same people as mentioned in chapter 2.1 are qualified as close relative.

4.3 Serious and permanent injuries

In section 3 of the Act it is mentioned that there must be question of *serious and permanent injuries as intended in section 107 subsection 1 under b of Book 6 of the Civil Code* (hereinafter referred to as: the CC). In section 107 of Book 6 of the CC no further substance is given to the term serious and permanent injuries. For the interpretation of the term the Schadefonds links up with the intention of the legislator and, in due course, with the interpretation by the court.

4.3.1 The intention of the legislator

For compensation for a close relative there must be question of exceptionally serious injuries of the victim. There is in any case question of serious and permanent injuries if this leads to a permanent functional disorder of the body of 70% or more. The functional disorder is determined on the basis of the AMA guides, a quantification model for invalidity of the American Medical Association. The functional disorder of 70% is an indication. It is up to the medical advisor to assess the individual circumstances of the case.

There may also be question of serious and permanent injuries if the physical component of the injuries is less serious. For instance, brain injuries that result in serious character and behavioural changes of the victim may have considerable consequences for the close relatives. This also applies to injuries that result in the loss or a serious disruption of physical contact, e.g. third degree burns over considerable parts of the body or (mental) injuries that imply that someone can impossibly still take care of him- or herself.

The Explanatory Memorandum to the legislative proposal includes that the requirement 'permanent' means that the prospect of reduction of the physical consequences in due course is absent, at least to a degree that the injuries can no longer be qualified as serious. In case of permanent injuries the turn in the life of the victim and the close relative is generally the most evident. It is then about the close relative being confronted with the far-reaching consequences of the violent crime for a long period of time in an insistent manner.

Examples of serious and permanent physical injuries

- Functional loss of both eyes, resulting in complete blindness;
- Complete loss of the ability to speak;
- High paraplegia;
- Anatomic loss of both arms;
- Serious traumatic brain injury that results in serious character and behavioural changes in the victim.

Psychological injuries can also form serious and permanent injuries. The injuries must be medically objectifiable. The influence of the serious and permanent psychological injuries on the life of the victim and the loved is of compelling importance upon the assessment.

4.3.2 Medical advice

The injuries of the victim are assessed by the medical advisor of the Schadefonds on the basis of medical information of the victim.

4.3.3 Medical authorisation

The Schadefonds requires medical information about the injuries of the victim for the assessment of the request of the close relative. The Schadefonds can only request the medical information if the victim issued authorisation for this.

4.4 Request of actual victim

It is preferred that the actual victim also submits a request. The injuries of the victim can then be assessed better. However, this is not a requirement.

4.5 Crime on or after January 1st, 2019

The compensation for a close relative of a victim with serious and permanent injuries is possible if the said injuries are caused by a crime that was committed on or after January 1, 2019. Namely, this compensation has also only been possible in the European Netherlands since that date.

Other statutory criteria

A. In the Caribbean Netherlands

In pursuance of section 3 subsection 1 in conjunction with section 20 of the Act it applies to all groups that the crime must have taken place in the Caribbean Netherlands or on board an aircraft or vessel of the Caribbean Netherlands. The Caribbean Netherlands is also understood as the territorial waters of the Caribbean Netherlands. For violent crimes that took place in the European Netherlands reference is made to the Policy Bundle Violent Crimes Schadefonds.

According to the law compensation cannot be awarded for violent crimes intentionally committed on Aruba, Curacao and St. Maarten.

Human trade often implies cross-border aspects. To determine whether there is question of human trade the Schadefonds investigates what happened in the (Caribbean) Netherlands and abroad. For the assessment of the injuries the acts abroad are, however, not taken into account. It is assessed whether the victim of human trade suffered serious injuries due to the acts in the (Caribbean) Netherlands. The nationality or place of residence of the victim is not important to submit a request.

B. Time limit for submission

With regard to victims and close relatives it is noted that a request must be submitted within ten years after the day on which the violent crime had been committed. For a close relative this time limit starts on the day of death of the victim. This was laid down in section 7 of the Act.

Overstepping of the time limit for submission

A request submitted after expiry of the time limit is still handled if the request is submitted as soon as could reasonably be requested. This is laid down in section 7 of the Act.

The victim must always specify a reason if a request is not submitted within ten years. The Schadefonds then assesses whether the request can still be handled. Valid reasons for a request submitted late can, for instance, be: serious psychological complaints, not being informed of the existence of the Schadefonds, first wanting to wait for the criminal case against the perpetrator or incorrect advice given by a legal expert. Also if an attorney or representative submitted a request on behalf of a victim late, the Schadefonds may decide to yet handle the request.

If a victim submits a request late but is aware of the existence of the Schadefonds (because the person making the request has previously already submitted a request for a different violent crime) then the request is not handled. An exception can be made to this if it can be substantiated that the victim was unable to submit the request earlier due to physical or psychological complaints.

In this respect it is noted that the chance exists that the request cannot be assessed properly if a long time has lapsed between the crime and the submission of the request. The longer in the past the crime, the more difficult it is to retrieve documents, e.g. the official report. This may lead to rejection of the request.

C. Personal share

C.1 General

Compensation can be omitted or set at a lower amount if the inflicted damages are also a result of a circumstance that can be attributed to the victim. This is referred to as the 'personal share' of the victim and is laid down in section 5 of the Act.

The idea behind this provision is that the Schadefonds was set up to offer people who become, through no fault of their own, the victim of violence financial compensation for their damages. If the victim had a personal share in the violence then the said compensation is basically not appropriate because it must be considered as an expression of solidarity of society with the victim. Namely, the compensation is funded from public funds.

For the assessment of the personal share the Schadefonds verifies if the victim could and should have avoided the violent crime. In this respect it examines if the victim unnecessarily placed himself in a situation where he could and should have expected violence.

If there is question of a personal share then the Schadefonds can reject a request in full or set the compensation at a lower amount. If the Schadefonds sets the compensation at a lower amount then it can allocate 25%, 50% or 75% of the compensation that the victim would have received had he not had a personal share.

Below a number of situations of personal share are described. In this respect it is indicated how the Schadefonds assesses these situations. Please note: these are guiding principles. Whether the Schadefonds rejects a request in full or sets the compensation at a lower amount is ultimately determined on the basis of the nature and seriousness of the reproach that can be made in respect of the victim, considered in the light of the violence that was used against him. This takes all circumstances of the case into account.

- If the victim was first to use violence and the perpetrator reacted identically (hence no disproportionate violence of the perpetrator) then the Schadefonds rejects a request in full. If the violence of the perpetrator is not proportionate to what can be blamed on the victim and the victim suffered very serious injuries (basically injury category 4 or higher) then the violence of the perpetrator is qualified as disproportionate. The guiding principle is then that 50% of the compensation is allocated.
- If the victim sought the confrontation with the perpetrator or contributed to the escalation of a situation, without using any violence, then the Schadefonds can set the compensation at a lower amount. The guiding principle is that 75% of the compensation is allocated.
- If there is question of nightlife violence, where the victim was under the influence of alcohol / drugs and acted in a provocative and/or insulting manner, then the guiding principle is that 50% of the compensation is allocated if the said behaviour gave cause to the violence. The reason to allocate 50% and not 75% of the compensation in these instances is that it is generally accepted that feelings can easily become very heated during the nightlife and can lead to violence.
- If a person submitting a request is intentionally active in the soft or hard drugs environment (this also includes intentionally providing services and/or delivering goods to people in this environment) and the violent crime is a result of this then the Schadefonds rejects the request in full. The same applies to violent crimes that are related to arms trade. Namely, violence is used regularly in the drugs and arms trade in order to solve conflicts and disagreements, to strengthen someone's position in the environment or to extort money, drugs and/or weapons.
- Also if the victim becomes the victim of violence as a result of (illegal) activities of a different kind (e.g. selling counterfeit branded articles, fraudulent practices or participation in an illegal poker tournament) then there may be question of a personal share. The Schadefonds then assesses the share of the victim in the entire event. On the basis thereof it determines if the compensation is set at a lower amount or that the request is reject in full.

C.2 Personal share in case of minors

The Schadefonds is of the opinion that a youthful age can be a reason not to blame someone for certain behaviour or to a limited degree. The Schadefonds thus seeks harmonisation with the background of the juvenile criminal law. To assess the personal share of a minor victim the Schadefonds makes a distinction between three age categories: 0 up to and including 11 years of age, 12 up to and including 15 years of age and 16 up to and including 17 years of age.

- In case of a personal share of minors aged 0 up to and including 11 the guiding principle is that no discount is applied to the compensation.
- In case of a personal share of minors aged 12 up to and including 15 the guiding principle is (depending on the degree of personal share) to apply a discount of at most 50% to the compensation. The seriousness of the fact (e.g. drugs trade or murder), the personality of the victim and the circumstances of the case may, however, occasionally give cause to yet apply a higher discount (75%) or to reject a request in full.
- In case of a personal share of minors aged 16 and 17 the guiding principle is (depending on the degree of personal share) to apply a discount of at most 75% to the compensation. The seriousness of the fact (e.g. drugs trade or murder), the personality of the victim and the circumstances of the case may, however, occasionally give cause to yet reject a request in full.

C.3 Personal share in case of observers

The personal share of the actual victim does not play a role of importance in the assessment of the request of an observer with psychological injuries. The personal share of the observer in the event is assessed as outlined in sections C.1 and C.2.

C.4 Personal share in case of surviving relatives

If a surviving relative submitted a request then the Schadefonds examines both the personal share of the deceased victim in the violent crime or the criminally negligent homicide and the potential involvement of the surviving relative. On the basis of the opinion on the personal share and the involvement the Schadefonds can only reject or sustain the request in full. Hence, no discount is applied to the compensation.

If the request of the victim, had he still been alive, would have been rejected in full (for instance, the victim dealt in hard drugs and was killed for that reason) then the Schadefonds rejects the request of the surviving relative in full.

If the deceased victim, had he still been alive, would only have been discounted on his compensation (for instance, he insulted someone in the nightlife after which he had been killed by knife stabbings) then the Schadefonds basically sustains the request of the surviving relative.

If the surviving relative had a personal share in the violent crime as a result of which the victim decreased then the Schadefonds assesses per individual case if and to what degree this is taken into account when determining the compensation.

C.5 Personal share in case of close relatives

If a close relative submitted a request then the Schadefonds examines both the personal share of the victim in the violent crime and the potential involvement of the close relative. On the basis of the opinion on the personal share and the involvement the Schadefonds can only dismiss or sustain the request in full. Hence, there is no discount on the compensation.

If the victim personally submitted or would have submitted a request and it was or would have been dismissed in full (for instance, the victim dealt in hard drugs and subsequently suffered injuries due to a crime) then the Schadefonds dismisses the request of the close relative in full.

If the victim personally submitted or would have submitted a request and would only have been discounted on the compensation (for instance, he insulted someone during the nightlife after which he had been stabbed with a knife and suffered injuries) then the Schadefonds basically sustains the request of the close relative in full.

If the close relative had a personal share in the violent crime in pursuance of which the victim suffered injuries then the Schadefonds assesses per individual case if and to what degree this is taken into account when determining the compensation.

D. Damages otherwise reimbursed

When awarding compensation the Schadefonds factors in the compensation that the victim, the surviving relative or the close relative can recover or recovered under civil law and other compensation for damages that are or can be provided to the victim as a result of the violent crime (section 6 subsection 1 of the Act). If all material and immaterial damages of the victim, the surviving related or the close relative have already been reimbursed otherwise then compensation from the Schadefonds is not possible.

D.1 Compensations taken into account by the Schadefonds

The payments of the Schadefonds are undifferentiated compensations for immaterial damages and for financial damages that are the direct result of injuries or demise due to a violent crime. Financial damages do in any case include: costs of recovery (from the injuries) and damages due to loss of the ability to work. If compensation has already been received for these two damage items or for immaterial damages in a different way then the Schadefonds deducts the said compensation from the payment. With regard to the costs of recovery the Schadefonds departs from compensations (e.g. from the perpetrator, an employer or an insurance) for the costs that were not reimbursed by the healthcare insurer. Hence, if the healthcare insurer reimbursed the costs of recovery (from the injuries) then the Schadefonds does not withhold the said reimbursement from the payment.

Compensations for property damages and compensations for legal costs are not deducted from the payment by the Schadefonds. This also applies to, for instance, telephone, travelling and security expenses.

Potential compensation for funeral expenses or loss of maintenance is only settled with the compensation by the Schadefonds if a separate allowance is or was awarded for these claim items.

A claim sustained by the civil court on account of 'shock damages' is deducted from the compensation for the observer who suffered psychological injuries by being a witness.

D.2 Settlement and recovery

Settlement during the handling of the request

If it becomes clear during the handling of a request that certain damages are (partly) compensated differently (e.g. by the perpetrator, an employer of the violent crime took place during the performance of the work or third-party insurance) then the Schadefonds can deduct the said compensation in full or in part from the payment (section 6 subsection 3 first sentence of the Act). The Schadefonds refers to this as a settlement.

Settlement afterwards via the PPS

If the damages shall be reimbursed by the perpetrator after the Schadefonds has awarded compensation then the Schadefonds can determine afterwards that the said compensation is settled with the payment (section 6 subsection 3 second sentence of the Act). This takes place as follows.

If a perpetrator is ordered by the criminal court to pay compensation to a victim then the Public Prosecution Service (PPS) shall collect the said compensation from the perpetrator. The PPS periodically informs the Schadefonds what compensations it collects in connection with violent crimes.

The Schadefonds then examines whether the PPS shall collect compensation for victims who have also already received compensation from the Schadefonds. If compensation and payment are related to the same damages of a victim then the Schadefonds reports this to the PPS.

The PPS then pays the overlapping part of the compensation to be collected to the Schadefonds instead of to the victim because the victim has already received payment for the relevant damages from the Schadefonds. The victim receives a decision from the Schadefonds about this settlement.

Recovery from the victim

If a victim has already received compensation (e.g. from the perpetrator, an employer or insurance) and the victim has previously already received compensation from the Schadefonds for the same damages then the Schadefonds claims the money that was received twice back from the victim. The victim receives a decision about this in which it is indicated what amount must be paid back to the Schadefonds.

Settlement in case of personal share

If the payment of the Schadefonds was cut due to personal share of the victim and the victim was compensated for a part of his damages differently then the said compensation is also settled with the payment. For the settlement the Schadefonds departs from the reduced payment.

No recovery or settlement

The compensations as intended in section D.1 are deducted from the payment by the Schadefonds, unless this is unreasonable. The Schadefonds does in any case consider it to be unreasonable to claim back compensation of \$ 500 or less received by the victim after the Schadefonds has allocated a payment. If settlement takes place afterwards via the PPS then amounts lower than \$ 500 are settled.

D.3 Recovery from the perpetrator

Having regard to section 6 of the Act the Schadefonds expects of the victim that he recovers his damages from the perpetrator (if he is known) as much as possible. The victim can do this by joining a claim for civil damages or by holding the perpetrator liable under civil law. The victim can also agree on a settlement with the perpetrator. If this is a settlement with final discharge then the Schadefonds does basically not provide payment.

To qualify for payment from the Schadefonds, it is, however, not required that a victim (first) addresses the perpetrator. Namely, a perpetrator could have remained unknown or the victim can have a good reason not to address the perpetrator.

D.4 Recovery from the employer

If an employee is involved in a violent crime during the performance of his profession then the employer should occasionally guarantee the damages. The Schadefonds expects of the victim that he first addresses the employer for the incurred damages. However, in general not all damages are reimbursed by the employer. If not all damages are reimbursed by the employer then the victim can afterwards rely on the Schadefonds.

The compensation payment

E. Compensatory nature

If all statutory requirements are met (see chapter 1) then a victim qualifies for compensation. The payment is determined based on the principles of reasonableness and fairness and does not exceed the amount of the damages caused by the injuries or the demise. This is laid down in section 4 of the Act. That is why the payment is of a compensatory nature. The said compensatory nature also comes to the fore in the Maximum Amounts Payments Schadefonds Geweldsmisdrijven Regulations. In article 1 of these regulations it is determined that the Schadefonds is bound by maximum amounts.

The compensation is a social expression of solidarity and a sign of acknowledgement by the government on behalf of society of the injustice and suffering that happened to a victim, a surviving relative or a close relative. It is paid from tax resources and does – having regard to the compensatory nature – not have the objective of covering all damages. The compensation is meant to slightly recover the damaged trust and help the victim, the surviving relative or the close relative (financially) in order that they can look ahead to the future again. The recipient can freely spend it.

What amounts the Schadefonds pays to every group and what damages are covered by the compensation is explained in this chapter.

E.1 The payment to the victim with injuries

Nature of the compensation

The payment that the Schadefonds makes to victims with serious physical and/or psychological injuries forms compensation for the injustice and suffering (immaterial damages) and potential financial damages that may be incurred as a consequence thereof, e.g. costs for medical assistance and reduction of income. The Schadefonds pays in an undifferentiated manner, this means that payment is not made separately for immaterial damages and financial damages.

How is the payment in case of injuries determined?

The Schadefonds can allocate a payment to victims of violent crimes who consequently suffer serious physical or psychological injuries. When determining the level of the payment the Schadefonds uses six injury categories to which six increasing fixed amounts are linked. This is shown diagrammatically below.

Injury category	Payment
1	€ 1,000
2	€ 2,500
3	€ 5,000
4	€ 10,000
5	€ 20,000
6	€ 35,000

The level of the payment depends on the seriousness and the consequences of the physical or psychological injuries and the circumstances under which the violent crime was committed. In this respect it is noted that the more serious the injuries, the consequences and the circumstances, the higher the injury category and the associated payment.

On the basis of the list of injuries (see section 1.2.2) the Schadefonds determines whether the injuries suffered fit in one of the injury categories. The Schadefonds may also ask its medical adviser to assess the injuries and to issue an opinion on the applicable injury category (see section 1.2.4).

If the injuries suffered fit in one of the injury categories then the amount that belongs to that injury category is the payment that the victim receives.

The compensation is determined in euros. The decision includes the amount in euros. The amount in US dollars is visible on the account. The level of the amount in US dollars depends on the then applicable exchange rate.

Payment for the observer

The seriousness of the psychological injuries of the observer must be established objectively. If the psychological injuries are serious then the Schadefonds determines what injury category is in line with this. This injury category then determines the level of the payment.

A child (under the age of 12) that systematically observed domestic violence receives compensation for psychological injuries that fit in injury category 2.

In case of a child aged between 12 and 18 that systematically observed domestic violence the seriousness of the psychological injuries must be determined objectively. If the psychological injuries are serious then the Schadefonds determines what injury category is in line with it. This injury category then determines the level of the payment.

E.2 The payment in case of demise

How is the payment determined in case of demise?

The Schadefonds can provide payments to surviving relatives of victims who deceased due to a violent crime. Who the Schadefonds qualifies as surviving relatives is mentioned in section 2.1.

The payment for a surviving relative always consists of a fixed amount of € 5,000 (injury category 3). This amount represents compensation for the suffering of the surviving relatives and the potential additional financial damages that are the result of the demise. Think about therapy costs or reduction of income. The fixed amount does, however, not aim to provide compensation for potential funeral expenses and loss of maintenance. The fixed amount that is paid is – just as in case of victims – undifferentiated. This means that it is not fixed what part regards immaterial damages and what part financial damages.

The fixed amount can be supplemented with two separate payments for:

- funeral expenses; and
- loss of maintenance.

Funeral expenses

If a victim deceased due to a violent crime then the funeral expenses that were not reimbursed may qualify for compensation. A person who demonstrates that the funeral expenses were incurred can submit a request for compensation for the said expenses. Hence this does not need to be a surviving relative.

Funeral expenses are all expenses that are related to the funeral or cremation of the deceased victim. This includes, for instance, all the costs charged by the funeral home and potentially also separate costs for, for instance, the flowers or the coffee table or the clothing for the funeral. The costs of the tombstone or urn are also included as well as the maintenance expenses of a grave and grave rights.

Travel and subsistence expenses of at most two family members of the deceased who travel from or to one of the other BES islands, the European Netherlands or abroad can also be included in the payment. This also applies to the additional costs that are incurred if the deceased is buried at one of the other islands, in the European Netherlands or abroad. This also includes the costs for the transport of the deceased and the travel and subsistence expenses of at most two family members.

The Schadefonds only provides a payment for funeral costs that are not reimbursed by, for instance, the perpetrator or a funeral insurance.

Level of payment for funeral expenses

Per deceased victim a payment of at most € 7,500 can be provided for the funeral expenses, also if the actual expenses were higher. The payable amount is determined on the basis of the amount in US dollars, converted into euros on the basis of the exchange rate applicable on the date of the invoice.

Evidence of funeral expenses

The funeral expenses must be substantiated. This can, for instance, be done with invoices. If a funeral insurance reimbursed certain expenses then the said reimbursement must be substantiated with an insurance specification. Potential compensations by the perpetrator must also be specified.

Loss of maintenance

Loss of maintenance refers to the damages of surviving relatives due to the loss of the income of the deceased victim. Payment for this damage item represents compensation for these damages and should slightly help the surviving relative to (temporarily) continue his standard of living.

Surviving relatives who can qualify for compensation for this damage item are:

- the surviving (not) married partner of the deceased;
- the minor dependent children (i.e. children for whom the deceased provided for the maintenance); and
- the children of age (aged between 18 up to and including 20) who follow fulltime studies that the deceased (partly) provided for.

The Schadefonds can pay several fixed amounts for loss of maintenance. The level of the payable amount depends on:

- the income of the deceased;
- the income of the surviving (not) married partner;
- the relationship of the surviving relative with the deceased ((not) married partner or dependent child); and
- if the surviving relative is a dependent child: the age.

Level of the payment in the case of loss of maintenance

- If the deceased was the breadwinner (employed or self-employed) then the Schadefonds pays € 25,000 to the surviving (not) married partner.
- If the deceased was the breadwinner (employed or self-employed) then the Schadefonds pays € 25,000 to every dependent (step) child aged between 0 up to and including 4.
- If the deceased was the breadwinner (employed or self-employed) then the Schadefonds pays € 15,000 to all dependent (step) children aged between 5 up to and including 11.
- If the deceased was the breadwinner (employed or self-employed) then the Schadefonds pays € 10,000 to all dependent (step) children aged between 12 up to and including 17.
- If the deceased and the surviving (not) married partner had comparable incomes then the Schadefonds pays the same amounts in the aforementioned situations.
- If the surviving (not) married partner was the breadwinner and the deceased had some income then the Schadefonds pays half of the specified amounts in the aforementioned situations.
- If the deceased was the breadwinner (employed or self-employed) or had a comparable income as the surviving partner and a child of age (aged between 18 up to and including 20) follows studies (VSBO, SBO, Bachelor or Master) then the Schadefonds pays € 1,500 per study year that still needs to be followed.
- The Schadefonds does not pay if the deceased received a social relief benefit or had no income.

Payments for loss of maintenance

The Schadefonds only provides payment for loss of maintenance if the said damages are not reimbursed. If reimbursement was received – for instance from the perpetrator or an accident or life insurance – then the Schadefonds verifies whether it should be deducted from the payment.

Evidence of loss of maintenance

Loss of maintenance must be substantiated with evidence (e.g. payslips or annual statements) that show the average income of the deceased victim and the surviving partner. The relationship and potential dependence of the surviving relative in respect of the deceased must also be demonstrated.

If a surviving child of age follows studies (VSBO, SBO, Bachelor or Master) then this must be demonstrated with evidence of enrolment. It must also be demonstrated that the deceased provided for this and how many study years shall still be followed.

Diagrammatic overview of payment to surviving relative

The payment for a surviving relative can consist of three parts. This can be shown diagrammatically as follows.

Payment to surviving relative	Meant for:
€ 5,000	The suffering of the surviving relatives due to the demise of the close relative + potential other financial damages, e.g. therapy costs and reduction of income. Loss or maintenance and funeral expenses are not included in this amount.
Max. 3 x € 1,500 / € 10,000 / € 15,000 / € 25,000	Loss of maintenance
€ 7,500	Funeral expenses

Maximum payment for funeral expenses and loss of maintenance combined

In pursuance of article 1 under a of the Regeling maximumbedragen uitkeringen schadefonds geweldsmisdrijf (Maximum Amounts Payments Schadefonds Regulations), compensation for financial damages can never exceed € 25,000. Funeral expenses and loss of maintenance are financial damages. If the Schadefonds provides a payment to a surviving relative for funeral expenses and loss of maintenance then they can, consequently, not exceed more than € 25,000 combined.

E.3 The payment to the close relative

The Schadefonds can award compensation to close relatives of victims with serious and permanent injuries resulting from an intentionally committed violent crime. It is mentioned in chapters 4.2 and 2.1 who the Schadefonds qualifies as close relatives.

The compensation for a close relative always consists of a fixed amount of € 5,000 (injury category 3). This amount forms compensation for the suffering of the close relative and the potential additional financial damages. Think about therapy costs or reduction of income. The fixed amount that is paid is – like with victims – undifferentiated. This means that it is not established what part of it regards immaterial damages and what part financial damages.

Financial and immaterial damages in case of serious and permanent injuries

Close relatives of victims who suffered serious and permanent injuries due to a violent crime can claim compensation for immaterial and financial damages. Immaterial damages of close relatives implies suffering in connection with the injuries suffered by the victim. The compensation is possible if the injuries were caused by a crime that was committed on or after January 1, 2019.

E.4 The payment in case of concurrence

General

If a victim suffered multiple physical injuries due to a violent crime, whether or not in combination with (presupposed) psychological injuries, then this is referred to as concurrence. The same applies to instances where a surviving relative is otherwise also a victim or when multiple surviving relatives deceased due to a violent crime. These instances of concurrence are elaborated further below.

Victim with multiple injuries

It happens that a victim suffers multiple physical injuries, whether or not in combination with psychological injuries, due to a violent crime (due to a crime that was committed against the victim or due to observation of a crime committed against a surviving relative). In that case the most serious injury is decisive for the Schadefonds to determine the level of the payment.

This means that the level of the payment is determined on the basis of the injury category that is in line with the most serious injury. In case of multiple injuries injury categories are therefore not added up. In case of at least 3 different physical injuries that fall in the same injury category, the category is, however, increased by one.

Surviving relative with serious injuries

If a surviving relative also suffered serious physical or psychological injuries (whether or not through observation) during the violent crime as a result of which a close relative deceased then he can submit a request as a surviving relative and as a victim. For the injuries suffered the Schadefonds then provides a separate payment of at most € 35,000. In addition, the Schadefonds can provide a surviving relative payment that consists of the fixed amount of € 5,000 and a potential supplement for funeral expenses and loss of maintenance.

Close relative with serious injuries

If a close relative also suffered serious physical or psychological injuries (whether or not through observation) in respect of a violent crime as a result of which the victim suffered serious and permanent injuries then he can submit a request as a close relative and as a victim. The Schadefonds then pays a separate compensation of at most € 35,000 for the suffered injuries. In addition, the Schadefonds can award compensation for close relatives, which consists of a fixed amount of € 5,000.

Multiples deceased due to one violent crime or criminally negligent homicide

If a surviving relative lost two or more close relatives due to one violent crime or criminally negligent homicide then the Schadefonds pays a fixed amount of € 10,000 (injury category 4) by way of compensation for the suffering and potential other financial damages, e.g. therapy costs and reduction of income. In addition, a maximum of two payments for loss of maintenance can be awarded. A separate compensation can be provided for the funeral expenses for every deceased.

Multiple victims with serious and permanent injuries due to one violent crime

If two or more people suffered serious and permanent injuries due to one violent crime then the Schadefonds pays every close relative of the victims a fixed amount of € 10,000 (injury category 4) by way of compensation for the suffering and potential other financial damages, e.g. therapy costs and reduction of income.

E.5 Mitigation of damages

As in civil law, the Schadefonds applies the duty to mitigate damages. This means that the victim is subject to the obligation to mitigate the damages that are inflicted by the violent crime as much as reasonably possible. Damages that arise because after the violent crime the victim made insufficient efforts to mitigate the damages can also be blamed on the victim and are therefore not taken into account in case of a potential payment. This is, for instance, the case if after a violent crime a victim does not undergo necessary treatment to limit his injuries.

E.6 Future damages

If a victim or surviving relative incurs damages after a payment has been provided then in certain instances an additional payment can be requested. See section F for this.

E.7 Costs of legal assistance

Having regard to the nature of the payment, the simplicity of the request procedure and the fact that free assistance of the Victim Support Centre is available, the Schadefonds does not separately provide payment for potential costs of legal assistance that the victim or the surviving relative incurs for the submission of a request.

The costs of legal assistance that a victim or a surviving relative reasonably had to incur in connection with the handling of objections (against a decision on his request) are only reimbursed by the Schadefonds at the request of the victim or the surviving relative if the decision was reached grossly carelessly in violation of the law. This follows from section 58 subsection 2 of the Wet administratieve rechtspraak BES (Administrative Justice (BES) Act).

E.8 Statutory interest

Basically the Schadefonds does not pay statutory interest on account of the fact that in advance there is no entitlement to payment from the Schadefonds. The entitlement to a payment only arises after an affirmative decision of the Schadefonds. From that moment reimbursement of the statutory interest may be relevant provided that there is cause for it (e.g. if the payment of the compensation imputably takes much too long). The victim should then expressly request the statutory interest.

E.9 Entitlement of beneficiaries to payment

If a victim or a surviving relative deceases after his request has been submitted to the Schadefonds, then the entitlement to a potential payment is susceptible to transfer by universal title. To this end the beneficiaries should submit the inheritance certificate.

Other procedures

F. Additional request

F.1 Additional request of victim

A victim can submit an additional request if after receipt of a (partially) affirmative decision the injuries appear to be substantially more serious than was taken into account in the decision on the primary request.

For the substantiation of an additional request the victim must supply new medical information from which it becomes apparent that the injuries are more serious than taken into account in the decision on the primary request. The Schadefonds submits the said medical information to its medical adviser with the question whether it gives cause to classification in a higher injury category than determined in the previous decision.

F.2 Additional request of surviving relative

A surviving relative can only submit an additional request for funeral expenses and for loss of maintenance. The request for a supplement to the fixed payment amount for surviving relatives is not possible because this is a fixed amount. A close relative cannot submit an additional request because he can only be awarded a fixed compensation of € 5,000.

F.3 Form of additional request

An additional request can be submitted without request form.

F.4 Time limit for submission of additional request

A time limit of ten years applies to the submission of an additional request. This time limit starts after the day of the occurrence of the damages for which the additional request is submitted. An overstepping of this time limit is basically not excusable.

G. Objection and appeal

If a victim or a surviving relative does not agree with the decision on the request then a notice of objection or a notice of appeal can be submitted in writing (not by email) within six weeks after the despatch of the decision. The Schadefonds recommends to first lodge an objection. Namely, this procedure is free of charge and provides the victim with an additional legal remedy. The person submitting the objection or the appeal must clearly describe in the notice of objection or the notice of appeal why and on what points he does not agree with the decision.

If the victim opts for the objections procedure then the person filing the objection is invited to explain his objections orally at a hearing, unless there is question of one of the situations mentioned in section 67 of the Wet administratieve rechtspraak BES (Administrative Justice (BES) Act). The hearing basically takes place via a secure video connection. A member of the Committee of the Schadefonds and an employee of the Schadefonds attend this hearing. The employee of the Schadefonds prepares, in association with the committee member, an opinion for the Committee as to how to decide on the objections. The Committee then reaches a decision on the notice of objection. The Committee can declare the notice of objection to be founded, unfounded or inadmissible. The victim is always informed of this in writing.

If a victim does not agree with the decision on the request or the decision on the notice of objection then appeal can be lodged at the Court of First Instance that holds its seat in the island territory where the person lodging the appeal holds his place of residence. How the victim can do this is described in the disputed decision and in the decision on the notice of objection.

H. Review

It is possible to request the Schadefonds to review a previously reached decision. If the request for review is made after a (partially) negative decision then new facts or changed circumstances must be brought to the fore that were unknown to the victim at the time of the negative decision and could neither have been known earlier. A policy change by the Schadefonds is, in itself, no ground for review of a decision.

A request for review can be made without request form.

H.1 Time limit for submission of review request

A time limit does not apply to a review request. The Schadefonds does expect that a review request is submitted as soon as possible after the victim has become aware of the new facts and/or changed circumstances.

I. International requests

Everyone who has become a victim of an intentional violent crime in a Member State of the European Union can submit a request for compensation by the relevant Member State via the Dutch Schadefonds Geweldsmisdrijven. The Schadefonds settles the request administratively and forwards the request to the competent authority of the relevant Member State. The Schadefonds has no control over the decision on payment. Namely, every country applies its own national rules and procedures.

Countries with a Schadefonds

EU countries are held to have a comparable authority. The following EU countries have this kind of authority: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

J. Complaints procedure

If a victim is not satisfied with the manner that he was treated by the Schadefonds then he can submit a complaint about this. A complaint can be submitted in writing, by email and orally.

After the complaint has been heard or received, the Schadefonds contacts, where required and possible, the victim by telephone. Namely, in a (telephone) conversation the mutual understanding can be increased and the complaint may perhaps already be handled. If the victim is satisfied with the reaction of the Schadefonds then a letter no longer follows.

It may also be that a victim is invited to explain the complaint in person during a meeting via a secure video connection. If the complaint is about an employee of the Schadefonds then this employee is also given the opportunity to tell his or her side of the story.

The Schadefonds provides a written reaction within six weeks after the submitted complaint.

K. National ombudsman

If after handling of his complaint the victim is still not satisfied with the Schadefonds then he can address the National Ombudsman in The Hague.

Miscellaneous

L. Submission of a request by a minor

If the victim is a minor then the request should basically be submitted and signed by the legal representative. In special situations an exception can be made to this. The minor victim or a person directly involved must then explain why the minor victim wants to submit the request without the intervention of the legal representative. This is assessed on a case by case basis.

M. Payment

M.1 Payment minor victim

Minor victim

In case of minor victims who are aged 16 or under at the time that the payment is provided, 20% of the payment is transferred by the Schadefonds to the account number specified by the legal representative. This part of the payment can thus directly be spent for the benefit of the victim (e.g. for potential financial damages).

For the remaining 80% of the payment, it is determined per situation to which bank account the amount must be deposited. As soon as the victim becomes of age, he can dispose of this amount. This way substance is as much as possible given to the guiding principle that the payment inures to the benefit of the victim or the surviving relative.

Minor (surviving) relative

Also in case of minor (surviving) relatives who are aged 16 or under at the time the payment is provided, 20% of the payment is transferred by the Schadefonds to the account number specified by the legal representative. For the remaining 80% of the payment, it is determined per situation to which bank account the amount must be deposited.

Potential payments for funeral expenses and loss of maintenance are always paid in full to the bank account specified by the legal representative.

M.2 Advance

By means of a provisional payment the Schadefonds can provide an advance on the payment (section 13 subsection 1 of the Act). Condition is, however, that the request complies with the statutory requirements (i.e. that it is certain that a payment shall be provided) and the Schadefonds cannot reach a definitive decision shortly. If the Schadefonds first wants to conduct a further investigation, for instance because it has not been established yet whether payment shall ultimately be provided, then an advance is not possible.

A request for an advance is only handled if the victim requests this in writing and motivates why an advance on the payment is required for him and is of an urgent nature to him. This may, for instance, be the case if the victim disposes of insufficient financial resources to undergo treatment for his injuries. The mere fact that the victim is in a difficult financial situation is no reason for allocation of an advance.

Advance to victim

An advance can be provided to a victim if it is clear that someone suffered serious injuries without personal share due to an intentional violent crime, however the exact seriousness of the injuries must still be examined. If the examination can reasonably not be waited for then an advance can be provided. In that case the Schadefonds pays an amount that corresponds with injury category 1. Namely, in the given situation it can be said with certainty of this amount that it does not exceed the amount that shall ultimately be paid (payment is made in any case and it cannot be lower than the amount pertaining to injury category 1). Depending on the circumstances of the case – for instance when it is an established fact that the injury category to be determined shall not be lower than 4 – a higher advance can be paid. An advance to be allocated does in any case not deviate from the fixed amounts that the Schadefonds can pay to victims.

Advance to surviving relative

In case of surviving relatives – as soon as it is clear that a request complies with all statutory criteria – the fixed payment amount is immediately clear. If a surviving relative did not specify any other damages due to funeral expenses and loss of maintenance then this fixed amount can immediately be paid. The allocation of an advance is then not required.

If a surviving relative did specify damages due to funeral expenses and loss of maintenance then it may happen that the examination regarding the said damages takes some time. If the examination can reasonably not be waited for then the fixed payment amount can be paid by way of advance.

Advance to relative

In case of relatives – as soon as it is clear that a request complies with all statutory criteria – the fixed payment amount is immediately clear. This fixed amount is therefore paid out immediately. The allocation of an advance is then not required.

Advance to minor

An advance to a minor victim (aged up to and including 16) amounts to 20% of the advance that would be paid to a victim of age. The reason for this is that 80% of the payment to a minor are always paid into an account to be determined. That is why an advance to a minor surviving relative (aged up to and including 16) also amounts to 20% of the fixed payment amount that would be paid to a surviving relative of age.

N. Administration

If a victim (or a surviving relative) cannot personally provide for his financial affairs then an administrator can be appointed for this. The administrator then reaches decisions on the money and the assets of the victim. The victim can, however, personally submit a request to the Schadefonds. However, the administrator determines to what account number the allocated compensation must be paid.

With every request the Schadefonds therefore checks if there is question of a situation of administration. To this end the administration register at the Court Registry of the Court in the First Instance of Bonaire, St. Eustatius and Saba is consulted. If there appears to be a situation of administration then the Schadefonds first contacts the victim or the surviving relative and he is requested to inform the administrator of the request. Before the Schadefonds pays the compensation, the administrator must submit a copy of the administration order and specify the account number to which a potential payment can be paid.

If a request is submitted on behalf of a minor whose parents are under administration then the aforementioned rules also apply. The only difference is that 80% of the potential payment are paid into an investment account (see section M.1). The remaining 20% of the payment are paid into the IBAN specified by the administrator.

O. Guardianship

Guardianship is for people who cannot personally organise their financial and personal affairs. A guardian reaches decisions on money, care, nursing, treatment or counselling of the person involved. A person who was placed under guardianship is legally incompetent. This means that without consent of the guardian he cannot perform legal acts that cannot be reversed. A person placed under guardianship is therefore not independently authorised to submit a request to the Schadefonds. The guardian should do this. A copy of the guardianship order should be attached.

P. Payment and taxes

Basically, the payment from the Schadefonds is tax-free as it does not fall under the “sources of income” mentioned in section 3 of the Wet op de inkomstenbelasting BES (Income Tax (BES) Act).

Q. Payment and social relief

The Schadefonds believe that the payment from the Schadefonds should not be included in the resources and therefore the payment from the Schadefonds should not be settled with the social relief benefit (Onderstand).

R. Insight into and surrender of dossier

In pursuance of article 15 of the Algemene verordening gegevensbescherming (AVG), (General Data Protection Regulation (GDPR) and section 63 of the Wet administratieve rechtspraak BES (Administrative Justice (BES) Act), everyone is entitled to insight into and surrender of his dossier. This may be different with regard to criminal information that the dossier contains. A request for insight into or surrender of the dossier must be submitted in writing. The Schadefonds then reaches a decision within four weeks.