Compelled apologies as a legal remedy

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Research questions:

• To what extent do legal and non-legal obstacles refrain defendants from communicating openly about their mistakes and apologise to the person they harmed?
• How could possible obstacles be resolved, and how could Dutch private law, better facilitate apologies?
Court-ordered apologies are available as a civil legal remedy in several countries:

E.g.:
- Australia
- Japan
- China
- Indonesia
- Ukraine

But not explicitly included as a remedy in current Dutch Civil Code.

‘Compelled Apologies as a Legal Remedy: Some Thoughts from a Civil Law Jurisdiction’

*University of Western Australia Law Review, (2014) 38 p. 100-122.*
Could civil claimants be legally entitled to receive apologies?
Past

< 1838: *amende honorable*

1838 – 1992: rectification
Present: focus on non-pecuniary interests

• Efforts have been made to encourage health care professionals to make disclosure and offer apologies following an adverse medical event.

• National Ombudsman: “honest explanations and apologies are no less important than financial compensation”.

Could health care professionals and public authorities be legally *obliged* to offer apologies?
Would compelled apologies constitute an undue infringement of the right to freedom of expression?
Art. 10 European Convention on Human Rights:

1. Everyone has the right to freedom of expression. (…)  
2. The exercise of these freedoms (…) may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, (…)
Case law

Dutch case law differs on the issue whether apologies can be awarded.
ENFORCEMENT OF THE OBLIGATION TO OFFER APOLOGIES

Case law

European Court of Human Rights

Under certain circumstances, compelled apologies:

1. can be a permitted restriction of the right to freedom of expression;
2. can even be more appropriate than other sanctions.
Conclusion

The right to freedom of expression as enshrined in Article 10 (1) of the European Convention on Human Rights can be restricted to meet a justified desire to receive apologies in order to protect the rights of others.

But the cases of the ECHR and of the Dutch Courts all originated in defamation proceedings…
May the right to freedom of expression also be restricted to accommodate the desire to receive apologies in cases of a different kind?

*(For instance to benefit a person’s emotional recovery from injury?)*
Could civil claimants be legally entitled to receive apologies?
Future research

• History of court-ordered apologies (*amende honorable*) in the Netherlands
• Apologies and (the acknowledgment of) liability