COMPENSATION FROM STATE FUNDS FOR DAMAGE CAUSED BY CRIME

BY

PEKKA KOSKINEN

Assistant Professor of Law,
University of Helsinki

1. INTRODUCTION

The aim of criminological research has long been, on the one hand, to chart the amount of criminality and to study its manifestations and the reasons for offences and, on the other, to throw light on the efficiency of imprisonment and other sanctions in preventing criminality. The main focus of attention has often been those guilty of offences, and criminal-policy measures have been used to influence the behaviour of potential offenders. It is, however, no recent discovery that the question of crimes might be approached from another point of departure. It would be advantageous also to take into consideration the victims. Research on the victims can significantly increase the fund of information on criminality. In the same way, measures that improve the position of the victims of offences can be used as means of reaching criminal-policy goals. On an international level, there seems to be a tendency today towards increased interest in *victimological problems.*[1] This has been made evident in many publications and at many international congresses.

In Scandinavia, the interest in victimology has been relatively lively. On the initiative of the Nordic Research Council for Criminology, studies have been carried out in the different Nordic countries during the 1970s on the victims of offences and on the damage caused by crime.[2] There have also been attempts to add data on crime damage to the official criminality statistics.[3] Knowledge regarding the amount of crime damage has meant that the matter has not been the focus solely of theoretical interest. Information has also been needed to provide support for those measures which are intended to improve the position of victims of offences.[4] A significant

[1] See Inkeri Anttila's general review, "Viktimologia — kriminologian uusi aluevaltaus", *Suomalainen Lakimiesyhdistys 75 vuotta,* Helsinki 1973, pp. 81–7, and Inkeri Anttila and Patrik Törnudd, *Kriminologi i kriminalpolitiskt perspektiv,* Stockholm 1973, pp. 126–9.

[2] See, for a comparative review of these, Preben Wolf, "Skader og tab vorvoldt ved kriminelle handlinger", *Nordisk Tidsskrift for Kriminalvidenskab* 1973, pp. 85–110. The bibliography of the article includes a number of special Nordic studies.

[3] In Finland, statistics on crime damage have been prepared as a result of various studies. See Tuija Mäkinen, "Rikosvahinkotilastointikokeilu (English summary: Experiment on crime damage statistics)", *Institute of Criminology,* Series M: 28, Helsinki 1973, and Tuija Mäkinen, "Rikosvahingot kahdessa poliisipiirissä 1973 (English summary: Crime damages in two police districts, 1973)", *Research Institute of Legal Policy,* Publication no. 7, Helsinki 1975. At this time, the compiling of statistics on crime damage has officially been begun in Finland.

[4] An investigation that clearly had such a practical goal is, for example, Kari Kitunen, "Vahingonkorvaus väkivaltarikollistuedessa (English summary: Compensation to victims of crimes of violence)", *Institute of Crimonology,* Series M: 10, Helsinki 1971.

measure in this line has been the decision to compensate crime damage from public funds, at least in some cases. On the one hand, such a system is supported by general social-security considerations and, on the other hand, it can be seen to be beneficial from a purely criminal-policy point of view also.

Compensation of crime damage from public funds is a topical question in many countries. The importance of the subject was clearly stressed at the Eleventh International Congress on Penal Law, which A.I.D.P. (*Association internationale de droit pénal*) organized in Budapest in September, 1974. In the subject of the III Section of the Congress—"Compensation of the victims of criminal acts"—compensation from public funds was accorded a central place.[5]

In December, 1973, the Act on State Compensation for Damage caused by Crime was passed in Finland; it came into force on March 1, 1974. In what follows I shall first explain the background of this Act (2–4) and then set out the basic principles of the the new system (5–8). Finally, I shall review the experiences that have so far been gained as to the working of the Act (9).

2. THE VICTIM'S POSSIBILITIES OF RECEIVING COMPENSATION FOR DAMAGE CAUSED BY CRIME BEFORE THE NEW ACT

In evaluating the possibilities that a victim of criminal acts had of receiving compensation for damage caused by crime before the new law came into force, we must distinguish between the possibilities provided by legislation itself and their actual significance in practice.[6] From the point of view of legislation, matters seemed to be well taken care of. Chap. 9, sec. 3, of the Penal Code, 1889, contained a provision according to which the guilty

[5] Of the documents connected with the work of the III Section of the A.I.D.P. Congress, see the advance commentary by Hans-Heinrich Jescheck, "Compensation of the victims of a criminal act", *Revue internationale de droit pénal* 1971, nos. 1–2, pp. 317–19, and the special issue of *Revue internationale de droit pénal* (1973 nos. 1–2) which contains reports prepared for the Congress and documents of the preparatory colloquium. This last publication includes, *inter alia*, Inkeri Anttila's national report on Finland, "Compensation for victims of crime", pp. 176–9, and Jacob M. van Bemmelen's preparatory general report, "L'indemnisation des victimes de l'infraction pénale", pp. 358–64. The complete documents of the A.I.D.P. Congress have not yet been published, but the statements of different sections have appeared in mimeographed form. See also Gerhardt Grebing, "Die Verhandlungen der III. Sektion über das Thema 'Die Entschädigung des durch eine Straftat Verletzten' ", *Zeitschrift für die gesamte Strafrechtswissenschaft* 1975, pp. 472–85.

[6] In connection with the following review, see Anttila, *Revue internationale de droit pénal* 1973, nos. 1–2, pp. 176–8, and Kitunen, *op. cit.*, pp. 4–10.

party must pay compensation for the damage which the crime had caused to another party, no matter whether the offence was intentional or came about through negligence. In this respect, no change has occurred through the entry into force of the Tort Liability Act of 1974 and the repeal of chap. 9 of the Penal Code. According to the Finnish law of procedure, a claim for damage compensation can be made either in the criminal case itself or in a separate suit. Indigent claimants can take advantage of the benefits provided by the Act on Legal Aid, 1973. Therefore, the victims of crimes are not generally faced with special difficulties or high costs in having their right to compensation confirmed by a court decision.

In practice, however, the right to compensation from the tortfeasor has often been insignificant. First of all, even the confirmation of a compensation claim requires identification of the tortfeasor. It is true that the rate at which offences in Finland are cleared up has remained relatively high by international standards; nevertheless, a very substantial proportion of all offences, especially property offences, remain unsolved. Furthermore, it seems as if this proportion is increasing annually. If the offence is not cleared up, the victim will not even have his right to compensation confirmed.

Even where the offender has been identified and the right of the victim to compensation has been confirmed by a court decision, the compensation has often remained unpaid in practice. This is due to the well-known fact that most offenders brought before the courts belong to the lowest social groups and that they have neither property nor a steady job. In most cases attempts to collect compensation will mean additional expense for the victims.

The law of Finland before 1974 contained certain rules that could have protected the financial status of the victims of offences. First, there are certain norms intended to ensure that the victim actually receives damages decided by the court. Thus, under sec. 3 (2) of the Act on Conditional Sentences, 1918, the court could make it a condition of a suspended sentence that the person who had been sentenced should pay the compensation within a certain time. In practice, however, this measure has rarely been resorted to. The new Act on Conditional Sentences, 1976, does not contain a similar provision.

Secondly, we could mention the existence of a social security system including, *inter alia*, the Act on Old-Age Pensions, 1956, the Act on Health Insurance, 1963, the Act on Accident Insurance, 1948, and several other statutes concerning pensions. The basic aim of these statutes is not, of course, to secure the position of crime victims specifically, but it is true

that, for example, victims of violent crimes may also be eligible for the benefits provided for by these statutes.

Thirdly, compulsory third-party motor vehicle insurance maintains its major significance both in principle and in practice. According to the Act on Third-Party Motor Vehicle Insurance, 1959, every owner of a motor vehicle must have a third-party insurance cover. According to the basic rule, personal injury and damage to property which have been caused by the use of motor vehicles in traffic are to be compensated through the insurance taken out by the owner of the motor vehicle.

Finally, we should mention the individual's possibility of securing advance protection of his financial position from crime damage by taking out one of the various forms of voluntary insurance.

3. THE LEGISLATIVE HISTORY OF THE ACT ON STATE COMPENSATION FOR CRIME DAMAGE

The laws described above cover only a portion of the damage caused by crime and, if only for this reason, the security they provide for victims of crime has been regarded as insufficient. Furthermore, especially where voluntary insurance schemes are concerned, it has in fact been those who most need protection who have been left without it. When considering ways of improving the financial position of the victims of crimes, this last factor has weighed against the idea of placing the main emphasis on the development of a voluntary system of crime-damage insurance. Nor was a compulsory system considered a satisfactory solution. Obviously, there would have been difficulties in connection with the determination of the size and the levels of the insurance premiums, and how they should be collected. Furthermore, the costs of such a system would be too high. Finally, it was necessary to take into account certain detrimental effects of any insurance scheme; above all, there was a fear that such a system would have a harmful effect on the citizens' sense of responsibility.

The main emphasis in Finland has been laid on examining the possibility of compensating the victims of crimes *directly from public funds*. Generally speaking, this idea has also been the point of departure in other countries where a system of compensation for crime damage has recently been introduced or is being planned.[7] Both in Finland and abroad, the principal aim is the protection of the victims of *crimes of violence* and of the dependants of these victims. Since 1964, the Finnish Parliament has had occasion to deal with many bills along these lines.

[7] The special issue of *Revue internationale de droit pénal* (1970 nos. 1–2) gives a good picture of the systems and reform plans of different countries. See also Grebing, *op. cit.*, pp. 476–80.

The preparatory work for the Act on State Compensation for Damage caused by Crime did not, however, start out from proposals such as these, related to compensation for damage caused by certain types of offences. In accordance with a recommendation by the Nordic Council in 1968, the Government of Finland appointed a Crime Damage Committee in the spring of 1970. This body was assigned the task of preparing proposals on when and how compensation should, subject to consideration, be paid from public funds for damage caused by *prisoners or other individuals under institutional care*. Thus, the crime damage subject to compensation would be limited on the basis of the type of *offenders*, and not the type of offence.[8]

On the request of the Crime Damage Committee itself, however, the terms of reference were extended in November 1970 to include consideration of the question whether compensation should also be paid from state funds *to the victims of crimes of violence in general* and to their dependants. The report of the Crime Damage Committee was published in the spring of 1972.[9] The Committee proposed that all personal injuries caused by offences should be compensated, as also should all damage to property when the perpetrator was under institutional care. The proposal of the Committee formed the basis for the Government Bill submitted to the 1973 session of Parliament, which led to the passing of the Act on State Compensation for Crime Damage.[1]

4. THEORETICAL AND PRACTICAL ARGUMENTS FOR AND AGAINST THE NEW CRIME DAMAGE COMPENSATION SCHEME

Compensation of crime damage from public funds was justified in the Committee's report and in the Bill by reference both to general considerations of social policy and to more purely criminal-policy arguments. It was held[2] that "social-security policy attempts to protect people from the threat

[8] In *Sweden*, ever since 1948, a system has been in force according to which, when reasonable, compensation can, subject to consideration, be paid from state funds for some personal injuries and property damage caused by institutionalized individuals. In 1971 this system was supplemented by rules which make it possible to pay compensation, subject to consideration, for injuries and damage caused to the person by crimes in general. See the Swedish Decree on Compensation from Public Funds for Injuries Caused by Crimes, 1971.

[9] See the report of the Crime Damage Committee, *Komiteanmietintö* 1972: A 10, Helsinki 1972. The background of the new system outlined above is extensively presented in this report, pp. 7–21.

[1] See the Government Bill on State Compensation for Crime Damage (*Hallituksen esitys* 1973: 98) and the report of the Parliamentary Law Committee in connection with the Bill (*Lakivaliokunnan mietintö* 1973: 8).

[2] See the report of the Crime Damage Committee, p. 22.

of injuries, or to moderate the consequences of these and also to make up for income losses or expenses caused by factors other than injuries (such as old age or childbirth). Social-security policy measures which ensure the basic security of citizens are needed above all because of sudden and, from the individual viewpoint, unexpected occurrences from which it is not possible to protect oneself in advance. Such occurrences are, for example, upheavals of nature, sudden illness or a crime causing disablement."

From the viewpoint of social policy, losses caused by crime do not occupy a special position compared with other cases of financial insecurity. Those who oppose a special system of compensation for the victims of crimes often believe that there are no grounds for granting such persons any benefits superior to those provided for under the system of social security in society.[3] When the creation of a special system of compensation for damage caused by crime was proposed in Finland, there were also some *criminal-policy* arguments behind the proposal. The Crime Damage Committee mentioned the following considerations:[4]

(*a*) Crime damage, more than, for example, natural cataclysms, can be regulated by social measures. Through criminal-policy measures, it is possible to influence the amount and quality of criminality. In a certain respect, then, the state can be held to be responsible for crime damage: the individual crime victim may believe that he himself would not have become a victim if the state had followed a different criminal policy.

(*b*) Improving the position of crime victims lessens the aggressions aroused by criminality. This, in turn, helps to produce a suitable climate for practising a rational criminal policy.

(*c*) Crime damage can be distinguished from many other types of damage by reason of the fact that the victims of offences have, in principle, a right according to law to be compensated by a certain individual. Since in practice the victim is often left without the compensation to which he is entitled, the frustration of this "justified expectation" is an important factor in arousing a special bitterness in the victim.[5]

The weightiest arguments are in favour of improving the position of the victims of violent crimes. As compared with, for example, property offences, crimes of violence are often more fraught with undesirable consequences, just as it is more difficult to find protection from them in

[3] This opinion was expressed by the representatives of some countries in connection with the work of the A.I.D.P. Congress, and it was noted as a minority opinion in the Statement of Section III of the Congress.

[4] See the report of the Crime Damage Committee, pp. 23–4.

[5] At times reference has been made to the responsibility of the state in the sense that the usually quite low pay granted those undergoing imprisonment makes it impossible for them to compensate for the damage. See, for example, Bemmelen, *Revue internationale de droit pénal* 1973, nos. 1–2, p. 360.

advance. On the other hand, the limited nature of the economic resources of society would in itself prevent the immediate introduction of a system of compensation embracing all damage to property caused by crime.

However, the compensation of damage to property from state funds may be justifiable in special circumstances. Indeed, examination of a particular category of crime damage, that which is caused by prisoners and other individuals under institutional care, gave the primary impulse to the legislation which led to the Act on Crime Damage. Extending the system of compensation to include damage to property caused by institutionalized individuals has been justified on the ground that in this way it will be possible to eliminate the aggressions directed at these individuals and the sense of insecurity felt by the public at large. Thus the prerequisites for the rational development of criminal policy and social-care policy can be created.

There are, however, certain practical problems and defects connected with compensating the victims of crime, and also certain arguments against the principle of such compensation:

(*a*) *The cost of the new system.* The drafters of the new law made estimates of the costs, based on specific studies.[6] The costs were not expected to exceed 1–1.5 million Finnmarks (roughly US$250,000–375,000) during the first few years, an amount which was not considered to be unduly burdensome for the state. It should be mentioned, however, that the Government Bill was amended in Parliament and the scheme extended to include small losses, too; the minimum for crime damages was lowered to 200 marks. Those who opposed the amendment in Parliament argued that, for reasons of public finance, this extension would endanger the execution of the new system of compensation.[7]

(b) *The possibility of abuses.* There is reason to fear that some individuals will attempt to acquire compensation from state funds by staging fictitious offences, or by other illegal means. Attempts have been made to take this into consideration, and there are some clauses in the new act which aim at the prevention of abuses (see part 8, below). Even so, however, the possibility of abuses has not been entirely eliminated.

(c) *Possible harmful effects on the general sense of responsibility.* In the international debate on the compensation of crime damage from state funds, reference has occasionally been made to the fear that such a system would weaken the general sense of responsibility, and thus introduce a factor which would increase criminality.[8] The offender may tell himself that

[6] See the report of the Crime Damage Committee, pp. 62–4, and Kitunen, *op. cit., passim.*

[7] See the minority opinion in the report of the Law Committee, p. 8.

[8] See, for example, the report of the Belgian scholar René Jeurissen in *Revue internationale de droit pénal* 1973, nos. 1–2, pp. 63–4.

actually he is not causing his victim much harm, since the government will compensate the loss. In addition, potential victims may neglect precautionary measures that they would otherwise have undertaken. We have already become familiar with such arguments in the debate on the development of different forms of insurance.

One could, of course, also say that the attempt to lessen aggressions towards criminality, an aim which was emphasized in the report of the Crime Damage Committee, would not necessarily have only beneficial effects. After all, the general idea of the penal-law system as an efficient instrument for deterring crimes is based specifically on the idea that the punishment of offences and the general disapproval of criminality create internal barriers in citizens against perpetrating offences (the effect of punishment upon public morality). The attempt to lessen the drama of criminality and make criminality as harmless as possible, to turn it into something which does not arouse anger in anyone, must inevitably gradually lessen the general deterrent effect of the penal-law system.

It cannot be denied that the system may have defects such as those referred to above. On the other hand, there is no reason to exaggerate their significance. The weight to be attached to the counter-arguments depends in part on the details of the system of compensation for crime damage from state funds. The Finnish system includes features which make these arguments less weighty (the subsidiary position of state compensation, the right of the state to seek redress from the perpetrator, the possibility of a reduction of the size of the compensation when the victim has neglected normal precautionary measures).

5. SOME BASIC PRINCIPLES OF THE NEW SYSTEM

Sec. 1 of the Act on State Compensation for Crime Damage prescribes that, if a Finnish citizen or a foreigner permanently residing in Finland has suffered damage in Finland from a crime, he has a right to compensation from state funds under the conditions laid down in the ensuing sections of the Act. Four principles can be distinguished:

(*a*) To begin with, only *a Finnish citizen* or a foreigner permanently residing in Finland is entitled to compensation from state funds.[9] The Act, however, gives the authority concerned (the Accident Office, see part 7

[9] In this respect the Finnish system is not in line with what was hoped for in the statement of the A.I.D.P. Congress, which recommended that compensation for damage suffered by an alien should be paid in accordance with the rules that govern compensation to the country's own citizens.

below) the power to pay compensation, subject to certain considerations, to citizens of Sweden and Norway who have suffered damage due to crime during a temporary stay in Finland. It is worth noting that crime damage suffered by *juridical persons* is left completely outside the compensation system. Juridical persons, of course, would seek compensation only for damage to property, and it was held that they could protect themselves adequately by taking out insurance policies.

(*b*) Only *damage suffered in Finland* can be compensated. It might be asked whether it is a requirement of the law that the offence took place in Finland, or that the victim was in Finland when the damage was caused. The author submits that, having regard to the purpose of the law, the answer should be that the offence must take place in Finland. In that case, damage to property caused by an individual institutionalized in Finland would be compensated even if the victim was abroad at the time of the crime, while, on the other hand, the dependants of a Finn killed abroad would not be entitled to compensation. Undoubtedly, the implementation of this rule is likely to give rise to problems. It should be mentioned here that the Crime Damage Committee proposed in its report that crime damage suffered by a Finnish citizen abroad should also be compensated; this proposal was not adopted, however, mainly because of the difficulties of proving such damage.[1]

(*c*) The damage to be compensated must have been *caused by an offence.* In this context an offence means an act that is punishable by law. What is essential is that the act should have the objective characteristics of an offence which, according to law, leads to an injury or to damage to property for which the victim is entitled to compensation. Furthermore, it is required that the damage was caused intentionally, or that the act was punishable even when damage was caused through negligence. The fact that the offender was found not responsible, and was not sentenced to any punishment, does not rule out compensation from state funds for damage that has occurred. It is not even a necessary condition for compensation that the offender shall have been identified. However, in such a case it might be difficult to prove that the damage actually was caused by an offence in a way justifying a claim for compensation from public funds.

(*d*) In addition, it is indicated in sec. 1 that the individual who suffered the damage has *a legal right* to compensation from state funds. In contrast to the systems of several other countries and also contrary to what was suggested in the original terms of reference of the Finnish Crime Damage Committee, it is not a question solely of a possibility, subject to considera-

[1] See the Government Bill, p. 2.

tion, of granting compensation. The declared aim behind the system adopted in the Act is the improvement of the position of the victim, and the system has also been justified on the ground that its simplicity will save administrative expenses.[2]

The scope of the new system of compensation is significantly limited by the provision in sec. 2 that compensation is not awarded for damage covered by the Act on Third-Party Motor Vehicle Insurance. Such damage is compensated on the basis of a special compulsory system of insurance.

According to sec. 3 of the Crime Damage Act, as a matter of principle, the system of compensation from state funds is subsidiary to all other compensation systems which could be applicable. Therefore, one must deduct from the claim under the Crime Damage Act any compensation that the applicant has received or to which he appears to be entitled on the basis of the same damage by virtue of some other enactment. The victim may have a right to compensation under the general system of social security by virtue of, for example, the Act on Health Insurance or the various statutes on pensions. However, compensation based on a voluntary insurance scheme is deducted from the claim where damage to property is concerned. Private insurance for personal injuries is not taken into consideration. Compensation by the offender himself is deductible only to the amount that has actually already been paid to the victim.

The new system does not compensate petty damage. It has already been mentioned that the minimum loss to be compensated was set at 200 marks. The compensation to be paid also has a maximum limit. The largest possible compensation payable to the victim of a crime of violence is 100,000 marks, and the corresponding maximum for damage to property is 50,000 marks.

6. DAMAGE TO BE COMPENSATED

In creating the crime-damage compensation system, the protection of the position of the victims of violent crimes was regarded as the principal aim.[3] In the different systems to be found in other countries, the crime damage for which compensation can be granted is limited in different ways. The enumeration of offences which justify compensation would be one method of limiting the scope of the scheme. The Finnish Act has adopted another technique. The criteria for the extent of compensation are defined on the basis of *the consequences of the offence.* According to sec. 5 of the Act, injuries

[2] The statement of the A.I.D.P. Congress has also expressed the opinion adopted in Finland, according to which the compensation from state funds should, when the conditions are fulfilled, be the legal right of the victim.

[3] This opinion is also apparent in the statement of the A.I.D.P. Congress.

or other kinds of personal damage caused by crime are to be compensated, and according to sec. 6, the loss of a provider is to be compensated if the crime caused his death. Thus any criminal offence constitutes a claim for compensation from state funds if the crime has caused the death of the victim, bodily injury or other personal damage. In these cases, *the identity of the offender is not a matter of consequence.*

As for the size of the compensation, the general principles of the law of torts are normally to apply. The main rule is that the damage should be compensated in full. This is applied, subject to the limitation of the absolute maximum, to compensation for medical expenses and other costs incurred through personal damage, and for injuries or other permanent damage. Compensation is also paid for loss of income or livelihood, but only up to a certain, reasonable level of income. Non-economic damage, such as aches and pains, is not compensated from state funds.

If the offence has resulted in the death of a provider, those who were entitled to support are to receive the compensation. The needs of a child are to be covered up to the age when he can begin to support himself. A reasonable compensation is also to be paid for funeral expenses.

In addition to personal damage, the new system will provide compensation for *damage to property* caused by an individual under institutional care. Sec. 8 of the Act lists the potential perpetrators of damage to property who would come under the Act: an individual who has been sent to an institution or otherwise deprived of his liberty owing to an offence, to vagrancy, misuse of intoxicants, insanity, mental deficiency, alcoholism or other such reason; and a child or youth who has been institutionalized in accordance with the Act on the Protection of Children. A further requirement is that the offence shall have taken place when the perpetrator was inside the institution or stationed outside the institution or was on leave or when he had escaped from the institution or from the custody of an official.

The types of offence which would come into question are not listed in the Act. What is decisive is that the damage was caused by an offence. The interpretation of the term "damage to property" and the extent of the compensation to be paid are intended to be determined in accordance with the general principles of compensation in the law of torts. Apparently in most cases the damage will result from offences involving theft or malicious mischief.

7. PROCEDURAL RULES

The practical application of the new compensation system has been left to the Accident Office. A special board of experts has also been set up to deal with questions of principle.

Compensation must be applied for from the Accident Office within one year from the day when the applicant found out that damage had occurred because of an offence, and in any case within five years from the perpetration of the offence. The court records connected with the case or, if the matter has not been dealt with in court, the records of the police investigation of the case or, if even such records have not been prepared, some other trustworthy record of the event plus other necessary proof of the offence must be appended to the application.

As a rule, the matter can be decided by the Accident Office only after the applicant's right to compensation from the offender has been determined by a court of first instance, or a decision has been made that the offender will not be prosecuted. Sometimes there may be delays in the investigation of the offence for one reason or another, or the offence may never be solved. In order to protect the victim's interests, it is provided that the Accident Office can also render a decision upon an application where the offender has not been brought to court within six months of the date when the offence was reported to the police. This rule applies, too, to the case where the prosecutor has not taken a decision within the same period. In clear cases compensation can be paid in advance.

When the Accident Office has decided to pay the applicant compensation for crime damage, the right of the applicant to compensation from the perpetrator of the offence is as a rule transferred to the state. The Accident Office decides on the use of the right of redress from the perpetrator of the damage. Where especially weighty reasons exist, the claim may be surrendered partially or entirely.[4]

8. MEASURES PREVENTING ABUSES

The new Act includes some provisions intended to prevent abuses of the new system—to ensure, in other words, that a person shall not be compensated for provoked, staged, or completely fictitious damage.

First of all, the Act attempts to achieve this aim in part by providing, in accordance with the law on compensation of torts, for the arbitrary reduction of the claim. If the individual who suffered the damage was instrumental in causing the damage, the compensation can be reduced to a reasonable amount, unless it is a question of the payment of subsistence to the

[4] This possibility is also emphasized in the statement of the A.I.D.P. Congress. The goal is that the use of the state's right of redress should not harm attempts to resocialize the offender.

dependants of a deceased victim. In addition to situations of provocation, this rule will apply when the victim has *neglected normal precautionary measures* to avoid the damage.

The full investigation of the act which caused the damage is furthered by a proviso according to which compensation from state funds will not come into question except for special reasons unless the victim reported the offence to the police within ten days after he found out about it, or the police otherwise found out about the offence within this period of time. When action was taken in court, compensation will not be granted from state funds where the victim has neglected to do what he should have done to have his right to compensation established by the court.

The legislator has presumed that, especially in cases of assault, a victim may try to avoid arbitrary reduction of his claim by refraining from revealing the identity of the assailant, and thus possibly also hiding his part in the assault. To prevent this, the Act prescribes that if the identity of the perpetrator of bodily injury or other damage to a person is not established, the Accident Office may reduce the compensation claim by one quarter. There is no corresponding rule regarding offences leading to the death of the victim, since no arbitrary reduction is carried out in such cases. As for damage to property, a similar rule was considered unnecessary, since in any case it must be shown that the perpetrator was under institutional care.

In order to prevent the staging of damage to obtain compensation, it has been provided that, in cases where the offender and the victim were living in the same household at the time of the offence, damage to property will not be compensated except for special reasons.

When it is discovered that compensation has been paid from state funds as a result of deceit, measures must be taken to recover what was paid to the applicant. The penal provisions on fraud or attempted fraud may be applicable.

9. EXPERIENCES OF THE PRACTICAL APPLICATION OF THE NEW LAW

The Act on State Compensation for Crime Damage came into force on March 1, 1974. There is a report on the practical application of the Act for the period up to the end of that year.[5]

The general impression is clear: the new system has been launched very cautiously. All in all, from March 1 to December 31, 1974, only 44,000

[5] See Tuija Mäkinen, "Rikosvahinkojen korvaukset (English summary: Compensation for crime damages)", *Research Institute of Legal Policy*, Publication no. 10, Helsinki 1975.

marks were paid out in compensations. When this figure is compared with the advance estimates of the costs, mentioned above in part 4 (1–1.5 million marks a year), we find that at least at the initial stage the actual costs were much lower than estimated.[6] There was therefore no ground for at least one of the objections made to the new system, viz. that it might overburden the public finances.

On the other hand, the small amount of compensation paid out during the first ten months the law was in force gives rise to a number of questions. Can it be that the public did not receive adequate information on the existence of the new compensation system, and that the victims did not realize that compensation from state funds can be applied for? Did the Accident Office apply unduly strict and narrow standards in interpreting the Act? Is it to be expected that the amount of compensation paid out will radically increase during the years to come?

In answering these questions, it should be borne in mind that the new scheme did not come into full effect immediately, since only crime damage caused on March 1, 1974, or later can form a basis for compensation from state funds and the procedural rules presented above in part 7 do not allow the presentation of claims until a certain period of time has elapsed. For this reason alone it is clear that it will not be possible to compare the compensation figures for March–December 1974 directly with the figures for the following years, which it is assumed will be higher.

Advance information from the Accident Office on the figures for 1975 has strengthened this assumption. The total sum of compensation granted in 1975 exceeded 600,000 marks.[7] Even this sum scarcely seems alarming from the viewpoint of the public finances. On the other hand, from the viewpoint of the victims of crimes who are entitled to the compensation, the situation is rather less satisfactory. It is all too apparent that so far information on the new compensation system has not reached all the victims.

Partly because of this factor, and partly because of the way in which the Accident Office has interpreted the Act, we can explain why a noticeable proportion of compensation applications in the first year were rejected either wholly or in part. The applicants' ignorance of the law is shown by the facts that in several cases compensation from state funds was requested for damage to property not caused by institutionalized individuals and that some personal-injury claims included requests for compensation for aches

[6] However, it is true that already during the preparatory stage reference was made to experiences from abroad which indicated that, at the outset of the system, many of those entitled to the compensation apparently would not apply for it. See the Government Bill, p. 6.

[7] The corresponding figure for January–March 1976 is 173,000 marks.

and pains. Such applications clearly fall outside the scope of the new law (see above, part 6). The adverse decisions in a few more ambiguous cases indicate that, at least to begin with, the Accident Office has generally adopted a relatively strict and cautious interpretation of the law when applying the new system. In the future, of course, this interpretation may to some extent be modified in the light of possible appeals.

It is probable that the amount of crime-damage compensation granted from state funds will gradually increase as the new system becomes more widely known. However, there is no cause to be alarmed at the increase which has so far occurred in the costs. On the contrary, this would seem to indicate that the new system is gradually beginning to fulfil its purpose.