



# Policy Manual Schadefonds Geweldsmisdrijven

1 January 2026

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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 injuries due to a violent crime or sexual crime. Sexual include the crimes set out in sections 240-254 of the Dutch Criminal Code (WvSr). The Schadefonds also awards payments to surviving relatives of victims who died as a result of a violent crime or sexual crime or criminally negligent homicide and to close relatives of victims with serious and permanent injuries due to an intentionally committed violent crime or sexual crime.

## What is the objective of the financial compensation?

The compensation is a contribution to the damages victims have incurred. It is a social expression of solidarity and also gives a sign of acknowledgement 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 intended to restore the trust somewhat, and to help the victim, surviving relative or close relative to get ahead financially and otherwise so that he or she can focus on the future again. The recipient can spend it freely. The compensation amounts to €35,000 at most.

## 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 (immortal 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 surviving relatives and close relatives 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

To qualify for a payment from the Schadefonds, all requirements set by the Schadefonds Geweldsmisdrijven Act (Wet schadefonds geweldsmisdrijven) must be met. The Schadefonds has drafted policy that gives substance to these statutory requirements. In this Policy Manual, you receive information on 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 a payment from the Schadefonds. Where 'he' is written in the text, 'they' and 'them' can also be read.

For more information on the Schadefonds Geweldsmisdrijven Act and the submission of a request you can also go to our website [www.schadefonds.nl](http://www.schadefonds.nl).

The Policy Manual Caribbean Netherlands applies to crimes committed in the Caribbean Netherlands. This Policy Manual and more information can be found on the website [www.schadefondscn.com](http://www.schadefondscn.com).

## Who qualifies for compensation?

Pursuant to Section 3 subsection 1 of the Schadefonds Geweldsmisdrijven Act (hereinafter referred to as: the Act) the Schadefonds can award compensation to:

- a) victims who have suffered serious physical or psychological injuries as the result of a violent crime or intentional rape or negligent sexual assault intentionally committed in the Netherlands, or
- b) victims who have suffered serious physical or psychological injuries as the result of a violent crime intentionally committed on board a Dutch aircraft or vessel, or
- c) surviving relatives and close relatives of a person referred to under a) or b), if this person died or suffered serious injuries due to the violent crime or sexual crime as referred to in Section 107, subsection 1, under b, of Book 6 of the Dutch Civil Code (BW), or to of surviving relatives of a person who died as a result of violation of Section 6 of the Road Traffic Act 1994 (WvW 1994) or Section 307 of the Dutch Criminal Code (WvSr), or

d) persons other than those referred to under c. who paid the funeral expenses of persons referred to under a) or b), if these persons died as a result of the violent crime or sexual crime.

*The following groups are therefore concerned:*

- 1) victims of intentionally committed violent crimes or sexual crimes
- 2) surviving relatives of victims of intentionally committed violent crimes and sexual crimes
- 3) surviving relatives of victims of criminally negligent homicide within the meaning of Section 6 of the Road Traffic Act 1994 or Section 307 of the Dutch Criminal Code
- 4) close relatives of victims with serious and permanent injuries resulting from an intentionally committed violent crime or sexual crime.

To qualify for a payment from the Schadefonds the above-mentioned persons must meet the various requirements set by the Act. In sections 1 to 4, it is discussed per group how the application is assessed. The other statutory criteria are explained in sections A to D. How the Schadefonds determines the level of the payment is set out in section E. The various procedures at the Schadefonds are set out in sections F to K. Sections L to S contain some other matters.

## **1. Victims of intentionally committed violent and sexual crimes and victims of intentional rape or intentional sexual assault**

### **1.1 Intentionally committed violent crime or sexual crime**

A request can be submitted for a violent crime or sexual crime committed intentionally in the Netherlands, as a result of which a victim suffered serious injuries (Section 3 subsection 1 of the Act). In this context, a violent crime or sexual crime means a crime made punishable in the Dutch Criminal Code, (or a punishable attempt to that effect), during which violence was used against a person or the person was threatened with violence. If an incident is not made punishable in the Dutch Criminal Code, this will not constitute a violent or sexual crime within the meaning of Section 3 of the Act.

Violence can consist of physical and psychological violence. Assault, violence committed in a public place, threat of violence, human trafficking, stalking, rape, robbery and murder and manslaughter are crimes that are always qualified as violent or sexual crimes. Arson or causing an explosion qualifies as a violent crime only if the fire was set or an explosion was caused intentionally, and danger to life or danger of serious injuries to the victim was to be feared.

A violent crime or sexual crime can also be involved if a victim is put under substantial psychological pressure. The violent aspect can for example consist of the perpetrator's creation of a certain situation in which the victim is no longer able to determine his or her own will, or in which certain circumstances are abused. These can be certain online sexual crimes such as sexchatting, where the circumstances can be equated to violence. Examples include a considerable difference in age, a relationship of authority or a dependent position with respect to the perpetrator.

Violence committed against property (for example destruction), theft and cursing or humiliation (without using violence or threatening violence against persons) are not qualified as violent crimes.

#### **1.1.1 Intent**

The violent crime or sexual crime must also have been committed intentionally with the exception of the crimes mentioned in para. 1.1.2 (the culpable offences). 'Intent' is a legal term from criminal law and, briefly stated, comes down to the fact that the perpetrator acted willingly and knowingly. To qualify as an intentionally committed violent crime or sexual crime, the perpetrator must therefore have willingly and knowingly inflicted injuries on the victim. A request can also be submitted in the event of 'conditional intent'. Conditional intent means that the perpetrator willingly and knowingly accepted the considerable chance that his/her 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 is not generally inflicted intentionally. Victims cannot submit requests for such cases.

#### **1.1.2 Guilt**

The Schadefonds can also award compensation in the event of certain culpable offences. First of all, surviving relatives of victims of criminally negligent homicide within the meaning of Section 6 of the Road Traffic Act 1994 (WVW 1994) or Section 307 of the Dutch Criminal Code (WvSr) can submit applications. More information about this can be found in section 3.

In addition, since 1 July 2024, the Schadefonds has also awarded compensation to victims of intentional rape within the meaning of Section 242 of the Dutch Criminal Code and victims of intentional sexual assault within the meaning of Section 240 of the Dutch Criminal Code if this has caused them to suffer serious injuries. This is the result of the introduction of the Sexual Offences Act.

### **1.1.3 Sexual Crimes**

The new Sexual Offences Act will apply with effect from 1 July 2024. Over and above what was already punishable, the new act also makes situations punishable in which there is sexual contact against a person's will. A person is already punishable if he or she knew that the other person did not want sexual contact or he or she should have known this. The first situation comes under intentional rape or intentional sexual assault. The second situation is defined as negligent rape or negligent sexual assault.

Consequently, in order for rape or sexual assault to be involved, coercion, force or threat of violence need not exist. This applies to rapes and sexual assaults committed on or after 1 July 2024. This applies to sexual crimes committed both offline and online.

This means that in cases of rape and sexual assault committed on or after 1 July 2024, the Schadefonds will assess whether will is lacking. In this context it is not relevant whether intentional rape or intentional sexual assault or negligent rape or negligent sexual assault was committed. The new sexual offences legislation in fact provides that the Schadefonds can also award compensation to victims of intentional rape and victims of intentional sexual assault if they have suffered serious injuries as a result of this.

Not every sexual crime is an intentionally committed violent crime that falls under the scope of the Schadefonds. Crimes such as sexual harassment and covert filming generally fall outside its scope. Where minors are involved, the overt or covert creation of sexual images is treated as the production of child pornography. This is considered sexual abuse of the child and therefore an intentionally committed violent crime.

The sections below dealing with the plausibility and assessment of the injuries apply to applications by victims of intentionally committed rape and sexual assault, as well as to applications by victims of intentional rape and intentional sexual assault.

### **1.1.4 Plausibility**

#### *General*

A violent crime or sexual 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 with a firearm or stabbing with a knife.

In the second place, what happened during the violent crime or sexual 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 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) 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 (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) 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 or sexual crime.

*The decision by the Public Prosecution Service to prosecute*

The fact that the Public Prosecution Service prosecutes a offender for the violent crime or sexual 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 defined as a violent crime or sexual crime intentionally committed against the victim as referred to in Sections 240-250 of the Dutch Criminal Code. 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 or sexual crime plausible.

*Medical information*

Medical information is in principle not usable to substantiate what happened during the violent crime or sexual 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 or sexual 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 or sexual 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 from this additional information as well regarding what happened during the violent crime or sexual 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 works additionally on the above-mentioned assumptions about plausibility with a separate assessment framework for human trafficking. 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 shape to the special responsibility of society for victims of violence. Compensation from the Schadefonds is a financial contribution to the damages. This contribution 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 or sexual 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 considers it important 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 or sexual 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 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) or an NVO (Dutch Association of Educators and Educationalists) registration with Basic Assessment Diagnostics (BAD). 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](http://www.bigregister.nl), [www.nip.nl](http://www.nip.nl), and [www.nvo.nl](http://www.nvo.nl) one can find out whether a care provider meets this requirement. If a diagnosis has been made by a care provider who does not have a BIG registration, NIP service mark with BAPD or NVO registration with BAD 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 suffered in order to classify them in an injury category. This list of injuries can be consulted on [www.schadefonds.nl](http://www.schadefonds.nl). 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 compensation.

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 or sexual crime was committed, the Schadefonds determines which injury category is applicable and which payment amount corresponds to it (see Section E).

### **1.2.3 Presumption of serious injury**

When certain 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 or sexual crime. This concerns crimes which in themselves are so serious that they will almost always have a substantial impact on the victim.

In case of the following crimes the Schadefonds can presuppose serious psychological injuries: human trafficking, systematic domestic violence, certain sexual crimes and stalking. In the event of home robberies, threats with weapons and arson or causing an explosion, the Schadefonds does not presuppose serious psychological injuries, unless the nature, seriousness, reason and duration of the crime give cause to do so. The Schadefonds does in principle presuppose serious psychological injury in a situation in which minors (up to 18 years of age) become victims of a home robbery, direct threat with weapons and arson or causing an explosion.

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

#### *Human Trafficking*

If human trafficking has been committed in the Netherlands and as referred to in Section 273 of the Dutch Criminal Code, the Schadefonds presupposes serious psychological injuries.

#### *Systematic domestic violence*

If frequent and prolonged violence is used or violence is threatened in a relational atmosphere, the Schadefonds qualifies this as systematic domestic violence. In case of systematic domestic violence serious psychological injuries are always presupposed.

If the domestic violence is not systematic, serious psychological injuries are not presupposed. In that case the Schadefonds examines whether serious injuries were suffered due to the violence.

#### *Sexual crimes*

The Schadefonds presupposes serious psychological injuries in cases of rape and prolonged sexual abuse. After a single incident of sexual assault or in case of online sexual crimes, 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 accompanied by 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 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 if the victim is a minor (up to 18 years old) or if for example the robbery lasted for a long or longer time or was accompanied by aggravated assault or prolonged deprivation of liberty.

### *Threat with a weapon*

In principle the Schadefonds does not presuppose serious injuries if a victim was 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 if this threat 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 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 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 lasts for a long or longer time, is accompanied by aggravated assault, prolonged deprivation of liberty or inflicting a shot wound or stab wound.

### *Arson or causing an explosion*

In principle the Schadefonds does not presuppose serious psychological injuries in case of arson or causing an explosion. This can be otherwise when the fire or explosion caused immediate mortal danger or danger of serious physical injuries to the victim. The Schadefonds can indeed presuppose serious psychological injuries if a minor (up to 18 years old) becomes the victim of arson or the causing of an explosion, resulting in a fear of mortal danger or a risk of serious physical injuries to the victim.

Examples of aggravated circumstances are when a fire started on the victim's escape route, or when assistance providers had 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 sexual crime or the plausibility of the violent crime or sexual 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 a diagnostic institution (Psychotrauma Diagnostic Centre (PDC) or a comparable institution) 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 a diagnostic centre 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 sexual crime or being directly confronted with the consequences of a violent crime or sexual crime. An 'observer' is treated as a victim within the meaning of Section 3 subsection 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 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).

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 personally be qualified as a victim as referred to in Section 3 subsection 1 of the Act.

### **1.3.2 Systematic observation of domestic violence**

The Schadefonds qualifies 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 or sexual crime, without personally having been a witness of this crime. This must 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 or NVO registration with BAD.

## **1.4 Crime on or after 1 January 1973**

Compensation for victims of crimes committed before 1 January 1973 is not possible. This is laid down in Section 23 subsection 2 of the Act. If a violent crime or sexual crime was started before 1 January 1973 and ended after 1 January 1973, then it is possible to submit a request. Then Schadefonds assesses whether compensation can be awarded for the crimes that were committed on or after 1 January 1973.

## **2. Surviving relatives of victims of intentionally committed violent and sexual crimes**

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

- a) the spouse, not legally separated, and the registered partner of the victim;
- b) 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;

- c) 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;
- d) those who lived together with the victim in a family unit and to whose maintenance the victim contributed by running a joint household;
- e) 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 conceived but not yet born at the time of the crime and has since been born alive.

## **2.2 Plausibility of the violent crime or sexual 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 before 1 January 2012**

The Schadefonds has decided that in principle surviving relatives of victims of violent crimes or sex crimes committed before 1 January 2012 – the date on which the possibility of compensation in case of death was introduced – are also entitled to compensation from the Schadefonds. They must however have a valid reason for submitting a request outside the time limit for submission of ten years. See also section B. In addition, the limitation also applies that surviving relatives who submitted requests before 1 January 2012 as surviving relatives and received irrevocable decisions on them cannot still qualify for compensation.

# **3. Surviving relatives of victims of criminally negligent homicide**

Since 1 July 2016, the Schadefonds has also awarded compensation to surviving relatives of victims who died as a result of violation of Section 6 of the Road Traffic Act 1994 (hereinafter referred to as: RTA 1994) or Section 307 of the Dutch Criminal Code (hereinafter referred to as: DCC). If the victim has died as a result of violation of one of these sections, this is called 'criminally negligent homicide'.

## **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 sections of the law**

Section 6 of the RTA 1994 (criminally negligent homicide in traffic):

Everyone who participates in traffic shall be prohibited from behaving in such a way that a traffic accident to be blamed on his or her culpability takes place due to which another person is killed or due to which serious bodily injuries are inflicted on another person or such bodily injury that temporary illness or prevention from performing normal activities ensues from it.

*Section 175 of the Road Traffic Act (RTA) 1994:*

- 1) Violation of Section 6 shall be punished by:
  - a) Imprisonment for a term not exceeding three years or a fourth-category fine, if an accident is concerned by which another person was killed;
  - b) Imprisonment for a term not exceeding a year and six months or a fourth-category fine, if an accident is concerned by which bodily injuries were inflicted on another person.
- 2) If the guilt consists of recklessness, violation of Section 6 shall be punished by:
  - a) Imprisonment for a term not exceeding six years or a fifth-category fine, if an accident is concerned by which another person was killed;
  - b) Imprisonment for a term not exceeding three years or a fourth-category fine, if an accident is concerned by which bodily injury was inflicted on another person.
- 3) If the guilty party was in the situation referred to in Section 8, subsections 1, 2, 3 or 4, or did not comply with an order given after the offence pursuant to Section 163, subsections 2, 6, 8 or 9, or if the offence was caused by or caused partly by the fact that he or she exceeded the maximum speed set by law to a serious degree, or drove very closely behind another vehicle, did not give priority or overtook in a dangerous manner, the terms of imprisonment referred to in subsections 1 and 2 can be increased by half.

*Section 307 DCC (criminally negligent homicide in a general sense):*

- 1) A person on whose guilt another person's death can be blamed shall be punished by a term of imprisonment not exceeding two years or a fourth-category fine.
- 2) If the guilt consists of recklessness, he or she shall be punished by a term of imprisonment not exceeding four years or a fourth-category fine.

### **3.3 Guilt**

Guilt means a considerable degree of imputable negligence. The Netherlands Supreme Court (De Hoge Raad) ruled with respect to traffic offences that the determination of the degree of guilt comes down to the whole of acts by the offender, their nature and seriousness and the other circumstances of the case. This entails that in general, it cannot be determined in traffic cases whether one traffic violation is sufficient to declare guilt proved. After all, different factors are relevant for that purpose, such as the nature and the actual seriousness of the traffic violation and the circumstances under which the traffic violation was committed. This concerns the behaviour of the offender.

### **3.4 Plausibility of guilt**

A payment from the Schadefonds is possible in principle if it is plausible that the death of a victim is the direct consequence of a violation of Section 6 RTA 1994 or of a crime as referred to in Section 307 DCC, irrespective of the degree of guilt.

A payment is therefore possible for each degree of guilt that fits within the description of the crime in Section 6 WVV 1994 in conjunction with Section 175 RTA or within the description of the crime in Section 307 DCC.

### **3.5 Assessment of 'guilt'**

To assess whether it is plausible that 'guilt' is involved within the meaning of Section 6 WVV 1994 or Section 307 DCC, 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 be made 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 is not (yet) clear.

In case of traffic offences, a traffic accident analysis (TAA) forms part of the police investigation. The Schadefonds also assesses the request on the basis of this analysis. Other sources of information that the Schadefonds could use to assess plausibility are expert reports by the Inspectorate of the Ministry of Social Affairs and Employment (SZW) and the Healthcare Inspectorate, claim forms and expert reports by competent authorities such as the Netherlands Forensic Institute (NFI).

### **3.7 Court judgments and decisions of the Public Prosecution Service**

The Schadefonds assesses on the basis of objective information, in principle independently, whether there has been a violation of Section 6 RTA or Section 307 DCC. 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 nevertheless decide in some cases to award compensation to the surviving relative(s).

### **3.8 Compensation for emotional damage by the insurer**

Since 1 January 2019 – through the introduction of compensation for emotional damage in the Dutch Civil Code – surviving relatives of victims of criminally negligent homicide by a driver of a motor vehicle in traffic, among others, have qualified for compensation for emotional damage by the perpetrator's insurer. Every owner of a car, motorcycle, scooter, moped or motorised bicycle is legally required to take out third-party liability insurance for motor vehicles (pursuant to the Civil Liability (Motor Vehicles) Act, hereinafter referred to as: WAM).

In all cases, the perpetrator's third-party liability insurance for motor vehicles will make payments to victims of traffic accidents (and their surviving relatives). If the perpetrator does not have insurance or if there is no demonstrable perpetrator/guilty party, the Motor Traffic Guarantee Fund (hereinafter referred to as: Guarantee Fund) assumes responsibility for payment of the claim (under the same conditions as the original insurer).

As surviving relatives of traffic accidents with a motor vehicle that took place on or after 1 January 2019 always have a possibility of recovery from the insurance of the person who caused it or the Guarantee Fund, in principle the Schadefonds no longer plays a part for this group of surviving relatives. The Schadefonds recommends recovering the damages from the insurer of the person who caused the accident.

Brothers and sisters of the deceased victim do not qualify for compensation by the insurer or the Guarantee Fund. These surviving relatives are expressly not included in the group of entitled persons. As evident from the list in section 2.1, brothers and sisters can indeed qualify for compensation from the Schadefonds.

### **3.9 Crime on or after 1 January 1973**

Compensation for surviving relatives of victims of criminally negligent homicide is possible if the crime was committed on or after 1 January 1973. A submission deadline of ten years applies to this.

## **4. Close relatives of victims with serious and permanent injuries**

Since 1 January 2019 the Schadefonds has also awarded compensation to close relatives of victims who suffered serious and permanent injuries due to an intentionally committed violent crime or sexual crime.

### **4.1 Plausibility of the violent crime or sexual crime**

The plausibility of the violent crime or sexual 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 Dutch Civil Code (BW) (hereinafter referred to as: DCC). No further substance is given to the term serious and permanent injuries in Book 6 Section 107 of the Dutch Civil Code. For the substance of the term, the Schadefonds is in line with the intention of the legislator and eventually with the substance given by case law.

#### **4.3.1 The intention of the legislature**

In order for a close relative to qualify for compensation the victim must have suffered exceptionally serious and permanent injuries. Serious and permanent injury exists if it results in 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. Functional disorder of 70% 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 or sexual 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;
- Anatomical loss of both arms;
- Serious traumatic brain damage resulting 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 can only request the medical information if the victim has authorised it to do so. 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.

### **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 or sexual 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 are injured after the major incident while fleeing within the geographical area by being trampled in the crowd are also qualified as victims.<sup>1</sup>

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

Persons who were physically threatened during the major incident by, for example by being located in a delineated zone, will be qualified for compensation. This means that in each case, a physical threat exists if the 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 on page 15.)

### *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 is qualified for compensation.

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

- there is no question of a current financial provision by the employer; and
- a diagnosis has been made of the physical injuries 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 are qualified for compensation.

<sup>1</sup> *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 major incident 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 are also qualified for compensation. Serious and permanent injuries must be involved as referred to in Section 107, subsection 1, under b. of Book 6 of the Dutch Civil Code.

The same persons as in the ordinary policy can be qualified as 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 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 - in accordance with the ordinary policy - close relatives of seriously and permanently injured victims (who did not personally observe the crime/were not present during the crime) 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 is qualified 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 payments**

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 identify the body of a deceased victim. Then there will not be much time to assess whether the actual victim is qualified 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 with a priority request can be submitted, on which in any case the following details are stated:

- Name and address of the surviving relative
- Account number (incl. BIC/SWIFT code)
- Victim's name
- Relationship to victim
- Date of crime/death of victim
- Reason for the 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 relative 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 Netherlands or in the Caribbean Netherlands**

Under Section 3 subsection 1 of the Act, it applies to all groups that the crime must have been committed in the Netherlands or on board a Netherlands aircraft or vessel outside the Netherlands. The Netherlands also means the territorial waters of the Netherlands. Under Section 20 of the Act, a payment can also be made if the crime was committed in the Caribbean Netherlands (Bonaire, Sint Eustatius and Saba). More information on this can be found on the website [www.schadefondscn.com](http://www.schadefondscn.com).

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 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 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 or sexual 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 or sexual 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 not a valid 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 sexual crimes can be considered. Scientific research has shown that this group of requesters (generally sexual 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.

#### *Crime before 1 January 1973*

A payment for a crime committed before 1 January 1973 is not possible. This is laid down in Section 23 subsection 2 of the Act. If a violent crime or sexual crime was started before 1 January 1973 and ended after 1 January 1973, then it is possible to submit a request. In that case the applicant must of course have a valid reason for overstepping the ten-year time limit. Then the Schadefonds assesses whether a payment can be awarded for the offences committed on or after 1 January 1973.

### **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 is qualified as 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 was 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 a 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 the 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 has submitted 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 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 and any involvement of the close relative in the violent crime. 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 or sexual 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.

If the civil court has allowed a claim of a surviving relative or close relative due to emotional damage (that must be paid by the perpetrator) or if the perpetrator's liability has paid compensation for emotional damage, the Schadefonds will not make a payment. In principle, the compensation by the perpetrator or insurance will actually be higher than the payment from the Schadefonds.

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 sexual crime or being directly confronted with the consequences of a violent crime or sexual 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 or sexual crime was committed during the performance of one's work, or under a third-party liability insurance policy), then the Schadefonds deducts such reimbursement from the compensation payment (Section 6 subsection 2 of the Act).

#### *Subsequent settlement via the CJIB*

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

If the criminal court has ordered a perpetrator to pay compensation to a victim, the Central Judicial Collection Agency (CJIB) will collect such compensation from the perpetrator. The CJIB periodically notifies the Schadefonds of the compensation payments it collects in connection with violent crimes.

Then the Schadefonds examines whether the CJIB will collect compensation payments for victims who have also received a payment from the Schadefonds. If compensation and a payment relate to the same damages of a victim, then the Schadefonds notifies the CJIB to that effect.

The CJIB then transfers the overlapping part of the compensation payment to the Schadefonds instead of to the victim, because the victim has already received a 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 or sexual 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 compensation 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) 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 or sex crimes who consequently suffered serious physical or psychological injuries. 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.

<i>Injury Category</i>	<i>Payment</i>
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 or sexual 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 into 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 into one of the injury categories, then the amount corresponding to that injury category is the payment that the victim receives.

#### *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 into 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 sexual crime or criminally negligent homicide. Who the Schadefonds qualifies as surviving relative 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 sexual 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 members at most of the deceased who travel abroad or come over from abroad for the funeral can also be included in the payment. This also applies to the additional expenses incurred if the deceased is buried 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 payment 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.

#### *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 to the family income in a financial sense or had an income comparable to that of the surviving partner, and a child of the age of majority (from 18 to 20 years old) who is in full-time secondary or further education, the Schadefonds pays €1,500 per year of study yet to be undertaken.
- 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 those 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 the age of majority undertakes studies (senior secondary vocational education (MBO), university of applied sciences (HBO) or academic university (WO)), 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.

<i>Payments for surviving relatives</i>	<i>Intended for:</i>
€ 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 for 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 or sexual crime. Who the Schadefonds qualifies as 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 that paid to 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 Payments in case of concurrence***

#### *General*

If a victim has suffered multiple physical injuries as a result of a violent crime or sexual 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 or sexual 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 or sexual crime, whether or not in combination with psychological injuries (as a result of the crime committed against the victim 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. If at least 3 different physical injuries 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 or sexual 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 or sexual 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 sexual crime or criminally negligent homicide*

If a surviving relative has lost two or more close relatives as a result of one violent crime or sexual 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 or sexual crime*

If two or more people have suffered serious and permanent injuries due to one violent crime or sexual 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 or sexual crime as much as reasonably possible. Damages incurred because the victim did not make sufficient efforts to limit the damages after the violent crime or sexual crime can also be imputed to the victim and are therefore not taken into consideration in the event of any payment. This is involved if a victim does not undergo necessary treatment after the violent crime or sexual 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 in so far as the contested decision was revoked as a result of unlawfulness to be blamed on the Schadefonds. This follows from Section 7.15 of the General Administrative Law Act (*Awb*).

#### ***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 beneficiary must submit a certificate of succession. The same applies if the beneficiary lodges 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 only submit an additional request 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 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, a surviving relative or close relative disagrees with the decision on the request, a notice of objection can be submitted in writing (not by e-mail) within six weeks after the decision was sent. In the notice of objection, the person submitting the objection must clearly state why and on which points he or she disagrees with the decision. The person submitting the objection will then be invited to explain his or her objection orally during a hearing, unless one of the situations has occurred as referred to in Section 7:3 of the General Administrative Law Act.

A staff member of the Schadefonds, in consultation with a member of the Schadefonds Committee, will then prepare advice to this Committee on how a decision should be taken on the objection. Afterwards, the Committee will take a decision on the notice of objection. The Committee can declare the objection well founded, unfounded or inadmissible. The person submitting the objection will always receive written notice to that effect. If the person submitting the objection does not agree with the decision on the objection, he or she can bring an appeal against it at the administrative court. How this must be done is indicated in 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, under Section 4:6 of the General Administrative Law Act, new facts or changed circumstances must be put forward that were not known to the victim at the time of the negative decision and also could not have been known earlier.

A policy change by the Schadefonds or legislative amendment is not in itself a ground for review of a decision. The amendment to the Act on 1 July 2016 with respect to adding surviving relatives of victims of criminally negligent homicide to the target group however is a relevant legislative amendment, as referred to in the General Administrative Law Act. If such a request was rejected earlier because no an intentionally committed violent crime or sex crime was involved, this legislative amendment has now enabled a request for review to be submitted. The substance of this request will be handled with due observance of the new Section 3 of the Act. A request for review can be made without a request form.

#### **H.1 Time limit for submission of a request for review**

No time limit for submission applies to requests 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 his/her habitual place of residence in the Netherlands and has become a victim of an intentionally committed violent or sexual crime in Member State of the European Union after 1 January 2006 can submit a request for compensation by that Member State via the Dutch Schadefonds Geweldsmisdrijven. The Schadefonds settles the request administratively and forwards the request to the competent authority of the relevant Member State. The Schadefonds has no influence on the decision on a payment. The fact is that each country applies its own national rules and procedures.

#### *Countries with a compensation fund*

EU countries are required to have a comparable body. The following EU countries have such an 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, in principle the Schadefonds will always 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 come and explain the complaint in person. 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 the victim (or surviving relative or close relative) is still not satisfied with the Schadefonds after his/her complaint has been handled, he/she can contact the National Ombudsman in The Hague.

# **Miscellaneous**

## **L. Submission of requests by minors**

In principle, the legal representative must sign and submit the request if the victim (or the surviving relative or close relative) is a minor. An exception to this is possible in special situations. In that case, the minor victim or a person directly involved must explain why the minor victim wants to submit the request without intervention of the legal representative. This is assessed on a case-by-case basis.

## **M. Payment**

### ***M.1 Savings accounts for minors***

#### *Minor victims*

In case of minor victims aged 16 or under at the time the compensation is made available for payment, 80% of the payment will be deposited in a savings account for minors, namely in an interest certificate with a BEM clause (clause relating to an investment account held on trust for a minor). The victim will have this amount at his or her disposal as soon as the victim reaches the age of majority. In this way, as much substance as possible is given to the guiding principle that the victim is entitled to the payment.

The Schadefonds transfers the remaining 20% of the payment to an IBAN indicated by the legal representative. This makes it possible to spend this part of the payment immediately for the benefit of the victim (for example for financial damages, if any).

#### *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, 80% of the fixed payment for surviving relatives and close relatives will be deposited in a savings account for minors. The Schadefonds transfers the remaining 20% of the payment to an IBAN indicated by the legal representative.

In the case of minor surviving relatives and close relatives, any payments for funeral expenses and loss of maintenance are always deposited in full in the IBAN indicated by the legal representative.

#### *Interest*

During the term of the interest certificate the parents are allowed to have the interest at their disposal. The interest can however be saved for the minor victim (or surviving relative or close relative). In principle, the parents and the minor victim cannot get hold of the money during the term. The parents can however request the Subdistrict Court to have (an additional part) of the money released. To do so, they must demonstrate that the money will be used for the well-being of the minor victim.

### ***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 request meets the applicable statutory requirements (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 provided to a victim if it is clear that someone has suffered serious injuries as a result of an intentionally committed violent crime or sexual crime without a 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 provided. In that case the Schadefonds pays 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 het case – for example if it has been established that the injury category to be determined will not in any case 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 provide 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 the request meets all statutory criteria – the fixed payment amount will be immediately established. This fixed amount is therefore be paid immediately. Then it will not be necessary to provide an advance.

#### *Advance payment to minors*

An advance payment for a minor victim (up to 16 years of age) amounts to 20% of the advance payment that would have been made to an adult. The reason for this is that 80% of the payment for a minor is always deposited in a savings account. For this reason an advance for a minor surviving relative or close relatives (up to 16 years of age) also amounts to 20% of the fixed payment amount that would have been paid to an adult surviving relative or close 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 the IBAN to which the compensation awarded must be transferred.

The Schadefonds therefore checks each request to see whether there is an administration situation. For this purpose the Central Insolvency Register and the Central Guardianship and Administration Register are 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 IBAN in 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 in an investment account (see section M.1). The remaining 20% of the payment will be deposited in the IBAN 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 irreversible legal acts without permission from the guardian. 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**

In principle the payment from the Schadefonds is tax free because it does not come under the "sources of income" referred to in the Income Tax Act (*Wet IB*).

## **Q. Payment and social assistance**

Section 7 of the Participation Act Regulations, Old and Partially Disabled Unemployed Workers Income Scheme Act (IOAW) and Old and Partially Disabled Self-Employed Persons Income Scheme Act (IOAZ) provides that municipalities may not take the payment from the Schadefonds into account in the means test in determining the level of and entitlement to a social assistance benefit. This means that a payment from the Schadefonds will not be deducted from the social assistance benefit, nor will a payment from the Schadefonds result in withdrawal of the social assistance benefit.

This applies to each victim and each close relative who receives a payment from the Schadefonds. The fixed payment for surviving relatives and the separate payment for funeral expenses will not have influence either on the entitlement to social assistance. It holds only for surviving relatives who have received a separate payment for loss of maintenance that municipalities may count this payment as part of the assets or income of the surviving relative. With the payment for loss of maintenance, the Schadefonds in fact explicitly compensates part of the loss of income. Because of this there is an overlap with the objectives of social assistance, provision for the necessary costs of maintenance. Municipalities decide on the basis of each individual case whether the compensation of loss of maintenance has influence on the social assistance benefit. To avoid having a fine imposed for failure to comply with the obligation to provide information (Section 17 subsection 1 of the Participation Act), it is advisable to report payments received for loss of maintenance to the municipality.

## **R. Access to and surrender of file**

Under Article 15 of the General Data Protection Regulation (GDPR) and Section 7:4 subsection 4 of the General Administrative Law Act, 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 All-in policy*

Since 15 October 2014 the Schadefonds has made undifferentiated compensation payments (all-in amounts). This means that since that date it has no longer been possible for victims to request separate payments for financial damages. Since 15 October 2014, surviving relatives have still been able to request an additional payment only for loss of maintenance and funeral expenses.

### *Transitional policy for primary requests*

Primary requests are handled on the basis of the policy that applied at the time the primary request was submitted.

### *Transitional policy for additional requests*

Additional requests are handled on the basis of the policy that applies at the time said additional request was submitted.

An exception applies to this. If the additional request follows on a primary request that was submitted before 15 October 2014, then the Policy Manual of 18 March 2014 will apply. This is the last applicable policy before the Schadefonds started using all-in payment amounts. In these cases an additional payment is still possible only for immaterial damage, because an assessment of the damages had already taken place earlier and therefore the all-in payment amounts are not applicable.

An additional request for material damages is no longer possible. Not even if the additional request follows on a primary request to which the policy from before 15 October 2014 was applied.

*Transitional policy for objection cases*

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

If however a successful objection is made to a partly affirmative decision (for example on rejection of a loss item, the level of the payment for immaterial damage or reduction based on personal share), that was taken on the basis of policy from before 15 October 2014, then the policy applicable at the time (and the Injury List applicable at the time) will apply to the determination of the payment. The idea behind this is that in the earlier decision, the level of the payment was determined on the basis of the old policy. If objection is made successfully to part of this decision, then the full decision will not be taken again on the basis of the policy formulated in this Policy Manual. The same applies to successful objections to decisions on additional requests that were handled on the basis of the policy from before 15 October 2014.

*Transitional policy for review requests*

When a review request is handled, the policy will be decisive that applied at the time of the decision on the request to which the review request relates.

If however a review request has been submitted successfully for a primary request that was rejected in full under the policy applicable before 15 October 2014, then the policy formulated in this Policy Manual will apply to the determination of the payment. This is possible because the assessment of the damages and determination of the level of the payment were not addressed earlier.