

Regime of compensation for victims of crimes

A. Overview

Numerous acts of terrorism have been carried out in the world over the last two decades with dramatic consequences for nations and people. Some have been committed on French territory or have hit French nationals abroad, with even greater impact on the national community.

Similarly, acts of delinquency at varying degrees are perpetrated every day.

Thus, victims of violent offences enjoy a special status and are eligible for national solidarity. The starting point was Act No 77-5 of 3 January 1977, establishing a State compensation system to ensure that victims are compensated for personal injuries caused by criminal acts. It was then followed by the creation in 1983 of *Commissions d'Indemnisation de Victimes d'Infractions*, Compensation Commissions for Victims of Offences, or CIVI, and by the creation in 1990 of the *Fonds de Garantie des Victimes d'Actes de Terrorisme et Autres Infractions*, the Fund of Guarantee for the victims of terrorism and other offences, or FGTI, which constitutes an expression of national solidarity¹.

The FGTI has two missions: compensating the victims and exercising recourses against offenders.

Since the start of the Fund, its activities grown constantly, evidencing that its creation met a necessity for the Nation².

¹ www.fgti.fr

² See Annexe.

The victims of facts, whether or not committed deliberately, that constitute criminal offences have access to a self-contained compensation scheme in relation to a whole series of offences. Applications for compensation do not have to be made in the course of criminal proceedings and it is not necessary for the offender to be identified.

There are two compensation schemes:

- The system for the compensation of victims of acts of terrorism originates from the law of September 9, 1986 when France was the target of serious terrorist attacks.

The compensation of bodily injuries (wounds, death) is total. The sums are set and paid by the Guarantee Fund in agreement with the victims.

- The system for the compensation of victims of other offences originates from the law of January 3, 1977, which went through various stages until the law of July 6, 1990 with the creation of the FGTI. The procedure of compensation is judicial.

Its evolution can be summarize as follows:

- Law of January 3, 1977: Creation of a State compensation system for victims of serious bodily injury resulting from an offence. Such compensation, the amount of which is capped and subject to restrictive conditions, was granted as assistance by a Commission attached to each Court of Appeal.
- Law of February 2, 1981: Extension of the compensation system to any person who, as victim of theft, embezzlement or breach of trust, was unable to obtain reparation elsewhere, thus being left in a serious material condition.
- Law of July 8, 1983: Improvement of the existing system, creation of a particular Compensation Commission for Victims of Offences within each *Tribunal de Grande Instance* (Court).
- Law of December 30, 1985: Extension of the existing system to any person victim of a rape or an indecent assault.
- Law of July 6, 1990: Modification of the system by instigating a system of full compensation of serious bodily injury (elimination of the capping of

the amount and of the restrictive conditions for award) and creation of the FGTI.

- Law of June 15, 2000: Extension of the compensation granted by the CIVI to extortion of funds and to destruction of or damage to property.
- Law of March 9, 2004: Introduction of Article 706-5-1 in the French Criminal Procedure Code which transfers from the CIVI to the FGTI the essential function of determining the amount of the compensation.

B. Compensation for the victims of acts of terrorism

Compensation for the victims of acts of terrorism³ follows the time frame laid down by Article 9 of the Law of September 9, 1986 on the fight against terrorism and attacks on State security.

The Guarantee Fund for victims of acts of terrorism and other offences pays full compensation for the bodily injuries of injured victims and for the damages of the beneficiaries of the deceased.

It should be noted that the FGTI pays an initial provision at the latest one month after receipt of the claim from the victim to cover the initial costs. It then sends the victim a written offer for final compensation at the latest three months after receipt of the documentary evidence from the victim. The victim has fifteen days to accept the offer. If the victim accepts the offer, the Guarantee Fund pays the amount of the compensation. If the victim refuses the offer, he or she can lay the case before the Court.

³ To qualify as an act of terrorism, two criteria are required: it must be an offence involving an individual or collective enterprise; its aim must be to seriously disrupt law and order by intimidation or terror.

- In the case of injuries with recovery without sequelae:

The Guarantee Fund sends an offer of compensation on the basis of the medical certificates forwarded, of the documentary evidence of the costs incurred and of the loss of income, subject to the deduction of payments made by social organisations.

- In the case of injuries with sequelae:

The Fund makes one or several provisional compensation payments. It asks its consultant physician to examine the victim who can be assisted by the physician or his/her choice (the copy of the report is sent to the victim and to the Guarantee Fund). Once the condition of the victim is stabilised, the Fund sends the victim a detailed account of the compensation on the basis of the medical report, subject to the deduction of payments made by social organisations.

- In the case of death:

The offer of compensation is sent to the beneficiaries. It includes compensations for moral damage, funeral costs, other costs incurred and for economic damage, subject to the deduction of payments made by social organisations.

C. Compensation for the victims of other offences

The applicant must show that the loss sustained is the result of facts which, whether or not done intentionally, correspond to a criminal offence. He must prove that the damage suffered is the result of facts, deliberate or otherwise, offering the material nature of an offence. The law therefore applies to deliberate acts just as to careless behavior or negligence of the offender. In the case of damage to property, the fact must be qualified as theft, embezzlement, breach of trust, extortion of funds or destruction of or damage to property.

However, it should be noted that when the victim is at fault compensation may be reduced or excluded⁴.

There are two situations:

- grievous bodily harm:

The victim can obtain full compensation for the damage resulting from grievous bodily harm insofar as the facts resulted in death, permanent disability or total personal occupational disability equal to or greater than one month, or if it comes under rape or sexual aggression. The FGTI takes account of the benefits paid by the social organisations, mutual insurances and insurance companies.

Damage to clothing or equipment is excluded.

- Slight bodily harm and material damage resulting from theft, embezzlement, breach of trust, extortion of funds or destruction of or damage to property:

If the victim has suffered bodily injury resulting in a total professional disability of less than one month or material damage resulting from any one of the above seven offences, compensation remains subject to strict conditions and the amount is capped.

To obtain compensation in these circumstances, the following additional conditions must be met: the victim must have monthly resources of less than 1288 Euros for 2006⁵; he must prove that the offender is either unknown or insolvable, and, the victim must also be unable to obtain any sufficient and effective compensation through an insurance company, social organization or other debtor and be in a serious material and psychological condition as the result of the offence. The victim may then benefit from compensation capped at 3864 Euros (maximum applicable in Metropolitan France in 2006).

As regards to procedure, it can be noted that it begins with an application signed by the victim, his legal representative, or counsel. It is then sent to the secretariat of the CIVI,

⁴ Article 706-3 Criminal Procedure Code.

⁵ To which can be added 155 Euros per month for the first two dependents and 98 Euros per month for all other dependents (husband, wife, descendant, ascendant).

which is in the nature of a civil court ruling at first instance, where a magistrate investigates it. The Commission and its Chairman have extensive powers: they can obtain copies of the reports recording the offence and all the documentary evidence of the criminal proceedings even if they are pending, they may call witnesses and carry out all investigations as they wish.

This FGTI is obliged to make the victim an offer of compensation within two months of receiving the application. Any refusal of the guarantee fund's compensation offer must be reasoned. These provisions are also applicable where the harm suffered has worsened. Where the victim accepts the compensation offer, the guarantee fund sends the statement of agreement to the president of the compensation commission for its approval. Where the guarantee fund makes a reasoned rejection of a claim, or where the victim disagrees with the offer made to him, an investigation into the case is carried out by the president of the commission or an assistant judge.

As seen above, the “*Perben II*” Law of 9 March 2004 transferred from the CIVI to the FGTI the essential function of determining the amount of the compensation. Originally, this reform was made to simplify the procedure, but according to some authors, it is prejudicial to the victims because Funds of Guarantee are generally prone to reduce the amount of the damage. Indeed, it may be considered peculiar that it is the debtor that fixes the amount of the compensation⁶.

Under the Justice Act No 86-620 of 9 September 2002, victims of the most serious crimes (that is murder, acts of barbarism, torture, violence against minors and vulnerable people causing death or infirmity, rape or aggravated rape) are fully entitled to legal aid with no resources conditions. Costs of these victims’ defence, including lawyers’ fees, are fully covered by the State.

⁶ Y. Lambert-Faivre, *Droit du dommage corporel, Systemes d'indemnisation*, Precis Dalloz Edition 2004, p987-88. However, it should be noted that the victim still has the right to refuse the offer made by the FGTI, in which case the case goes before the CIVI again.

It can be noted that the product of recourse actions represents a significant part of the resources of the FGTI.

It is also financed by a levy on property insurance contracts, to the amount of 3,30 Euros per contract in 2005. These resources are complemented by the product of the reimbursements of compensation that the Guarantee Fund obtains from offenders. Management of this Fund is entrusted to the FGAO (Guarantee Fund of Compulsory Damage Insurance).

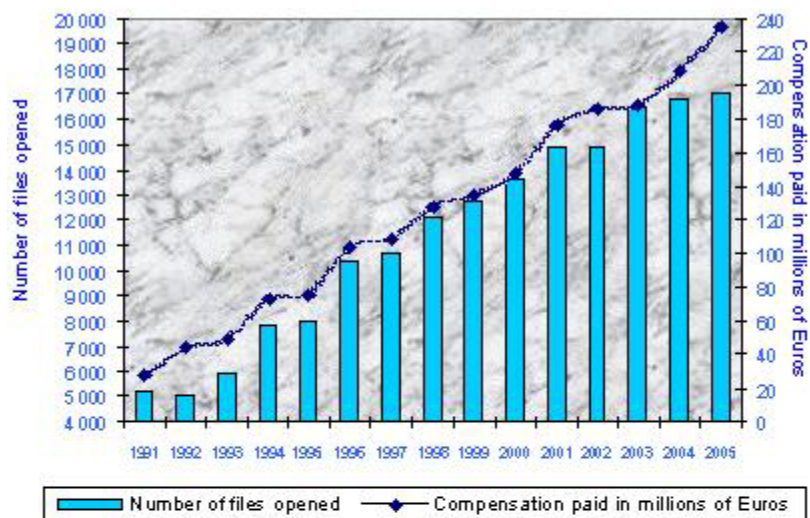
In 2004, the FGTI received applications from 133 terrorism victims and the benefits paid the same year totalled 2 644 638 Euros. From January 1, 1985 to December 31, 2004, 3,069 victims of acts of terrorism applied for compensation.

In 2004, 16,877 files for victims of other offences were opened. The benefits paid in 2004 totalled 209 541 638 Euros.⁷

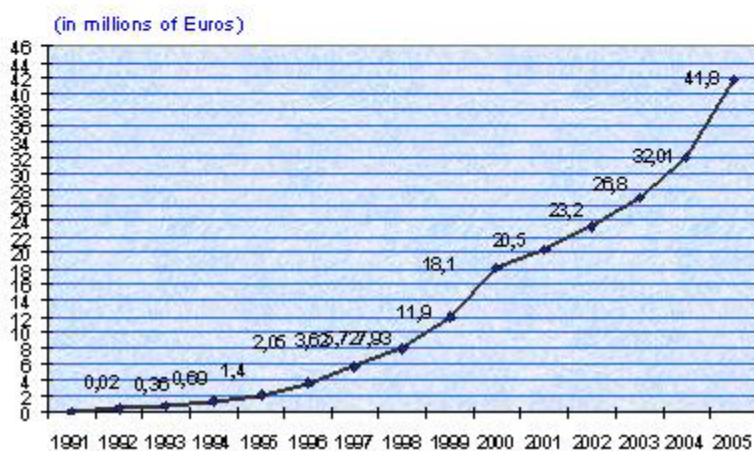
⁷ www.figti.fr

Annexe⁸

EVOLUTION OF THE NUMBER OF FILES ON CRIMINAL
OFFENCES OPENED AND COMPENSATION PAID



EVOLUTION IN COLLECTIONS FROM THOSE RESPONSIBLE
FOR CRIMINAL OFFENCES (IN MILLIONS OF EUROS)



⁸ www.fgti.fr