XXXII International Congress on Law and Mental Health

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Recent developments in personal injury court proceedings in the Netherlands
Introduction

• Initiatives in the Netherlands to improve the position of parties in a personal injury case with the help of the court
  – A new type of civil procedure for personal injury claims to enable the parties to return to the negotiation table and to reach a settlement
  – Possibilities within criminal procedure to settle claims of victims of traffic accidents or violent crimes without the need of further litigation
Personal injury cases in Dutch courts

• 1-5% of civil law cases in Dutch first instance courts are personal injury cases (small claims and multi track cases, without fast track cases)

• Personal injury claims for compensation are mainly related to
  – traffic accidents
  – medical disputes
  – workplace injuries
  – violent crimes
Average length of civil procedure (2010)

- Average length of procedure in all Dutch civil cases including personal injury cases
  - 59 weeks in first instance
  - 65 weeks on appeal
  (small claims and multi track cases, without fast track cases)
- Personal injury cases may take much more time
  - Secondary victimization
Initiatives for reforms: central perspectives

- The right of self-determination of the victim
- The duty of (eventual) liable parties to empower victims to return to normal participation in society as soon as possible and as far as possible
- The duty of the government to create a fair balance between parties to settle personal injury cases and to enable them to access to justice
Code of conduct for out of court settlement

• Rules in the code of conduct are intended to regulate the relations between victims and their legal representatives on the one hand and insurance companies on the other hand
• To facilitate and speed up the out of court settlement process in personal injury cases
• Intervention by a third party?
A new type of civil procedure

• To enable parties to have access to the court in the out of court settlement process in personal injury cases in order to get a decision of the court about a part of the claim that obstructs final settlement of the whole claim
• A party can ask for limited judicial intervention in an ongoing out of court settlement of a personal injury claim
• The court decides only on the particular part or parts that prevent the parties from reaching a settlement
• Parties return to the negotiation table to reach a settlement by themselves
Role of the judge

• To decide a dispute of fact and/or law
• To conciliate

• The mix of dispute resolution mechanisms aims to combine the best of two worlds, negotiation and adjudication
• To simplify and speed up the settlement of personal injury claims
Main features of the new procedure

- The statute facilitates access to the court during negotiations
- Oral hearing
- Decision in a factual or legal dispute is binding for the parties
- Cost orders
Criterion of proportionality

• Leading issue is whether the time, costs and effort invested to reach a court decision are in a fair balance with the amount of the total claim and the expected contribution of a court decision to the realization of a final settlement
First experiences

• Three situations
  – The sole announcement to start the procedure is enough to speed up effective negotiations between the parties
  – Proceedings are started; the case is settled during the oral hearing
  – Adjudication: about 60 published court decisions (traffic accidents, medical liability, or accidents at work)
Published court decisions

• Length of procedure: about 13-17 weeks (cf. 59 weeks average civil procedure)

• The damage-causing incident took place.. before the court decision:
  – less than two years: 11%
  – between two and five years: 37%
  – between five and ten years: 22%
  – more than ten years: 22%
  (not mentioned: 8%)
Personal injury claims in criminal procedure

• Research project Ministry of Justice to investigate whether the possibilities for victims of violent crimes for the recovery of damages are effective enough

• 1.1.2011 new statute:
  – more possibilities to claim damages in criminal procedure
    • Council Framework Decision of 15 March 2001 of the European Communities on the standing of victims in criminal proceedings (L 82)
  – the right to be heard (voice)
To explore?

• Is it possible to use the expertise of judges specialized in civil personal injury court proceedings in handling the claim of the victim during criminal procedure?
  – Recognition of the needs of the victim by the state
  – To underline the significance of empowerment of the victim
  – To facilitate and speed up the final settlement of the claim

• Do other countries mix civil and criminal court expertise to handle personal injury cases in order to facilitate and speed up the process of settlement of personal injury cases related to criminal offences?
Summary

• Recent developments in personal injury civil court proceedings in the Netherlands

• Central perspectives
  – empowerment of victims
  – the need for a fair balance between parties to settle personal injury cases in a way that enables them to access to justice