SCHADE FONDS GEWELDS MISDRIJVEN

Policy Manual Schadefonds Geweldsmisdrijven

Caribbean Netherlands

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Introduction

What does the Schadefonds Geweldsmisdrijven do?

The Schadefonds Geweldsmisdrijven is an independent body of the Ministry of Justice and Security and awards non-recurring payments to people who suffered serious physical or psychological injury due to a violent crime. The Schadefonds also awards payments to surviving relatives of victims who died as a result of a violent crime or criminally negligent homicide and to close relatives of victims with serious and permanent injuries due to an intentionally committed violent crime.

Up to 1 April 2019 the Schadefonds could only offer compensation to victims and surviving relatives of victims of crimes committed in the European Netherlands. From 1 April 2019 it has also been possible to pay compensation to people who were victims of crimes committed after 1 January 2017 in the Caribbean Netherlands (Bonaire, Sint Eustatius and Saba). This Policy Manual is only applicable to victims and surviving relatives of victims of crimes committed in the Caribbean Netherlands. For violent crimes committed in the European Netherlands reference is made to the Policy Manual Schadefonds Geweldsmisdrijven.

What is the objective of the financial compensation?

The compensation is a social expression of solidarity and also gives a sign of acknowledgment by the government on behalf of society of the injustice and suffering that overcame a victim, surviving relative or close relative. This compensation is paid from tax money and is not intended to cover all damages. The compensation is meant to restore damaged trust somewhat and help the victim, surviving relative or close relative to get ahead (financially), so that he or she can focus on 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 the injury category in which the injuries suffered belong. The corresponding amount is then the compensation that is paid to the victim for the suffering that overcame him/her (immaterial damage) and any financial damages that were consequently incurred, e.g. costs of 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 any further financial damages. These can be therapy costs or reduction of income. The compensation for the surviving relative can be supplemented by 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

Pursuant to Section 20 of the Schadefonds Geweldsmisdrijven Act (*Wet schadefonds geweldsmisdrijven*), hereinafter referred to as: the “Act”, the Act applies to the Public Entities of Bonaire, Sint Eustatius and Saba (the Caribbean Netherlands). To qualify for a payment from the Schadefonds, all requirements set by the Act must be met. The Schadefonds has drafted policy that gives substance to those statutory requirements. In this Policy Manual you receive information about the way in which the Schadefonds assesses requests from victims, surviving relatives and close relatives. On this basis you can verify whether you qualify for payment from the Schadefonds. Where ‘he’ is written in the text, ‘they’ and ‘them’ can also be read.

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

The Policy Manual applies to crimes committed in the European Netherlands. This Policy Manual and more information can be found on the website www.schadefonds.nl.

Who qualifies for compensation?

Pursuant to Section 3 subsection 1 of the Act, the Schadefonds compensation can be awarded to:

- victims who suffered serious physical or psychological injuries due to a violent crime intentionally committed in the Caribbean Netherlands, or
- 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
- surviving relatives and close relatives of a person referred to under a) or b) if he or she passed away or suffered serious and permanent injuries due to the violent crime, as referred to in Section 107, subsection 1, under b., of Book 6 of the Civil Code, or surviving relatives of a person who passed away as a result of violation of Section 320 of the Criminal Code BES (*Wetboek van Strafrecht BES*), or
- people other than those referred to under c., who paid the funeral expenses of a person referred to under a) or b), if he or she died as a result of the violent crime.

The following groups are therefore concerned:

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 above-mentioned groups must meet the various requirements set by the Act. In sections 1 to 4 inclusive, it is discussed per group how the request is assessed. The other statutory criteria are explained in sections A to D inclusive. How the Schadefonds determines the level of the compensation is set out in section E. In sections F up to and including K, the various procedures at the Schadefonds are described. Sections L to R inclusive 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 committed in the Caribbean Netherlands as a result of which a victim suffered serious injuries (Section 3 subsection 1 of the Act). A violent crime as referred to in this section means a crime made punishable in the Criminal Code BES (*Wetboek van Strafrecht BES*) (or a punishable attempt to that effect), in the course of which violence was used or violent threats were made against a person. Consequently, if an incident has not been made punishable in the Criminal Code BES, hereinafter referred to as “CC BES”. then it does not constitute a violent crime within the meaning of Section 3 of the Act.

Violence can consist of physical and psychological violence. Assault (Section 313 of the CC BES), an act of violence committed 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 or causing an explosion (Section 163 of the CC BES) is only qualified as a violent crime if arson is committed or an explosion is caused intentionally and this results in mortal danger or danger of serious injury to the victim.

A violent crime may also be involved if a victim is put under considerable psychological pressure. Then the violent aspect can consist, for example of the perpetrator creating a certain situation in which the victim is no longer able to determine his or her will or in which certain circumstances are abused. This can include sex crimes. A substantial age difference, a relationship of authority or a dependent position with respect to the perpetrator are examples of circumstances that can be equated 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 violent crimes.

1.1.1 Intent

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

The Schadefonds assumes that injuries as a result of a game between children, a traffic accident or a normally run sport match generally are not intentionally inflicted. These are often referred to as 'culpable' injuries. Victims cannot submit a request for such injuries. Surviving relatives of victims of criminally negligent homicide within the meaning of Section 320 of the Criminal Code BES can submit a request. More information about this can be found in Section 3.

1.1.2 Plausibility of the violent crime

General

A violent crime does not have to be proved (such as before a criminal court), but must be made plausible. Plausibility is a legal term and entails that it does not have to be absolutely certain that things went as described in the request, but that it is quite possible that they went that way on the basis of the substantiation given. A clear and logical picture of what happened and what the reason for it was must follow from the substantiation.

First of all, the actual act of violence is important. This is the act that caused the victim to suffer injuries: for example dealing a blow, shooting of a firearm or stabbing with a knife. In the second place, what happened during the violent crime, the reason for it and the circumstances under which it was committed must be clear. The Schadefonds can include information from several sources in its assessment.

The guiding principle is that the victim is responsible for substantiating the request with enough objective indications. Objective indications are indications coming from a source other than the victim personally. These sources must be reliable and impartial and make statements based on their own observations.

The assessment

The Schadefonds assesses requests on the basis of the information available or if sufficient clarity emerges from it regarding the above-mentioned elements. In doing so, the Schadefonds weighs the available information coming from the various sources. A list is included below of sources that are often available in practice. This is not an exhaustive list, but it gives an indication of the sources that can be considered.

Examples are:

- A report to the police;
- A court judgment in a criminal case or civil proceedings;
- Medical information from a general practitioner or other physician or a qualified therapist, including a forensic and diagnostic examination;
- Information from the police investigation (such as witness and other statements, camera images or other findings)
- A report of an informative interview at the sexual crimes investigation unit;
- A report of an informative interview in case of human trafficking;
- Changes/reports to the police, including information by telephone;
- An allowed request for an Aware button/box
- A decision of the Court of Appeal in Section 12 CC proceedings;
- A record of the trial in a criminal case or civil proceedings;
- A decision of the (civil) court on a child protection order;
- A decision on a domestic exclusion order imposed on the perpetrator;
- An extract from judicial documentation (the criminal record) of the victim, the perpetrator or other persons involved;
- Information from assistance providing bodies such as the Child Abuse Counselling and Reporting Centre (AMK), social work, women's shelters, Youth Care, the Child Care and Protection Board (RvdK) and Safe at Home (Veilig Thuis);
- The results of a mediation process;
- A decision allocating housing with certificate of urgency on the basis of violence;
- Online and other open sources, including news and newspaper reports;
- Witness statements, visual or sound material, WhatsApp or social media prints personally delivered by the victim;

- The information stated on the request form and the description of what happened. Please note: these are not in themselves sources that can substantiate the request. These documents may nevertheless contain information on the basis of which the Schadefonds can request additional information, for example from the victim, the police, the Public Prosecution Service or a medical specialist.

A number of guiding principles apply to assessment of the available information by the Schadefonds.

The victim made a report to the police

A victim's own statement – if this is the only thing available – is not sufficient to establish plausibility. Making a report to the police is not a requirement in itself for handling of the request by the Schadefonds. In practice, however, a report to the police and the criminal investigation following it do indeed contribute to a high degree to the substantiation of a request. A report pressing charges immediately after the incident will weigh more heavily than a report made some time later, unless a clear explanation can be given for that, for example because the victim was not able to make the report due to the injuries suffered. For that reason, it is also important that a victim makes a report as soon as possible after the violent crime.

The decision by the Public Prosecution Service to prosecute

The fact that the Public Prosecution Service prosecutes a offender for the violent crime reported by the victim can help to substantiate the request. Consequently, whether the request will then be sufficiently substantiated must be considered in connection with the other objective indications.

A court judgment

If the criminal court has given judgment in the criminal case against the offender, the Schadefonds always includes that judgment in its assessment. A judgment can be an objective indication for substantiation of the victim's request. The offender must however be convicted of a crime that can be considered a violent crime intentionally committed against the victim. This can be a judgment in the first instance, on appeal or on appeal to the Supreme Court (in cassation). Even if an offender is acquitted, the grounds in the judgment can contain sufficient indications to make the violent crime plausible.

Medical information

Medical information is in principle not usable to substantiate what happened during the violent crime, the reason for it and the circumstances under which it was committed. Medical information usually can support a statement by the victim regarding plausibility only to a (very) limited extent. That is why in assessing the plausibility of the violent crime, the Schadefonds is restrained in its use of medical information. Medical information can nevertheless help to determine whether the injuries were caused by the violence asserted by the victim. The fact that someone has certain physical or psychological injuries cannot however give a decisive answer as to what happened. Medical information is of course also necessary to determine the seriousness of the injuries.

Information from other sources

It could be that the Schadefonds will need additional information if a police report or court judgment is not available. Additional information may also be needed if the victim has made a report to the police, but insufficient clarity emerges from it about what happened during the violent crime, the reason for it and the circumstances under which the crime was committed.

This applies as well if the report did not have criminal consequences, for example because the offence or the offender was not liable to punishment. It is also possible that the victim's statement gives rise to questions or that his or her statement gives rise to doubts for certain reasons, or that it is not sufficiently evident from a court judgment in which the offender is, for example, acquitted, what the reason was, what exactly happened and under which circumstances all this happened. The award of compensation in such cases is possible only if enough additional information can be obtained from one or more other sources.

If an insufficient picture can be formed also from this additional information regarding what happened during the violent crime, the reason for it and the circumstances under which it was committed, then the request will not be sufficiently substantiated and the request will be rejected. Such a rejection does not mean that the Schadefonds does not believe the victim: in that case, the request will be rejected because the victim's statement is not sufficiently substantiated by objective indications.

The request will also be rejected if the victim withholds or fails to provide additional information which he or she does possess. We expect a victim to fully disclose the state of affairs.

A request can be rejected as well because the police investigation is still in progress or has not yet produced a decisive answer. Clarity sometimes comes years after the incident; then the victim can once again submit a request for compensation to the Schadefonds.

Plausibility of victimhood in case of human trafficking

The assessment of the plausibility of victimhood in the event of human trafficking is complex, because this crime is pre-eminently aimed at isolation of the victim. That is why the Schadefonds uses a separate assessment framework for human trafficking to work additionally on the above-mentioned assumptions about plausibility. The assessment framework prescribes that the victim's statement as set out in the police report must be taken as the starting point. Medical information and information from other types of sources can be included in the assessment to examine whether they may contain objective indications. Contradictions and/or vague statements in the report only form a basis for contraindications with respect to plausibility if they pertain to the core of the account and are sufficiently substantiated. If there is no report, an assessment of the other objective information will have to show whether human trafficking can still be considered plausible.

Underlying idea

The Schadefonds carries out this assessment because the legislature gave the Schadefonds Geweldsmisdrijven the duty to give substance to the special responsibility of society for victims of violence. Compensation from the Schadefonds is an expression of the solidarity of society with the victim and a sign of acknowledgement of his or her victimhood. By way of this acknowledgement, a contribution is made to the restoration of the victim's trust. This is important, also because the perpetrator often remains unknown. Exactly because of this social solidarity, it must be sufficiently clear what happened during the violent crime, what the reason for it was and under which circumstances it was committed. A payment is fitting only if social solidarity is appropriate. The Schadefonds must be able to show society that the payments, which are made from public funds, have been made in a responsible and careful manner. For this reason as well, it is important that the payments are based on requests that are sufficiently substantiated.

1.2 Serious physical or psychological injuries

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

Just as in civil law, the Schadefonds starts from the victim as he or she was at the time of the crime. Because of this it can occur that a person who was physically or psychologically weaker at the time of the crime will suffer serious injury sooner than if he or she had been perfectly healthy at that time.

1.2.1 Medical information

The Schadefonds needs medical information to be able to assess the injuries. For this purpose, it only uses medical information from care providers who have made a diagnosis. Moreover, the Schadefonds considers it important that these diagnoses were made by qualified and competent care providers. The Schadefonds therefore sets the requirement for these care providers that they must have a BIG (Individual Healthcare Professions) registration, NIP (Dutch Association of Psychologists) service mark with Basic Assessment Psychodiagnostics (BAPD), NVO (Dutch Association of Educators and Educationalists) registration with Basic Assessment Diagnostics (BAD) or a contract with a Health Insurance Office (these are for example mental healthcare (GZ) psychologists, psychotherapists or Dutch Mental Healthcare Association nursing specialists for psychological injuries or general practitioners or other physicians for physical injuries). The Schadefonds finds that setting this requirement best guarantees the quality and reliability of the diagnoses made. Via www.bigregister.nl, www.nip.nl, www.nvo.nl and www.rijksdienstcn.com/contracted-care-providers one can find out whether a care provider meets this requirement.

If a diagnosis has been made by a care provider who does not meet the above-mentioned requirements set for making this diagnosis, then in principle the Schadefonds does not assess the injuries. This can mean that a request will be (partially) rejected.

1.2.2 List of injuries

The Schadefonds developed a list of injuries in order to classify the injury suffered in an injury category. This list of injuries can be consulted on www.schadefondscn.com. The list of injuries contains guidelines as to which physical and psychological injuries according to the Schadefonds can be qualified as sufficiently serious within the meaning of the Act in order to justify a payment.

The list of injuries distinguishes six injury categories, to which fixed payment amounts are linked. Based on the seriousness of the injury suffered and the circumstances under which the violent crime was committed, the Schadefonds determines which injury category is applicable and which payment amount corresponds to it (see Section E).

1.2.3 Presupposition of serious injuries

When various violent crimes are committed, the Schadefonds can presuppose serious psychological injuries without assessing medical information. It does so on the basis of what happened during the violent crime. This concerns violent crimes which in themselves are so serious that they will almost always have a substantial impact on the victim.

In case of the following violent crimes the Schadefonds can presuppose serious psychological injuries: human trafficking, systematic domestic violence, certain sex crimes and stalking. In case of home robberies, threats with firearms and arson or causing an explosion, the Schadefonds does not presuppose serious psychological injuries, whereas the nature, seriousness, facts and circumstances and duration of the crime give cause to do so. The victim's age also plays a part in this. In principle the Schadefonds does presuppose serious psychological injuries in situations in which minors (up to 18 years of age) become victims of home robberies, a direct threat is made with a knife or firearm and in cases of arson or causing an explosion.

It is specified below per violent crime when serious psychological injuries are presupposed. In Part 2A of the List of Injuries, it is specified which injury category is appropriate to them. The level of the injury category depends on the seriousness and consequences of the violent crime. If the injuries actually suffered are more serious, then the injury category appropriate to them is applied.

Human trafficking

If human trafficking is committed in the Caribbean Netherlands and as referred to in Section 286f of the Penal Code of the BES Islands, the Schadefonds presupposes serious psychological injuries.

Systematic domestic violence

If frequent and prolonged physical violence is used or violence is threatened in the relational atmosphere, the Schadefonds considers this systematic domestic violence. In cases of systematic domestic violence, serious psychological injuries are always presupposed.

If domestic violence is not systematic, serious psychological injuries are not presupposed. In that case the Schadefonds examines whether the violence has caused serious injuries.

Sex crimes

The Schadefonds assumes that rape and prolonged sexual abuse cause serious psychological injury. After a single incident of sexual assault, it applies this assumption only where there are aggravating circumstances. If there are no such circumstances, the Schadefonds assesses whether the crime caused serious injury.

Stalking

If stalking is coupled with frequent and prolonged physical violence or threats of violence, then the Schadefonds presupposes serious psychological injuries. In all other cases of stalking the Schadefonds examines whether the victim suffered serious injuries.

Home robberies

In principle the Schadefonds does not presuppose serious psychological injuries in the event of a robbery in the victim's own home. In these cases the Schadefonds examines whether the violence has caused serious injuries to be suffered. This can be otherwise when the victim is a minor (up to 18 years old) or, for example when the robbery is of a longer duration or is accompanied by aggravated assault or prolonged deprivation of liberty.

Threats with weapons

In principle the Schadefonds does not presuppose serious injuries if a victim is threatened with a weapon. In these cases the Schadefonds examines whether the violence has caused serious injuries to be suffered. This can be otherwise in the event of a direct threat with a knife or firearm and when this threat is committed under aggravating circumstances. The Schadefonds can indeed presuppose serious psychological injuries if a minor (up to 18 years of age) becomes the victim of a direct threat 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 aware of the weapon at the time) at a distance reasonably usable for the weapon. At the time of the threat, the victim must also presume that it is a real weapon.

The Schadefonds understands aggravated circumstances to mean, for example a direct threat with a knife or firearm that is of a long or longer duration, is coupled with aggravated assault, prolonged deprivation of liberty or inflicting a shot or stab wound.

Arson or causing an explosion

In principle, the Schadefonds does not presuppose serious psychological injuries in cases of arson or causing an explosion. This can be otherwise if the fire or explosion resulted in a fear of immediate mortal danger or a risk of serious physical injuries to the victim and the crime was committed under aggravating circumstances. The Schadefonds can indeed presuppose serious psychological injuries if a minor (up to 18 years old) becomes the victim of arson or causing an explosion and there is a fear of immediate mortal danger or a risk of serious physical injuries to the victim.

Examples of aggravated circumstances are when a fire starts on the victims escape route or when assistance services have to pull the victim out of the home.

1.2.4 Examination by the medical adviser

The Schadefonds can engage its medical adviser to assess the injuries. It does so, for example if the injuries are complex or unclear. Then the medical adviser does a file search of the nature and seriousness of the injuries. If a care provider made a diagnosis, it is possible that the medical advisor will want to request (additional) information from this care provider. The medical advisor does this only with permission from the victim. When the medical adviser has concluded his or her examination, he or she gives advice to the Schadefonds. Then the Schadefonds assesses whether the injuries suffered are serious - within the meaning of the Act - and which injury category is appropriate to them.

If there is a lack of clarity regarding the connection between the injuries and the violent crime or the plausibility of the violent crime, in certain cases the Schadefonds can also ask its medical adviser to give advice. Based on this advice, the Schadefonds then determines whether a statement can be made about the matter in question.

If there is a lack of clarity regarding the victim's psychological injuries, the Schadefonds can ask Mental Health Caribbean to make a diagnosis. This is usually done on the indication of the medical adviser as a result of information obtained from the treating physician/therapist. In very exceptional cases it can be decided in the objection proceedings to have Mental Health Caribbean make a diagnosis if a victim states that he or she does indeed have psychological injuries, but is (or was) not under treatment for them. Then the costs of the diagnosis and report will be payable by the Schadefonds.

1.3 Psychological injuries by being a witness

1.3.1 General

The Schadefonds also awards compensation for psychological injuries that a person suffers by being a witness of a violent crime or being directly confronted with the consequences of a violent crime. An 'observer' is treated as a victim within the meaning of Section 3(1) of the Act if they:

- Witnessed the crime; or
- Found the victim at the scene of the offence; or
- Were subsequently confronted shortly after the crime with its consequences for the victim, for example by seeing the victim in hospital or their body in the mortuary during identification.

To qualify for compensation as an observer, the violent crime must have caused serious psychological injuries within the meaning of the Act. A diagnosis is necessary for this, made by a care provider who, in order to make this diagnosis, has a BIG (Individual Healthcare Professions) registration, NIP (Dutch Association of Psychologists) service mark with Basic Assessment Psychodiagnostics (BAPD) or NVO (Dutch Association of Educators and Educationalists) registration with Basic Assessment Diagnostics (BAD), or a contract with a Health Insurance Office.

The Schadefonds does not award compensation for psychological injuries someone suffers by being a witness of a criminally negligent homicide or by being directly confronted with the consequences of a criminally negligent homicide. It is in fact explicitly laid down in Section 3 subsection 1 under c. of the Act that compensation is only possible for the surviving relatives of victims of culpable crimes. Consequently, an 'observer' of the death of a victim due to a culpable crime cannot be qualified him or herself as a victim as referred to in Section 3 subsection 1 of the Act.

1.3.2 Systematic observation of domestic violence

The Schadefonds always presupposes serious psychological injuries in minors (up to 18 years old) who systematically observe domestic violence as victims within the meaning of Section 3 subsection 1 of the Act. The Schadefonds always presupposes serious psychological injuries in minors who systematically observe domestic violence.

1.3.3 Civilian first responders

The Schadefonds also awards compensation for psychological injuries 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 this crime. This must then be a civilian first responder, therefore not a professional emergency assistance provider. The civilian first responder is qualified as a victim within the meaning of Section 3 subsection 1 of the Act.

To qualify for compensation as a civilian first responder, the crime must have resulted in serious psychological injuries within the meaning of the Act. A diagnosis is necessary for this, made by a care provider who, in order to make this diagnosis, has a BIG registration, NIP service mark with BAPD, NVO registration with BAD or a contract with a Health Insurance Office.

1.4 Crime on or after 1 January 2017

Compensation for victims of crimes committed in the Caribbean Netherlands before 1 January 2017 is not possible. If a crime was started before 1 January 2017 and ended after 1 January 2017, then it is possible to submit a request. Then the Schadefonds assesses whether compensation can be awarded for the offences that were committed on or after 1 January 2017.

2. Surviving relatives of victims of intentionally committed violent crimes

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

2.1 Surviving relatives within the meaning of the Act

The following persons are qualified as surviving relatives under Section 3 subsection 2 of the Act:

- the spouse, not legally separated, and the registered partner of the victim;
- other relatives of the victim by blood or affinity, provided that, at the time of the event on which the liability is based, the victim already provided for all or part of their maintenance or was obliged to do so pursuant to a court judgment;
- those who already lived together with the victim in a family unit before the event on which the liability is based, and for whose maintenance the victim fully or largely provided, in so far as it is plausible that all this would have continued without the event on which the liability is based;
- those who lived together with the victim in a family unit and to whose maintenance the victim contributed by running a joint household;
- blood relatives of the victim in the first degree and in the second degree in the collateral line such as parents, children, (half) brothers and (half) sisters. The term 'children' also includes a child who was not yet born at the time of the crime and has since been born alive.

2.2 Plausibility of the violent crime

If a victim has died, no report will be made. The police usually do investigate what happened on an ex officio basis. The Schadefonds uses the information ensuing from this police investigation or other objective information to determine if what happened is sufficiently clear. Plausibility will be assessed further as set out in section 1.1.2.

2.3 Crime on or after 1 January 2017

Compensation for surviving relatives of victims of violent crimes committed in the Caribbean Netherlands before 1 January 2017 is not possible.

3. Surviving relatives of victims of criminally negligent homicide

The Schadefonds also awards compensation to surviving relatives of victims who died as a result of 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 persons as referred to in section 2.1 are qualified as surviving relatives.

3.2 Relevant section of the law

Section 320 Criminal Code BES (criminally negligent homicide):

A person who is to blame for the death of another person shall be punished by a term of imprisonment or detention of nine months at most.

If, on the occasion of a collision or crash or running over of a person with a motor vehicle driven by the guilty party, or on the occasion of any action to prevent a collision, crash or running over of a person with said motor vehicle, the death is caused by said collision, crash or running over or by the action to prevent this, the person who is to blame for the death shall be punished by a term of imprisonment of two years at most.

3.3 Guilt

Guilt means a considerable degree of imputable negligence. The Joint Court of Justice has ruled with respect to traffic offences that the degree of guilt is determined by the whole of actions of the offender, their nature and seriousness and the other circumstances of the case. This means that it cannot generally be indicated in traffic cases whether one traffic violation is sufficient to declare guilt proved. After all, various factors are important in this regard, such as the nature and specific seriousness of the traffic violation and the circumstances under which the violation was committed. This concerns the conduct of the offender.

3.4 Plausibility of guilt

Compensation from the Schadefonds is possible in principle if it is plausible that the death of a victim was the direct consequence of a crime as referred to in Section 320 of the Criminal Code BES, regardless of the degree of guilt.

Compensation is therefore possible in case of each degree of guilt that fits within the description of the crime set out in Section 320 of the Criminal Code BES.

3.5 Assessment of 'guilt'

To assess whether it is plausible that 'guilt' is involved within the meaning of Section 320 of the Criminal Code BES, the Schadefonds takes the following steps.

1) Establish what happened;
2) Establish causality;
3) Establish the regulatory framework:
    a) Establish foreseeability;
    b) Establish illegality;
    c) Establish plausibility;
4) Culpability is assumed, unless it is made plausible that there is no question of this.

3.6 Objective information

In principle, in connection with the usual factual complexity, the Schadefonds can only assess plausibility if a concluded police investigation is available or if decision has been taken on prosecution (for example a decision not to prosecute or a decision to issue a summons). At that time, a competent authority will already have examined the correctness of the facts. The assessment can actually take place only if the complex of facts of the incident is clear on the basis of objective information. An assessment of whether there was a considerably negligent act is possible only on the basis of clarity regarding what happened. The Schadefonds itself does not have the possibility and expertise to conduct independent investigation. In addition, the assessment of the complex of facts can be very technical.

If the police investigation has not yet been concluded or if no decision has been taken yet on prosecution, the Schadefonds assesses the request on the basis of the objective information that is (already) available. This information may not be sufficient to enable a decision to be taken, because what happened in not (yet) clear.

In case of traffic offences, a traffic accident analysis forms part of the police investigation. The Schadefonds also assesses the request on the basis of this analysis. Per request the Schadefonds examines whether there are other sources of information it could use to assess plausibility (for example expert reports and claim forms).

3.7 Court judgments and decisions of the Public Prosecution Service

The Schadefonds assesses the basis of objective information, in principle independently, whether a crime is involved as referred to in Section 320 of the Criminal Code BES. In principle, it is not necessary for an offender to be convicted in order to award compensation. The court judgment and the decision of the Public Prosecution Service (PPS) however play an important role. Depending on the grounds 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 an offender is acquitted, then the Schadefonds may decide in some cases nevertheless decide to award compensation to the surviving relative(s).

3.8 Crime on or after 1 January 2017

Compensation for surviving relatives of victims of criminally negligent homicide is possible if the crime was committed on or after 1 January 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 plausibility of the violent crime is assessed as set out in section 1.1.2.

4.2 Close relatives within the meaning of the Act

The same persons as referred to in section 2.1 are qualified as close relatives.

4.3 Serious and permanent injuries

Section 3 of the Act includes that there must be serious and permanent injuries as referred to in Section 107, subsection 1, under b, of Book 6 of the Civil Code (hereinafter referred to as: CC). In Section 6:107 CC no further substance is given to the term serious and permanent injuries. For the substance of the term, the Schadefonds is in line with the legislator's intention and with the substance to be given in due course by case law.

4.3.1 The legislator's intention

In order for a close relative to qualify for compensation, the victim must have suffered exceptionally serious injury. Serious and permanent injury will have been suffered in any case if this injury resulted in 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 impairment of the American Medical Association. The 70% functional disorder is an indication. It is up to the medical adviser to assess the individual circumstances of the case.

There can also be serious and permanent injuries if the physical component of the injuries is less serious. For example, brain injuries that result in serious changes in the victim's character and behaviour can have considerable consequences for the close relatives. This holds as well for injuries that result in the loss of or a serious disruption of physical contact, such as third degree burns on large parts of the body or (mental) injuries that make it impossible for someone to continue caring for him or herself.

The Explanatory Memorandum to the legislative proposal includes that the requirement of 'permanent' means that there is no prospect that the consequences of the injuries will be reduced after the passage of time, or at any rate to a degree that can no longer be qualified as serious. In case of permanent injuries, as a rule the turnabout in the lives of the victim and the close relatives is most obvious. Then the point is that a close relative will be confronted for a long time in a penetrating way with the consequences of the violent crime.

Examples of serious and permanent injuries

- Functional loss of both eyes, resulting in total blindness;
- Total loss of the ability to speak;
- Upper spinal cord lesion;
- Anatomic loss of both arms;
- Serious traumatic brain injury that results in serious changes in the victim's character and behaviour.

Psychological injuries can also be serious and permanent injuries. The injuries must be medically objectifiable. The influence of the serious and permanent psychological injuries on the lives of the victim and the close relative is substantially important in the assessment.

4.3.2 Medical advice

The medical adviser of the Schadefonds assesses the victim's injuries on the basis of medical information of the victim.

4.3.3 Medical authorisation

The Schadefonds needs medical information about the victim's injuries to assess the close relative's request. The Schadefonds may request medical information only if a close relative provides a signed authorisation from the victim.

4.4 Request by the actual victim

It is preferable that the actual victim also submits a request. Then the victim's injuries can be assessed better. But this is not a requirement.

4.5 Crime on or after 1 January 2019

Compensation for a close relative of a victim with serious and permanent injuries is possible if these injuries were caused by a crime committed on or after 1 January 2019. Such compensation has actually been possible in the European Netherlands only since that date as well.

5. Policy in case of a major incident

If a violent crime is classified as a major incident, then, a broader policy will be applicable. This can be justified because the impact of the incident on society as a whole is greater than in case of 'ordinary violent crimes'. Because it is not always established that a terrorist purpose is involved, and other types of attacks also have a similar impact on society, the broader policy will be applicable in the event of:

A violent crime - whether or not with a terrorist purpose - during which one or more innocent and random civilians have become victims (injured or deceased), and which violent crime has a substantial impact on society because, due to the threat expressed by the perpetrator, the civilian could have the feeling that he/she could just as easily have become a victim.

5.1 Group of persons entitled

The following persons can qualify for compensation from the Schadefonds in case of a major incident:

1) Persons with physical injuries;
2) Persons who are physically threatened (without personal physical injuries);
3) Persons who were witnesses and have psychological injuries due to this (without personal physical injuries and without being physically threatened):
    a) Observers
    b) Emergency assistance providers
        i) Professional emergency assistance providers
        ii) Civilian first responders;
4) Surviving relatives of deceased victims (who did not personally observe the crimes/were not present during the major incident);
5) Close relatives of seriously and permanently injured victims (who did not personally observe the major incident/were not present during the crime).

5.2 Explanation by category

Re 1 Persons with physical injuries

Victims with direct bodily (physical) injuries come under Section 3 subsection 1 of the Schadefonds Geweldsmisdrijven Act if it has been established that their injuries are the result of the major incident. Persons who became injured after the major incident while fleeing within the geographical area by being trampled in the crowd are also qualified as victims[1].

Re 2 Persons who were physically threatened (without personal physical injuries)

Persons who were physically threatened during the major incident, by being located in a delineated zone for example, will be qualified for compensation. In each case a physical threat exists if a weapon was present in space and time, within a usable distance, and the threat was aimed at the person of the requester. When people are physically threatened during the major incident, serious psychological injuries are presupposed, irrespective of whether they suffered personal serious physical or psychological injuries.

In the situation that a vehicle drives into a crowd, it is assumed that a physical threat exists, in so far as the person was located within the established delineated zone at the time the vehicle drove in (see footnote).

Re 3 Persons who were witnesses and have psychological injuries due to this (without personal physical injuries and without being physically threatened): observer

The following is qualified as an observer: someone who observed the major incident or unexpectedly found a victim at the crime scene.

Re 3a Observers

The conditions as referred to in section 1.3 apply to them.

Re 3b Emergency assistance providers

Civilian first responder: a person who enters the delineated area after the major incident to provide assistance to persons unknown to him or her. It is determined on the level of the individual case what is meant by 'first responder'. The conditions as referred to in section 1.3.3 apply to the assessment of whether the civilian first responder qualifies for compensation.

Professional emergency assistance provider: in case of a major incident, a professional emergency assistance provider will also qualify for compensation if the following conditions are met:

- there is no question of a current financial provision by the employer and;
- a diagnosis of the physical injuries has been made by a therapist/practitioner who, for making the diagnosis, has a BIG registration, NIP service mark with BAPD or NVO registration with BAD.

Re 4 Surviving relatives of deceased victims

Under Section 3 subsection 2 of the Schadefonds geweldsmisdrijven Act, surviving relatives qualify for compensation.

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[1] *Per major incident, a geographical area with respect to space, time and distance is delineated within which people must have been located during or immediately after the attack in order qualify for compensation.*

Re 5 Close relatives of seriously and permanently injured victims (who did not personally observe the major incident/were not present during the crime)

Close relatives of victims with serious and permanent injuries also qualify for compensation. Serious and permanent injuries must be involved as referred to in Section 107, subsection 1, under b of Book 6 of the Civil Code.

The same persons as in the ordinary policy can be considered close relatives and surviving relatives (Sections 3 and 4).

5.3 Level of payments

- In persons with physical injuries due to a major incident, psychological injuries are presupposed and Injury category 1 is awarded. If the physical and/or psychological injuries actually suffered are more serious (on the basis of Parts 1A and B and Part 2B of the List of Injuries) or if the presupposed injuries belong in a higher category on the basis of Part 2A of the List of Injuries, the appropriate higher payment is awarded.
- In persons who suffered physical injuries by being trampled during their flight after the major incident, it is determined on the basis of the actual injuries whether their injuries are serious injuries. The level of the compensation is determined on the basis of the actual injuries.
- In persons who were physically threatened and have psychological injuries due to such threats (without personal physical injuries) serious psychological injuries are presupposed and Injury Category 1 is awarded, unless the presupposed psychological injuries are more serious on the basis of Part 2A of the List of Injuries or the psychological injuries actually suffered are more serious on the basis of Part 2B of the List of Injuries. Then the appropriate higher injury category is awarded.
- For persons with psychological injuries due to observation, compensation is awarded in line with the ordinary policy with respect to psychological injuries due to observation.
- For professional emergency assistance providers and civilian first responders, the injury category is determined in accordance with Part 2B of the List of Injuries.
- In case of a major incident, surviving relatives of deceased victims (who did not personally observe the crime/were not present during the crime) - in accordance with the ordinary policy - will be awarded Injury Category 3. This payment can be supplemented by a payment for funeral expenses and loss of maintenance.
- In case of a major incident, close relatives of seriously and permanently injured victims (who did not personally observe the crime/were not present during the crime) – in accordance with the ordinary policy - will be awarded Injury Category 3.

5.4 Concurrence

In case of a major incident, the situation can occur that on the basis of the above-mentioned policy, a person qualifies for several payments in different capacities. In that case the ordinary policy pertaining to concurrence will be applicable. See Section E.4.

5.5 Setoff

In principle, the ordinary policy pertaining to setoff will apply in case of a major incident. Situations may however occur in which the ordinary policy cannot be applied properly. Then it will have to be examined per situation how it should be dealt with. In case of crowd funding the Schadefonds will assess whether the amounts collected must be set off against the compensation payments from the Schadefonds. This depends on the purpose of the amounts collected.

5.6 Advance payment

It is conceivable that close relatives will rely on an advance payment in order to come to the Netherlands, for example to assist a close relative or to identify the body of a deceased victim. Then there will not be much time to assess whether the actual victim qualifies for compensation.

An advance payment to surviving relatives can be made immediately, as soon as it is clear that a request meets all statutory criteria. If there is a lack of clarity about this, the matter can be presented to the Director-Secretary and the chairperson of the Committee. They have the authority to decide in mutual consultation whether an advance will be awarded in that individual case without a complete assessment of the statutory criteria.

The amount of the advance payment in accordance with ordinary policy is €5,000 per surviving relative. An advance payment can be awarded to two surviving relatives at most. Then it will still be possible to make an additional payment later for the funeral and travel expenses actually incurred.

A request for an advance payment can be submitted - by means of a priority request, on which in any case the following details are stated:

- Name and address of surviving relative
- Account number (incl. BIC/SWIFT code)
- Victim's name
- Relationship to victim
- Date of crime/death of victim
- Reason for advance
- Copy of proof of ID

An advance payment to a close relative of a living victim is usually not possible. After all, a close relative can only receive compensation if the victim has serious and permanent injuries and this usually cannot be established immediately after the crime. There is a possibility in cases that arise to award an advance payment to the victim personally with which the close relatives can pay the travel expenses to the Netherlands. Then the victim him/herself must however submit the request for an advance payment and the amount of the advance payment will therefore be transferred to the account number indicated by the victim.

The Schadefonds strives to take a decision on the request on the day of the request for an advance payment. Then the amount awarded will be deposited in the account of the requester no later than on the next day.

Other statutory criteria

A. In the Caribbean Netherlands

Under Section 3 subsection 1 in conjunction with Section 20 of the Act, it applies to all groups that the crime must have been committed in the Caribbean Netherlands or on board a Caribbean Netherlands aircraft or vessel outside the Caribbean Netherlands. Caribbean Netherlands also means the territorial waters of the Caribbean Netherlands. For violent crimes committed in the European Netherlands, reference is made to the Policy Manual Schadefonds Geweldsmisdrijven.

Under the Act, no compensation can be awarded for intentional violent crimes committed on Aruba, Curaçao and Sint Maarten.

Human trafficking often has inherent cross-border aspects. To determine whether human trafficking is involved, the Schadefonds examines what has happened in the (Caribbean) Netherlands and abroad. The acts abroad however are not included in the assessment of the injuries. It is assessed whether the victim of human trafficking has suffered serious injuries due to the acts in the (Caribbean) Netherlands. To be able to submit a request, the nationality or place of residence of the victim is not relevant.

B. Time limit for submission

It holds for victims and close relatives that a request must be submitted within ten years from the day on which the violent crime was committed. For surviving relatives this time limit starts to run from the day of the victim's death. This is laid down in Section 7 of the Act.

In the event of minor victims the counting of the time limit of ten years starts from the age of majority (18 years of age). The same applies to minor surviving relatives and close relatives.

Overstepping of the time limit for submission

If the request is not submitted within ten years from the day on which the violent crime was committed, the request will be rejected unless the requester has a valid reason for the fact that he/she did not submit the request earlier. Then the Schadefonds assesses whether the request can be handled anyway. A request submitted after the time limit ends will be handled nevertheless if the request was submitted as soon as reasonably could be expected.

Not being aware of the existence of the Schadefonds is no reason for overstepping the time limit for submission. Psychological circumstances beyond one's control can be a valid reason for a late request. In that case there must be circumstances that are connected with the crime and that have reasonably prevented the requester from submitting a request to the Schadefonds earlier. First of all, in this context minor victims of sex crimes can be considered. Scientific research has shown that this group of requesters (generally sex crime victims) often experience problems for a long period and need a long time to come to terms with the incident(s).

A requester is expected to submit his or her request as soon as possible after he or she has become aware of the consequences of the crime and has reached such a stage in the process of coming to terms with it that the requester is able to submit a request.

The requester must substantiate the reasons given for overstepping the time limit. This can be done, for example by means of:

- medical information on treatment (started at a later age) for psychological problems that are connected with the crime
- a report to the police made on a later date

If there is a long time between the crime and the request, a chance exists that the request cannot be assessed properly. The longer ago the crime was committed, the more difficult it is to obtain certain documents, such as the official report. This can lead to rejection of the request.

C. Personal share

C.1 General

Compensation need not be awarded or can be set at a lower amount if the injury was inflicted partly as a result of circumstances attributable to the victim. This is laid down in Section 5 of the Act and is referred to as the 'personal share' of the victim.

The idea behind this provision is that the Schadefonds was established to offer people who become victims of violence through no fault of their own financial compensation of their damages. If the victim has a personal share in the violence, such compensation is in principle not appropriate because it must be seen as an expression of the solidarity of society with the victim. The compensation is in fact financed from public funds.

To assess the personal share, the Schadefonds finds out whether the victim could have and should have prevented the violent crime. In doing so, it sees whether the victim had unnecessarily put him or herself in a situation in which he/she could have and should have expected violence.

If a personal share is involved, the Schadefonds can reject a request completely or set the compensation at a lower amount. If the Schadefonds sets the compensation at a lower amount, it can award 25%, 50% or 75% of the compensation the victim would have received if he or she did not have a personal share.

A number of situations of personal share are described below. It is indicated as well how the Schadefonds assesses these situations. Please note: these are guiding principles. The Schadefonds determines whether it will completely reject a request or set the compensation at a lower amount on the basis of the nature and seriousness of the reproach that can be made to the victim, viewed in the light of the violence used against him or her. In this context it takes account of all circumstances of the case.

- If the victim was the first one who used violence, and the perpetrator reacted to this in a similar manner (hence no disproportionate violence by the perpetrator), then the Schadefonds rejects a request in its entirety. If the violence used by the perpetrator is not in proportion to that for which the victim can be reproached, and the victim suffered very serious injuries (in principle Injury Category 4 or higher), then the violence used by the perpetrator considered disproportionate. In that case the guiding principle is that 50% of the compensation is awarded.
- If the victim sought confrontation with the perpetrator or contributed to escalation of the situation, without using violence, the Schadefonds can set the compensation at a lower amount. In that case the guiding principle is that 75% of the compensation is awarded.
- If nightlife violence is involved, during which the victim was under the influence of alcohol/drugs and behaved in a provocative and/or insulting manner, then the guiding principle is that 50% of the compensation is awarded if this behaviour was the reason for the violence. The reason not to award 75% but 50% of the compensation in these cases is that feelings can easily rise to a high level during nightlife and can result in violence.
- If a requester is intentionally active in the soft or hard drugs environment (this is also understood to mean intentionally providing services and/or delivering goods to people in this environment) and the violent crime is a result of this, the Schadefonds rejects an application in its entirety. The same holds for violent crimes in connection with arms trafficking. In drug and arms trafficking violence is regularly used to solve conflicts and disagreements, to strengthen someone's position in the environment or to do someone out of money, drugs and/or arms.

- A personal share can also be involved if the victim becomes a victim of violence as a result of other types of (illegal) activities (such as selling counterfeit brand articles, fraudulent practices or participation in an illegal poker tournament). Then the Schadefonds assesses the share that the victim had in the entire incident. On the basis of this it determines whether the compensation will be set at a lower amount or that the entire request will be rejected.

C.2 Personal share in case of minors

The Schadefonds is of the opinion that a young age can be a reason not, or to a lesser degree, to attribute certain acts to someone. This puts the Schadefonds in line with the background of juvenile criminal law. To assess the personal share of a minor victim the Schadefonds distinguishes three age categories: 0 to 11 years of age, 12 to 15 years of age and 16 to 17 years of age.

- The guiding principle for the personal share of minors aged 0 to 11 is that the compensation will not be set at a lower amount.
- The guiding principle for the personal share of minors aged 12 to 15 is that (depending on the extent of the personal share) no less than 50% of the compensation will be awarded. The seriousness of the offence (for example drug trafficking or murder), the victim's personality and the circumstances of the case however can sometimes be a reason nevertheless to award 25% of the compensation or to reject a request in its entirety.
- The guiding principle for the personal share of minors aged 16 and 17 is that (depending on the extent of the personal share) the request will not be rejected in its entirety, but set at a lower amount (25%,50% or 75% of the compensation). The seriousness of the offence (for example drug trafficking or murder), the victim's personality and the circumstances of the case however can sometimes be a reason nevertheless to reject a request in its entirety.

C.3 Personal share in case of observers

The personal share of the actual victim does not play a part in the assessment of a request from an observer with psychological injuries. The observer's personal share in the incident is assessed as set out in sections C1 and C.2.

C.4 Personal share in case of surviving relatives

If a surviving relative submits a request, the Schadefonds examines the deceased's personal share in the violent crime or the criminally negligent homicide as well as any involvement of the surviving relative. On the basis of the assessment of the personal share and involvement, the Schadefonds can only reject the request in its entirety or allow it. So no reduction is applied to the compensation.

When the victim's request, if he/she were still alive, would have been rejected in its entirety (for example the victim trafficked in hard drugs and was killed for that reason), the Schadefonds rejects the surviving relative's request in its entirety.

When only the compensation of the deceased victim, if he/she was still alive, would have been reduced (for example he/she insulted someone during nightlife, after which he/she was stabbed to death), in principle the Schadefonds allows the surviving relative's request in its entirety.

If the surviving relative him/herself had a personal share in the violent crime during which the victim died, the Schadefonds assesses per individual case if and to what extent this will be taken into account in determining the compensation.

C.5 Personal share in case of close relatives

If a close relative submitted a request, the Schadefonds examines both the victim's personal share in the violent crime and any involvement of the close relative. Based on the assessment of the personal share and involvement, the Schadefonds can only reject or allow the request in its entirety. So no reduction is applied to the compensation.

If the victim personally submitted or would have submitted a request and this request would have been rejected in its entirety (for example the victim trafficked in hard drugs and for that reason suffered injuries due to a crime), the Schadefonds rejects the close relative's request in its entirety.

If the victim personally submitted or would have submitted a request and only his/her compensation would have been reduced (for example because he/she insulted someone during nightlife, after which he/she was stabbed with a knife and suffered injuries), in principle the Schadefonds grants the close relative's request in its entirety.

If the close relative had his/her own personal share in the violent crime during which the victim suffered injuries, the Schadefonds assesses per individual case if and to what extent this will be taken into account in determining the compensation.

D. Damages otherwise reimbursed

When the Schadefonds awards compensation, it takes account of the reimbursement the victim, surviving relative or close relative can recover or has recovered in a civil lawsuit and of other reimbursement of damages that has been or can be awarded to the victim as a result of the crime (Section 6 subsection 1 of the Act). An example of other reimbursement is an amount collected via crowd funding. If the damages of the victim, surviving relative or close relative have been reimbursed in a different way, then compensation from the Schadefonds is not possible. The compensation from the Schadefonds is after all intended as a safety net and is awarded only in the event that no damages can be recovered from the perpetrator. This gives the compensation an explicitly conditional and compensatory nature.

D.1 Reimbursements that the Schadefonds takes into account

The compensation payments from the Schadefonds are intended as compensation of immaterial damage and financial damages that are a direct result of injuries or death due to a violent crime. The compensation is nevertheless undifferentiated. This means that which part of the compensation is meant for which damages is not determined. By financial damages the Schadefonds means: costs of recovery (from the injuries) and damages due to loss of the ability to work. If these two loss items have already been otherwise reimbursed, then the Schadefonds deducts such reimbursement from the compensation payment. With respect to costs of recovery, the Schadefonds presupposes payments (for example by the perpetrator, an employer or insurance) of the costs that have not been reimbursed by the healthcare insurer. If the healthcare insurer has reimbursed the costs of recovery (from the injuries), then the Schadefonds therefore does not deduct them from the compensation payment.

The Schadefonds does not deduct reimbursements for property damage and legal costs from the compensation payment. This also applies for example to the reimbursement of telephone, travel and security expenses.

The Schadefonds offsets reimbursement, if any, of funeral expenses or loss of maintenance against the compensation payment only if separate compensation will be or has been awarded for these loss items.

A claim allowed by the civil court for damages due to ‘psychological shock’ will be deducted from the compensation payment for an observer who suffered psychological injuries by being a witness of a violent crime or being directly confronted with the consequences of a violent crime.

In case of crowd funding in principle the Schadefonds does not deduct the amount, unless there is a clear overlap with the specific compensation payments for funeral expenses or loss of maintenance.

D.2 Settlement and recovery

The Schadefonds deducts the reimbursements referred to in section D.1 from the compensation. The Schadefonds calls this settlement.

Settlement during the handling of the request

If it becomes clear during the handling of a request that certain damages have been reimbursed (partly) in a different way, (for example by the perpetrator, an employer if the violent crime was committed during the performance of one’s work, or under a third-party insurance policy), then the Schadefonds deducts such reimbursement from the compensation payment (Section 6 subsection 2 of the Act).

Subsequent settlement via the PPS

If the damages will be reimbursed by the perpetrator after the Schadefonds has awarded compensation, the Schadefonds can subsequently decide that such reimbursement will be offset against the compensation payment (Section 6 subsection 3 of the Act). This is done as follows.

If the criminal court orders a perpetrator to pay compensation to a victim, the Public Prosecution Service (PPS) will collect this compensation from the perpetrator. The PPS periodically notifies the Schadefonds of the compensation payments it receives in connection with violent crimes.

Then the Schadefonds examines whether the PPS will collect compensation payments for victims who have also received a payment from the Schadefonds. If such a payment is a compensation payment relating to the same damages of a victim, then the Schadefonds notifies the PPS to this effect.

The PPS then transfers the overlapping part of the compensation payment 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 will receive a decision on this settlement from the Schadefonds.

Recovery from the victim

If a victim receives compensation (for example from the perpetrator, an employer or insurance), and the victim had already received a payment earlier from the Schadefonds, then the Schadefonds recovers the doubly received money from the victim. The victim will receive a decision on this, indicating which amount must be refunded to the Schadefonds.

Setoff in case of a personal share

If the compensation from the Schadefonds has been cut because of a victim's personal share, and the victim has been reimbursed for part of his/her damages in a different way, then such reimbursement is also offset against the compensation payment. The Schadefonds offsets this amount on the basis of the cut payment.

D.3 Recovery from the perpetrator

Having regard to Section 6 of the Act, the Schadefonds expects the victim to recover as much as possible of his or her damages from the perpetrator (if he/she is known). The victim can do this by joining the criminal case or by recovering the damages from the perpetrator or the perpetrator's insurance in civil proceedings. The victim can also make a settlement with the perpetrator. If this is a settlement in exchange for final discharge, in principle, the Schadefonds does not award a compensation payment.

To qualify for compensation from the Schadefonds, a victim is not required to hold the perpetrator liable (first). A perpetrator can actually have remained unknown or the victim can have a good reason not to hold the perpetrator liable.

D.4 Recovery from the employer

If a violent crime happens to an employee during the performance of his/her job, the employer must sometimes guarantee payment of the damages. The Schadefonds expects the victim to hold the employer liable first for the damages incurred. In general however, an employer does not always compensate all damages. If this is the case, then the victim can rely on the Schadefonds.

Payments

E. Compensatory nature

If all statutory requirements have been met (see section 1), a victim, surviving relative or close relative will qualify for a compensation payment. The payment will be determined in reasonableness and fairness, and will not exceed the amount of the damages caused by the injuries or death. This is laid down in Section 4 of the Act. For this reason, the payment is compensatory in nature. This compensatory nature also emerges in the Payments from the Schadefonds Geweldsmisdrijven (Maximum Amounts) Regulations. Section 1 of these Regulations provides that the Schadefonds is bound by maximum amounts.

The compensation payment is an expression of social solidarity and a sign of acknowledgement by the government on behalf of society of the injustice and suffering that has overcome a victim, surviving relative or close relative. It is paid from tax money and – in view of its compensatory nature – is not intended to cover all damages. The compensation payment is intended to restore the trust of the victim, surviving relative or close relative somewhat, and to help them to get ahead financially and otherwise so that they will be able to focus on the future again. The recipient can spend it freely.

Which amounts the Schadefonds pays to each group and what damages the compensation covers are explained in this section.

E.1 Payments to victims with injuries

Nature of the payment

The payment that the Schadefonds awards to victims with serious physical and/or psychological injuries is compensation for the injustice and suffering (immaterial damage) and any financial damages incurred as a result of this, such as costs of medical assistance and reduction of income. Payments by the Schadefonds are undifferentiated, which means that they are not separate for immaterial damage and financial damages.

How is the payment determined in case of injuries?

The Schadefonds can award payments to victims of violent crimes who suffered serious physical or psychological injuries as a consequence of this. The Schadefonds determines the amount of the payment on the basis of six injury categories, to which six increasing fixed amounts are linked. This is indicated in the diagram below.

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

The amount of the payment depends on the seriousness and consequences of the physical or psychological injuries and the circumstances under which the violent crime was committed. It holds for this: the more serious the injuries, the consequences and the circumstances are, the higher the injury category and corresponding payment.

On the basis of the List of Injuries (see section 1.2.2) the Schadefonds determines whether the injuries suffered fit in with one of the injury categories. The Schadefonds can also ask its medical adviser to assess the injuries and give advice on the appropriate injury category (see section 1.2.4).

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

The compensation payment is determined in Euros. In the decision, the amount is in Euros. The amount is also visible in US dollars on the account. The level of the amount in US dollars depends on the exchange rate on the day of payment.

Payments to observers

The seriousness of an observer's psychological injuries must be determined objectively. If the psychological injuries are serious, then the Schadefonds determines which injury category is appropriate. This injury category then determines the level of the payment.

A minor who has systematically observed domestic violence will receive a payment for psychological injuries that fit in with Injury Category 2.

E.2 Payments to surviving relatives

How is the payment determined in case of death?

The Schadefonds can award payments to surviving relatives of victims who have died as a result of a violent crime or criminally negligent homicide. Who the Schadefonds considers surviving relatives is set out in section 2.1.

The payment for a surviving relative always consists of a fixed amount of €5,000 (Injury Category 3). This amount is compensation for the suffering of the surviving relative (immaterial damage) and any further financial damages that can be the consequence of the death. These can be therapy costs or reduction of income. The fixed amount however is not intended to compensate any funeral expenses and loss of maintenance. The fixed amount that is paid – just as in the case of victims – is undifferentiated. This means that it is not established which part relates to immaterial damage and which part to financial damages.

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

- funeral expenses
- loss of maintenance

Funeral expenses

If a victim died as a result of a violent crime or criminally negligent homicide, then the funeral expenses that were not reimbursed can qualify for compensation. A person who can demonstrate that he/she has paid the funeral expenses can submit a request for compensation of these expenses. So this does not have to be a surviving relative.

Funeral expenses are all expenses that reasonably relate to the burial or cremation of the deceased victim. This includes for example all expenses that the funeral parlour has charged and any separate costs of, for example the flowers, coffee table or clothing for the funeral. It also includes the costs of the gravestone or urn and grave rights.

For the "purchase" of a private grave (grave rights), only the costs for a period of 10 or 20 years, including the accompanying fixed maintenance contribution, can qualify for compensation. It is not possible to submit an additional request after this period has ended.

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

The Schadefonds only awards compensation for funeral expenses that have not been reimbursed, for example by the perpetrator or funeral insurance.

Level of compensation payments for funeral expenses

For each deceased victim, no more than €7,500 can be awarded for funeral expenses. This maximum amount therefore applies even if the actual expenses were higher. The amount to be paid is determined on the basis of the amount in US dollars, converted into Euros on the basis of the exchange rate on the invoice date.

Evidence of funeral expenses

The funeral expenses must be substantiated. This can be done for example by way of invoices. If funeral insurance has reimbursed certain costs, such reimbursement must be substantiated by insurance specifications. Any compensation by the perpetrator must also be declared.

Loss of maintenance

Loss of maintenance is the damages incurred by surviving relatives through loss of the income of the deceased victim. A payment for this loss item is a contribution to these damages, and is intended to help the surviving relative somewhat to continue his/her standard of living (temporarily).

Surviving relatives who can qualify for compensation of this loss item are:

- the surviving married or unmarried partner of the deceased,
- minor dependent children (these are children whose maintenance was provided for by the deceased), and
- children of the age of majority (aged 18 to 20) who are in full-time secondary or further education whose maintenance was provided for (partly) by the deceased.

The Schadefonds can pay various fixed amounts for loss of maintenance. The level of the amount to be paid depends on:

- the income of the deceased,
- the income of the surviving married or unmarried partner,
- the surviving relative's relationship to the deceased married or unmarried partner or dependent child, and
- if the surviving relative is a dependent child: the age.

Level of the payment in case of loss of maintenance

- If the deceased (in paid employment or as a self-employed person) contributed the most to the family income in a financial sense, then the Schadefonds pays €25,000 to the surviving married or unmarried partner.
- If the deceased (in paid employment or as a self-employed person) contributed the most to the family income in a financial sense, then the Schadefonds pays €25,000 to each dependent child/stepchild from 0 to 4 years old.
- If the deceased (in paid employment or as a self-employed person) contributed the most to the family income in a financial sense, then the Schadefonds pays €15,000 to all dependent children/stepchildren from 5 to 11 years old.
- If the deceased (in paid employment or as a self-employed person) contributed the most to the family income in a financial sense, then the Schadefonds pays €10,000 to all dependent children/stepchildren from 12 to 17 years old.
- If the deceased and surviving married or unmarried partner had comparable incomes, in the above-mentioned situations the Schadefonds pays the same amounts.

- If the deceased (in paid employment or as a self-employed person) contributed the most or to a comparable extent as the surviving partner to the family income in a financial sense, and a child of the age of majority (from 18 to 20 years old) is in full-time secondary or further education the Schadefonds pays €1,500 per year of study that still has to be undergone.
- If the surviving married or unmarried partner contributed the most to the family income in a financial sense and the deceased had any income, in the above-mentioned situations the Schadefonds pays half of the aforementioned amounts.
- The Schadefonds does not pay if the deceased received a social assistance benefit or had no income.

Payments for loss of maintenance

The Schadefonds only awards a compensation payment for loss of maintenance if said damages have not been reimbursed. If reimbursement has been received – for example from the perpetrator or accident or life insurance – then the Schadefonds examines whether this should be deducted from the payment.

Evidence of loss of maintenance

Loss of maintenance must be substantiated by evidence (such as salary slips or annual statements) showing the average income of the deceased victim and the surviving partner. The relationship and dependence if any of the surviving relative on the deceased must also be demonstrated.

If a child of majority age undertakes studies (prevocational secondary education (VSBO), secondary vocational education (SBO), Bachelor's or Master's degree programme), this must be demonstrated by a certificate of registration. It must also be demonstrated that the deceased provided for these studies and how many years of study will still be undertaken.

Diagrammatic overview of payments for surviving relatives

The payment for a surviving relative can consist of three parts. This is set out in the following diagram.

Payments to surviving relatives	*Intended for:*
€5,000	The grief of the surviving relatives due to the death of the close relative + any other financial damages, such as costs of therapy and reduction of income. This amount does not include loss of maintenance and funeral expenses.
€ 1,500 (max. 3x) / € 10,000 / € 15,000 / € 25,000	Loss of maintenance
€ 7,500	Funeral expenses

Maximum payment for funeral expenses and loss of maintenance together

Under Section 1 under a. of the Payments from the Schadefonds Geweldsmisdrijven (Maximum Amounts) Regulations, a compensation payment for financial damages may not exceed €25,000. Funeral expenses and loss of maintenance are financial damages. Consequently, if the Schadefonds awards a payment to a surviving relative for funeral expenses and loss of maintenance, these payments together cannot amount to more than €25,000.

E.3 Payments to close relatives

The Schadefonds can award payments to close relatives of victims with serious and permanent injuries as a result of an intentionally committed violent crime. Who the Schadefonds considers close relatives is specified in sections 4.2 and 2.1.

The payment for a close relative always consists of a fixed amount of €5,000 (Injury Category 3). This amount is compensation for the suffering of the close relative and any further financial damages. These include e.g. therapy costs or reduction of income. The fix amount paid – just as in the case of victims – is undifferentiated. This means that it has not been established which part relates to immaterial damage and which part to financial damages.

E.4 Payment in case of concurrence

General

If a victim has suffered multiple physical injuries as a result of a violent crime, whether or not in combination with (presupposed) psychological injuries, this is referred to as concurrence. The same holds for cases in which a close relative is also a victim in a different way, or if several close relatives have died as a result of a violent crime. These cases of concurrence are elaborated upon in more detail below.

Victim with multiple injuries

A victim sometimes suffers multiple injuries due to a violent crime, whether or not in combination with psychological injuries (as a result of the crime committed against the victim him/herself or by observing a crime committed against someone else). In that case the most serious injury is the guiding principle for the Schadefonds in determining the level of the payment. This means that the amount of the payment is determined on the basis of the injury category corresponding to the most serious injury. In case of multiple injuries, therefore, the injury categories are not added up. In case of at least 3 different physical injuries that fall under the same injury category, the category is however increased by one.

Surviving relatives of the victim of violence with serious injuries

If, in case of a violent crime due to which a close relative has died, a surviving relative has also suffered serious physical or psychological injuries (by observation or not), then he or she can submit a request as a surviving relative and as a victim. For the injuries suffered, the Schadefonds then awards a separate payment of €35,000 at most. In addition, the Schadefonds can award a surviving relatives' payment, consisting of the fixed amount of €5,000 and a possible addition for funeral expenses and loss of maintenance.

Close relative with serious injuries

If a close relative has personally suffered serious and permanent physical or psychological injuries (whether or not by observation) during a violent crime that caused the victim to suffer serious and permanent injuries, then he or she can submit a request as a close relative and as a victim. Then the Schadefonds awards a separate payment for the injuries suffered of €35,000 at most. In addition, the Schadefonds can award a close relatives' payment, consisting of the fixed amount of €5,000.

Several deceased persons due to one violent crime or criminally negligent homicide

If a surviving relative has lost two or more close relatives as a result of one violent crime or criminally negligent homicide, then the Schadefonds pays a fixed amount of €10,000 (Injury Category 4) as compensation for the suffering and any other financial damages, such as therapy costs and reduction of income. In addition, two payments at most can be awarded for loss of maintenance. A separate payment can be awarded for the funeral expenses of each deceased person.

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

If two or more people have suffered serious and permanent injuries due to one violent crime, then the Schadefonds pays each close relative of the victims a fixed amount of €10,000 (Injury Category 4) as compensation for the suffering and any other financial damages, such as therapy costs and reduction of income.

E.5 Limitation of damages

Just as in civil law, an obligation to limit damages applies at the Schadefonds. This means that the victim is obliged to limit the amount of the damages caused by the violent crime as much as reasonably possible. Damages incurred because the victim did not make sufficient efforts to limit the damages after the violent crime can also be imputed to the victim and are therefore not taken into consideration in the event of any payment. This is involved, for example if a victim does not undergo necessary treatment after the violent crime to limit his/her injuries.

E.6 Future damages

If a victim or surviving relative incurs damages after a payment has been awarded, an additional payment can be requested in certain cases. See section F.

E.7 Costs of legal assistance

In view of the nature of the payment, the simplicity of the request procedure and the fact that assistance with this by the Victim Support Centre is possible free of charge, the Schadefonds does not separately compensate any costs of legal assistance that a victim or surviving relative incurs for submitting a request.

The Schadefonds only reimburses the costs of legal assistance that a victim or surviving relative has reasonably had to incur in connection with the handling of an objection (to a decision on his or her request) at the request of the victim, surviving relative or close relative if, as a result of serious negligence, the decision was taken in conflict with the law. This follows from Section 58 subsection 2 of the Administrative Justice (BES Islands) Act (WarBES).

E.8 Statutory interest

In principle, the Schadefonds does not pay statutory interest because, in advance, no right exists to a payment from the Schadefonds. The right to a payment arises only after an affirmative decision by the Schadefonds. From that time, reimbursement of statutory interest can be addressed, provided there is a reason to do so (for example if payment of the reimbursement has taken imputably much too long). Then the victim must explicitly request statutory interest.

E.9 Entitlement of beneficiaries to payment

If a victim or surviving relative dies after his/her request has been submitted to the Schadefonds, entitlement to any payment will be capable of transfer under universal title. For this purpose the beneficiaries must submit a certificate of succession. The same applies if the beneficiaries lodge objection to the decision of the Schadefonds.

Other procedures

F. Additional requests

F.1 Additional requests from victims

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

To substantiate an additional request, the victim must provide new medical information showing that the injuries are more serious than was taken into account in the decision on the primary request. If necessary, the Schadefonds will present such medical information to its medical adviser, asking the adviser whether this information gives reason for classification in a higher injury category than determined in the previous decision.

F.2 Additional requests from surviving relatives and close relatives

A surviving relative can submit a request only for funeral expenses and loss of maintenance. It is not possible to request an addition to the fixed payment amount for surviving relatives, because this is a fixed amount. A close relative cannot submit an additional request because he or she can only receive a fixed payment of €5,000.

F.3 Form of the additional request

An additional request can be submitted without a request form.

F.4 Time limit for submission of additional requests

A time limit of ten years applies to the submission of additional requests. This time limit starts to run after the day on which the damages were incurred for which the additional request was submitted. In principle, there is no excuse for overstepping this time limit.

G. Objection and appeal

If a victim, surviving relative or close relative disagrees with the decision on the request, a notice of objection or appeal can be submitted in writing (not by e-mail) within six weeks after the decision was sent. The Schadefonds advises submitting an objection first. This procedure is actually free of charge and it gives the victim an additional legal remedy. The person submitting the notice of objection or appeal must clearly specify in the notice of objection or notice of appeal why and on which points he/she does not agree with the decision.

If the objection procedure is chosen, the person submitting the objection will be invited to explain his/her objection orally during a hearing, unless one of the situations referred to in Section 67 of the Administrative Justice (Bes Islands) Act exists. In principle, the hearing will be held via a secured video connection. A staff member of the Schadefonds, in consultation with a member of the Schadefonds Committee, will then prepare advice to this Committee on how to decide on the objection. After this the Committee will take a decision on the notice of objection. The Committee can declare the objection well founded, unfounded or inadmissible. The person lodging objection will always receive written notice to that effect.

If a person submitting an objection does not agree with the decision on the request or the decision on the objection, appeal can be brought against this at the Court of First Instance that has its hearing location in the Island territory where the person submitting it has his/her place of residence. How this is done is set out in the contested decision and in the decision on the notice of objection.

H. Review

It is possible to ask the Schadefonds to review a decision taken earlier. If the request for review is made after a (partially) negative decision, new facts or changed circumstances must be put forward that were not known to the victim at the time of the negative decision, and could not have been known earlier either. A policy change by the Schadefonds is not a ground in itself for review of a decision.

A request for review can be made without a request form.

H.1 Time limit for submission of requests for review

No time limit for submission applies to a request for review. The Schadefonds does however expect a request for review to be 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 that Member State via the Dutch Schadefonds Geweldsmisdrijven. The Schadefonds will settle the request administratively and forward the request to the competent authority of the relevant Member State. The Schadefonds has no influence on the decision on a payment. The fact is that each country applies its own rules and procedures.

Countries with a compensation fund

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

J. Complaints procedure

If a victim (or a surviving relative or close relative) is not satisfied with the manner in which he or she has been treated by the Schadefonds, he/she can submit a complaint about this. A complaint can be submitted in writing and by e-mail as well as heard orally.

After the complaint has been heard or received, if necessary and possible, the Schadefonds will contact the victim by telephone. The fact is that mutual understanding can be increased in a telephone conversation and the complaint could possibly already be settled. If the victim is satisfied with the response by the Schadefonds, a letter will no longer follow.

It is also possible that a victim will receive an invitation to explain the complaint in person during a conversation via a secured video connection. If the complaint is about a staff member of the Schadefonds, that staff member will also be given the opportunity to tell his or her side of the story.

The Schadefonds will respond in writing within six weeks after the complaint was submitted. The Schadefonds will not handle complaints submitted more than a year after the incident.

K. National Ombudsman

If after his or her complaint has been handled, the victim (or the surviving relative or close relative) is still not satisfied with the Schadefonds, he/she can contact the National Ombudsman in The Hague.

Miscellaneous

L. Submission of a request by a minor

If the victim (or surviving relative or close relative) is a minor, his/her legal representative must in principle sign and submit the request. An exception to this is possible in special situations. The minor victim or someone 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 to minors

Minor victim

In case of minor victims who are aged 16 or under at the time the compensation payment is made available for payment, 20% of the payment is deposited in the account number indicated by the legal representative. This makes it possible to spend this part of the payment immediately for the purposes of the victim (for example for financial damages, if any).

The remaining 80% will be deposited in a blocked account. Withdrawals from this account are completely blocked until the victim turns 18. As soon as the victim reaches the age of majority, he/she will have this amount at his/her disposal. In this way as much substance as possible is given to the guiding principle that the victim him/herself is entitled to the payment.

Minor surviving relatives and close relatives

In case of minor surviving relatives and close relatives who are aged 16 or under at the time the payment is made available for payment, 20% of the payment is also transferred to the account number indicated by the legal representative. The remaining 80% of the payment will be deposited in a blocked account.

Any payments for funeral expenses and loss of maintenance are always deposited in full in the account number indicated by the legal representative.

M.2 Advance payment

By way of a provisional payment, the Schadefonds can pay an advance on the payment (Section 13 subsection 1 of the Act). This however is on condition that the statutory requirements are met (i.e. that it is certain that a payment will be awarded) and the Schadefonds cannot take a final decision in the short term. If the Schadefonds first wants to investigate in more detail, for instance because it has not yet been established that a payment will be awarded, an advance will not be possible.

A request for an advance is handled only if the victim (or the surviving relative or close relative) requests this in writing, stating the reason why he or she needs an advance on the payment and why this is of urgent importance. This can be the case, for example if the victim does not have sufficient financial means available to undergo treatment for his/her injuries. The mere fact that the victim is in an awkward financial situation is no reason for granting an advance.

Advance payment to victims

An advance payment can be made to a victim if it is clear that someone has suffered serious injuries due to a violent crime without having a personal share in it, but the exact seriousness of the injuries still has to be examined. If it is not reasonably possible to wait for this examination, an advance can be paid. In that case the Schadefonds will pay an amount that corresponds to Injury Category 1. It can in fact be said with certainty regarding this amount that it will not amount to more than what will ultimately be paid (a payment will be awarded in any case, and it cannot be less than the amount corresponding to Injury Category 1). Depending on the circumstances of the case – for example if it has been established that the injury category to be determined will not be lower than 4 – a higher advance can be paid. An advance payment will not in any case be different from the fixed amounts that the Schadefonds can pay to victims.

Advance payment to surviving relatives

In case of surviving relatives – as soon as it is clear that the request meets all statutory criteria – the fixed payment amount will be immediately established. If a surviving relative has not declared further damages due to funeral expenses and loss of maintenance, this fixed amount can be paid immediately. Then it will not be necessary to award an advance.

If a surviving relative has declared damages due to funeral expenses or loss of maintenance, it can occur that the investigation of these damages will take some time. If it is not reasonably possible to wait for this investigation, the fixed payment amount can be paid as an advance.

Advance payment to close relatives

In case of close relatives – as soon as it is clear that a request meets all statutory criteria – the fixed payment amount will be immediately established. This fixed amount will therefore be paid immediately. Then it will not be necessary to award an advance.

Advance payment to minors

An advance for a minor victim (up to the age of 16) amounts to 20% of the advance that would have been paid to an adult victim. The reason for this is that 80% of the payment for a minor is always deposited in a blocked account. This is the reason that an advance for a minor surviving relative a or close relative (up to the age of 16) is also 20% of the fixed payment amount that would be paid to an adult surviving relative.

N. Administration

If a victim (or surviving relative or close relative) is unable to arrange his/her own financial matters, an administrator can be assigned for this purpose. Then the administrator takes decisions on the victim's money and property. The victim may however submit his/her own request to the Schadefonds. The administrator nevertheless determines to which account number the compensation awarded must be transferred.

The Schadefonds therefore checks each request to see whether there is an administration situation. For this purpose the Guardianship and Administration Register at the Registry of the Court of First Instance BES is consulted. If an administration situation exists, the Schadefonds first contacts the victim. The victim 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 indicate the account number into which a payment, if any, can be deposited.

If a request is made on behalf of a minor whose parents are under administration, the above-mentioned arrangement will also apply. The only difference is that 80% of the possible payment will be deposited into an account to be determined at a later date (see section M.1). The remaining 20% of the payment will be deposited in the account number indicated by the administrator.

O. Guardianship

Guardianship is for people who are unable to arrange their financial and personal affairs themselves. A guardian takes decisions on money, care, nursing, treatment or counselling of the person concerned. Someone who is under a guardianship order is unable to manage his/her own affairs. This means that he/she cannot perform legal acts without permission from the guardian that cannot be reversed. Consequently, someone under a guardianship order cannot submit a request to the Schadefonds. independently either. The guardian has to do this. When the guardian does so, a copy of the guardianship order must be submitted.

P. Payment and tax

The payment from the Schadefonds is in principle tax free, because it does not come under the "sources of income" referred to in Section 3 of the Income Tax Act BES.

Q. Payment and social assistance

Sections 1 and 7a of the Policy Rules for application of the Assistance Decree BES 2019 provide that a payment from the Schadefonds for the purpose of assistance is not counted as means, unless this cannot be considered responsible from the viewpoint of the provision of assistance. This means that in principle the payment from the Schadefonds is not taken into consideration in the assessment of the right to assistance by the National Office for the Caribbean Netherlands (RCN Unit of Social Affairs and Employment). In individual cases however it may be decided that part of the payment (thus not the entire payment) will nevertheless be counted as means.

R. Access to and surrender of the file

Under Article 15 of the General Data Protection Regulation (GDPR) and Section 63 of the Administrative Justice (BES Islands) Act (WarBES) everyone has the right of access to and surrender of his/her file. This can be otherwise if the file contains criminal information. A request for access to or surrender of the file must be submitted in writing. The Schadefonds will take a decision on it within four weeks.

S. Transitional policy

Transitional policy for primary applications

A request will be handled on the basis of the policy applicable at the time the primary request was submitted.

Transitional policy for additional requests

An additional request will be handled on the basis of the policy applicable at the time the additional request was submitted.

Transitional policy for objection cases

A notice of objection will be handled on the basis of the policy applicable at the time.

Transitional policy for review requests

For the handling of a review request, the policy will be decisive that is applicable at the time of the decision on the request to which the review request relates.