

Management Summary

Background, objective and approach

The Prejudgment Attachment (for the Benefit of the Victim) Act (hereinafter referred to as 'prejudgment attachment')¹ came into effect on 1 January 2014. The purpose of this specific form of attachment is to make sure that the compensation for damage suffered by the victim (in the form of a compensation order) is actually paid by the convicted offender. The idea is that the attachment will prevent the situation in which no compensation can be recovered from a suspect because they took the opportunity to dispose of or encumber their assets, for example, in anticipation of their possible conviction and the requirement to compensate for the damage they caused.

When the Prejudgment Attachment (for the Benefit of the Victim) Act was introduced, the then State Secretary for Security and Justice promised the Lower House of the Dutch Parliament that there would be an evaluation after three years. He said that this evaluation would investigate whether "levying a prejudgment attachment [...] leads to the perpetrators compensating the victims for the damage they caused more often, more comprehensively and more quickly".²

The following questions were formulated:

- a. How often is a prejudgment attachment applied and in what kinds of cases?
- b. How do the cases in which a prejudgment attachment is levied develop, how often is this followed by a compensation order, what are the financial aspects of this and what role does the prejudgment attachment play?
- c. Does the levy of a prejudgment attachment lead to the perpetrators paying the compensation to the victims more often, more comprehensively and more quickly?
- d. Does the prejudgment attachment for the benefit of victims achieve the objective for which it was designed?

Various research methods were used to perform this evaluation:

- a. Document study;
- b. Examination of dossiers at three district public prosecutors' offices, involving a total of 130 dossiers in which a prejudgment attachment was levied (Article 94a, paragraph 3, Dutch Code of Criminal Procedure);
- c. Examination of dossiers at the central judicial collection agency, involving a total of 130 dossiers in which a prejudgment attachment was levied (Article 94a, paragraph 3, Dutch Code of Criminal Procedure);
- d. 18 face-to-face interviews with stakeholders in the criminal justice system (the police, the public prosecution service, the central judicial collection agency, Victim Support Netherlands, the legal profession and bailiffs);

¹ Where we refer to prejudgment attachments in the wider sense, this is stated explicitly (see for example Section 2).

²Upper House, session year 2012–2013, 33 295, C, p. 4.

- e. Data analysis of data provided by the public prosecution service and the central judicial collection agency;
- f. At the end, a meeting focusing on improvements was held in which most of the criminal justice system parties were represented.

A further explanation of the prejudgment attachment

A prejudgment attachment for the benefit of the victim (Article 94, paragraph 3, Code of Criminal Procedure) is aimed at preventing the situation in which no compensation can be recovered from a convicted offender because they took the opportunity to dispose of or encumber their assets, for example, in anticipation of their possible conviction and the requirement to compensate the damage they caused. Figure M1 gives a broad outline of the process for levying a prejudgment attachment.

The prejudgment attachment for the benefit of the victim (Article 94a, paragraph 3, Code of Criminal Procedure) is one of the options within the broader concept of prejudgment attachment (Article 94a, Code of Criminal Procedure) in criminal law. That article also provides for the option of levying an attachment on the assets of a suspect or offender convicted of a crime to ensure payment of any fine (paragraph 1) or confiscation order (paragraph 2) that may eventually be imposed. In addition to the prejudgment attachment, there is also the possibility of levying an attachment in the interests of the investigation (Article 94, Code of Criminal Procedure); this is also termed 'classical' attachment.

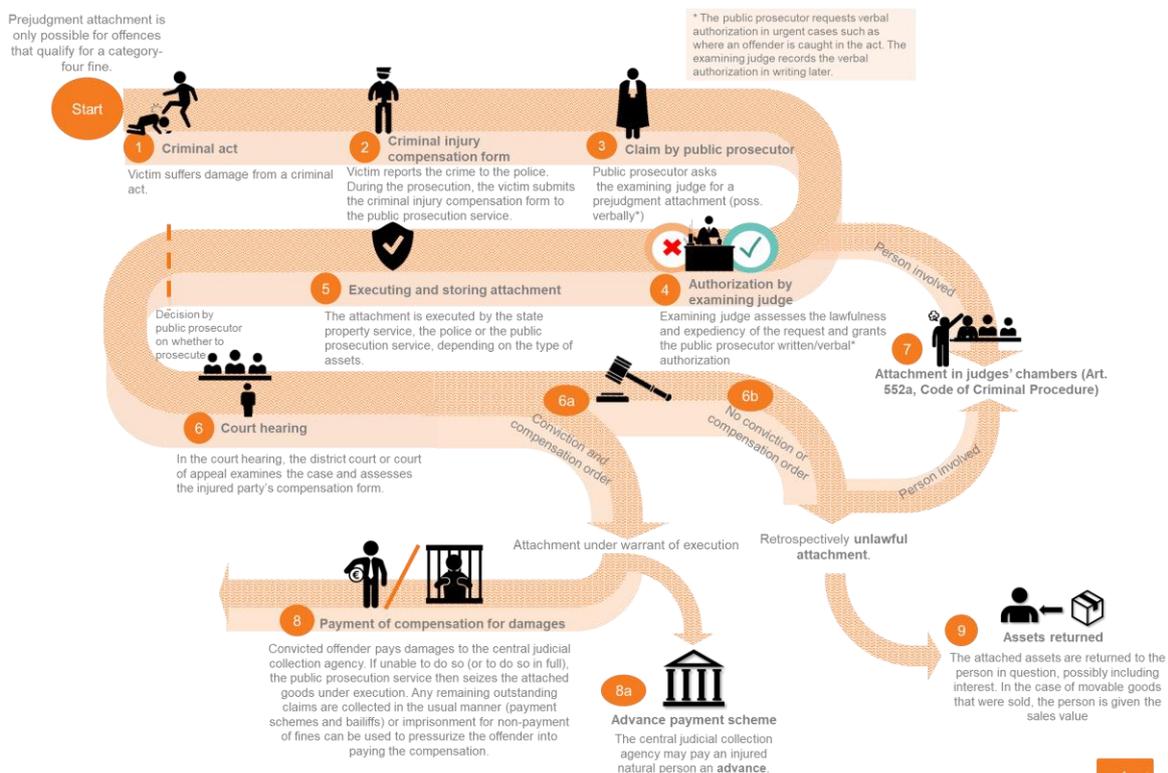


Figure M1. Diagram of the process for the prejudgment attachment benefiting the victim.

Findings

Levying the prejudgment attachment

The number of times that prejudgment attachments (Article 94a, paragraph 3, Code of Criminal Procedure) were levied cannot be deduced directly from the public prosecution service's automated registration systems. It is possible to give an estimate of the figures based on dossier examinations and data analysis. It is estimated that prejudgment attachments (Article 94a, paragraph 3, Code of Criminal Procedure) are levied by the public prosecution service in around 300 to 400 cases a year.

The number of prejudgment attachments levied is relatively low compared with the number of compensation orders imposed: about 13,500 compensation orders are imposed every year. We conclude that there is potential for a further increase in the number of occasions on which a prejudgment attachment (Article 94a, paragraph 3, Code of Criminal Procedure) is used. However, the interviews revealed four impediments preventing the levying of prejudgment attachments (as yet):

- a. Not all suspects have assets that can be subject to a prejudgment attachment, or the criminal dossier may not show the suspect as having assets;
- b. The option is not (yet) 'top of mind', among all professionals in the criminal justice system (in particular among the public prosecution service's assessors and public prosecutors). Some may not be aware of it at all;
- c. Levying a prejudgment attachment costs effort. It is a complex process in which the police, the public prosecution service and the courts have to carry out a number of tasks, which some interviewees saw as superfluous;
- d. The benefit to the victim is not always evident. In about half the cases in which a prejudgment attachment was levied, this was not followed by a compensation order and the attachment did not therefore ultimately have any added value. What is more, nearly all victims have a right anyway to a (partial) advance on the compensation order that is imposed if it is not paid within eight months, which means that the added value for victims is limited.

The type of offence does not play a major role in whether prejudgment attachments are levied; the guiding factor is the suspect's available assets. The assets that a suspect is found to have are often the trigger for a claim by the public prosecutor. A further investigation is sometimes conducted into the suspect's assets but this is much less common than attachments levied on assets that are encountered without an investigation.

Nearly all authorizations are issued by the examining judge. The rejections found in the examination of dossiers concerned the transitional law. Although only a few instances of verbal authorizations were found when examining the dossiers, the respondents felt this option did have added value, in particular in fast-track ('ZSM') cases. Such cases are generally handled faster than would allow authorization in writing.

A complaint was lodged by the suspect against 13% ($n = 17$) of the levied attachments. In two thirds of the cases (12 cases), it is possible to determine the ruling by the court based on the information in the dossier. The court ruled fully or partially in favour of the complainant in half these cases.

The prejudgment attachment in relation to the preliminary judicial investigation and the court hearing

The court only imposed a compensation order in about half the cases with a prejudgment attachment (n = 60). The most common reason for this is that the victim did not join in the criminal proceedings in the end (16%, or 20 cases). In other cases, the charges were dropped or the suspect was found not guilty (12%, or 15 cases) or the victim's claim was ultimately found inadmissible in all respects (12%, or 14 cases).

The extent of the damages was often still unknown when the public prosecutor submitted the claim for authorization of a prejudgment attachment. This is not the first thing on a victim's mind immediately after the offence. It can also take a long time before the full extent of the damages is known, as it may be unclear how the victim will recover or whether they will be capable of working again. Respondents say that as a result, victims regularly only join the proceedings at a late stage, which makes it difficult for the public prosecution service to still levy a prejudgment attachment. The fact that the damages are not known until late on could also explain why some victims eventually never join the proceedings.

Finally, there is another bottleneck at the end of this phase. If an irrevocable compensation order is imposed, levying the prejudgment attachment has to be handed over to the central judicial collection agency. This handover does not go smoothly: the prejudgment attachment is handed over to the central judicial collection agency too early, too late or not at all in between a quarter and half of all cases with compensation orders. The criminal justice system parties explained that this was because of the lack of IT support for the process; the handover of the prejudgment attachment has to be done manually.

Prejudgment attachments in the collection phase

Examining the dossiers shows that in 89% of the dossiers known to the central judicial collection agency, the prejudgment attachment was executed for the purpose of the compensation order. Of these dossiers, 39% had a prejudgment attachment that covered the amount, and no collection was required for the remainder of the compensation order.

Given the small number of prejudgment attachments that the central judicial collection agency has information about, it is not really possible to demonstrate that levying a prejudgment attachment improves the likelihood of payment. The only statistically significant difference found is for compensation orders of between €5,000 and €10,000, where there is a greater likelihood of payment with a prejudgment attachment.

From 2016 onwards, advance payment arrangements were made for many of the compensation orders imposed.³ This gives the victims an assurance that at least part of the compensation order amount will be paid out after eight months. The dossier examinations showed that the advance payment scheme was eventually applied in about one third (32%) of the cases, which meant the prejudgment attachment did not have any added value (from a financial perspective) for the victims. The victim may still be happy to know that the

³ A full advance has applied for crimes of violence and sexual offences since 2011, and an advance of up to €5,000 for other offences since 2016.

perpetrator paid for the damage rather than the State. This also matters to the State as it is the State that pays the advance.

The position of the victim

The victim was only informed of a prejudgment attachment being levied in a few cases. There are occasions in each phase of the proceedings in which the victim could have been told of the prejudgment attachment, but there is no fixed moment for communication and that means there is a large risk that the victim will know nothing of the efforts being made on their behalf. For example, the prejudgment attachment that had been levied was almost never mentioned during the court hearing.

Conclusions and recommendations

Conclusions

The legislative amendment has the potential to achieve its aim — “that perpetrators would compensate the victims for the damage they caused more often, more comprehensively and more quickly” — but has not yet fulfilled that potential. The vast majority of the respondents see the benefit of this option. However, that potential has barely been fulfilled in practice in the first few years since the introduction, given the relatively low numbers. In 2017, the central judicial collection agency had information on a prejudgment attachment in less than 1% of all compensation orders that had been imposed (96 of the 13,500 cases); the percentage was even lower in the previous years. As a result, the prejudgment attachment option does not offer sufficient added value at present.

The interviews revealed four impediments that could be mitigated in order to boost use of the prejudgment attachment:

- a. Not all suspects have assets that can be subject to prejudgment attachment, or the criminal dossier may not show the suspect as having assets;
- b. The option is not (yet) ‘top of mind’, among all professionals in the criminal justice system (in particular among the public prosecution service’s assessors and public prosecutors). Some may not be aware of it at all;
- c. Levying a prejudgment attachment costs effort. It is a complex process in which the police, the public prosecution service and the courts have to carry out a number of tasks;
- d. The benefit to the victim is not always evident.

Finally, the complex process with only limited assistance from IT tools also seems to inhibit use of the prejudgment attachment. The central judicial collection agency is far from having information on all prejudgment attachments that have been levied. The prejudgment attachment was not registered by the central judicial collection agency in between one quarter and one half of all cases because it was handed over too early, too late or not at all.

Recommendations

Based on the evaluation, the following recommendations are made:

- a. Improve IT support for the police, public prosecution service and central judicial collection agency (both within these organizations and for exchanges between them) in order to facilitate and improve execution;
- b. Raise awareness further within the police force and the public prosecution service about the prejudgment attachment for the benefit of the victim;
- c. Make agreements on standard points in the proceedings when the possibility of levying a prejudgment attachment should be considered;
- d. Monitor the number of prejudgment attachments levied for the benefit of the victim and discuss these KPIs regularly;
- e. Consider whether to keep the victim better informed about the levying of the prejudgment attachment.