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Extern Wetenschappelijke Betrekkingen

Personenschade en de Wet tegemoetkoming schade bij rampen

Summary

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Summary

In order to compensate victims of disasters for personal damage, the Wet tegemoetkoming schade bij rampen (Wts) – the Act compensation and damages during disasters and major accidents – can be extended to include damages related to personal injuries and deaths. This addition to the Act requires a number of fundamental choices to be made. First of all the so-called circle of rightful claimants needs to be defined, as well as the type of costs that qualify for compensation. Furthermore, it will have to be decided whether compensation will be in lump sum awards or based on actual damage. This last choice can be made by meticulously balancing the interests of all parties concerned.

The current Act compensation and damages during disasters and major accidents (Wts) does not include personal damages. The Ministry of Security and Justice is considering to include personal damages as a form of compensation, should the Act be reviewed in the future. Therefore, the Research and Documentation Centre (WODC) has commissioned SEO Economic Research and INTERVICT to research the scope and possible effects of this addition to the Act. The following two research questions are central to the research:

1. To what extent and in what form can personal damage/injury be included in the Act, and how should it be assessed?
2. To what extent and by which means can the balance between legal security on the one hand and flexibility and customized procedure on the other hand be ensured?

The Act (Wts)

Until 2013, the Act – which was passed in 1998 – has been enforced five times. The Act is the political answer to issues concerning the insurability of flooding and earthquakes. With this Act the government seeks to prevent the social disruption of victims, and to express solidarity with these victims. The characteristics of the Act are mentioned below:

- The Act is a safety net provision. Victims will not be fully recompensed for the injuries they suffered.
- To qualify for compensation, the sustained injuries must have their origin in a geographically defined damaged area, and must be the direct and immediate result of the disaster.
- Insurable risks and damage that is recoverable or avoidable are excluded from compensation.
- A detailed settlement procedure will be drawn up for each type of disaster.
- The basis for compensation is the actual damage or injuries sustained.

Personal injury

Personal injury concerns injury that results from harm to the human body. This includes physical harm (bodily injury) as well as (financial) effects suffered by death. Personal injury can be both material and immaterial. Examples are loss of income, medical expenses, funeral costs and compensation for injury or loss of life.

Many kinds of personal injury are insurable in one way or another, or are covered by social funds or provisions. However, it is not immediately clear whether these forms of insurance or social provisions are accessible to, or covering the damage of, the entire population.

Different systems can be used to assess personal injury claims. These systems can either be based on a lump sum award or on compensation for actual damage.

Personal injury under the Act

If compensation for personal injuries is included in the Act, a number of choices must be made. By studying the scope of the Act, we come across these choices one by one.

1. **Compensatory nature;** the current application of the Act does not allow victims to claim full damages, but they can be awarded compensation. This principle can also be applied to personal injury cases.
2. **Causality conditions and the circle of rightful claimants;** the damage must have occurred in a geographically defined damaged area and must be the direct and immediate result of a disaster. According to experts, these causality conditions will not lead to additional restrictions for personal injury compensation. However, personal injury – other than material damage – cannot be limited to a specific geographical area. An example would be the suffering and distress of next of kin, after a disaster. To prevent a limitless number of claimants, this circle of rightful claimants can be defined from the start.
3. **Restrictions to compensation;** the Act only offers compensation if no other form of coverage or payment of damages is possible. As was stated earlier, many types of personal injury can be insured, or be covered by social funds or provisions. Therefore, it would seem that personal injuries are exempt from compensation by the Act – because they are ‘in all fairness insurable’. However, it is not *a priori* certain that these insurances and social provisions are accessible to the entire population, nor that they offer a reasonable compensation for personal injuries. To remedy this, the legislative body has the power to decide in advance which categories of injury fall under the Act and which do not.
4. **Assessment of personal injuries;** for material damage the current Act offers compensation that equals a percentage of the actual damage sustained. However, the current Act also allows the use of lump sum awards, own risk excess, thresholds and maximum compensation limits. In other words: the current Act allows the assessment of personal injuries to be done in terms of lump sum awards as well as in terms of actual damage.
5. **Balancing of interests;** whether personal injury should be assessed by using a lump sum award system or a system based on actual damage, can be decided by balancing the interests of parties concerned. Payment of compensation after a disaster involves various parties, each with their own (conflicting) interests. As the synthesis of this report shows, some of these interests are best served by using a lump sum award system, while others can be met by using a system based on actual damage. To arrive at a choice for the best system, these interests must be balanced carefully.

It is also possible to work with a combination of both systems or to compromise and decide on a fixed lump sum and a system based on actual damage. Thus, the legislative body may be able to serve various interests.

Summarizing, this study shows that it is possible to include personal damage in the Act and that there are different systems to assess personal damage. However, relevant academic literature nor analysis of cases in which governing bodies compensated personal injuries have unequivocally answered the question of 'how to assess personal damage'. A fixed lump sum award has both advantages and disadvantages. The same is true for compensation based on actual damage and expenses. Where the first offers legal security, the second allows room for customized compensation. Also, where a system based on actual damage will lead to (very) high execution costs, a fixed lump sum award may lead to inequality of justice. Therefore, in cases of personal damage under the Act, it will be to the legislator to decide which interests should be served in awarding compensation and, subsequently, which system of assessment is best suited to do this.