

# Maximum Amount of Compensation to Victims of an Offense Through Criminal Proceedings

Yaniv Vaki\*

“When a man does another any injury by theft or violence, for the greater injury let him pay greater damages to the injured man, and less for the smaller injury; but in all cases, whatever the injury may have been, as much as will compensate the loss.”<sup>1</sup>

## Abstract

The article deals with the provision of Section 77 of the Israeli Penal Code that regulates compensation awarded to victims of an offense through criminal proceedings. Specifically, it discusses the maximum compensation decreed in Section 77. The arrangement provides that the court may impose on the defendant payment of compensation to the victim of the offense in the maximum amount determined by law.

Despite the importance and broad acceptance of this arrangement, the literature and case law in Israel have not yet conducted a comprehensive discussion concerning the necessity and justification of a maximum cap on compensation. In this article, the author answers three main questions related to this arrangement: (a) Is it justified to limit the amount of compensation, or should the fixed cap be canceled, leaving the court the discretion to award compensation in accordance with its assessment of the damage caused? (b) If the cap is retained, should it be interpreted as referring to each victim separately, so that the court may award the maximum compensation to each victim individually, or does the cap limit the total amount of compensation paid by the defendant, regardless of the number of victims of the offense? (c) Who is the victim who is entitled to receive compensation through the criminal proceedings, and must the court impose payment of compensation to all victims of the offense, or only to certain types of victims?

These questions are discussed in light of the goals of the criminal compensation arrangement and its nature, in Israel and abroad. Also taken into account are the legislative history of the compensation arrangement in Israel, the conflicting interests of the victim of the offense and of the defendant, legal policies in force and customary in court rulings in Israel, comparative aspects of compensation arrangements under various legal systems, and more.

In view of the above considerations, including the need for proper balance between the conflicting interests, the author offers a new arrangement that would cancel the cap set by law and grant the court discretion to award compensation in accordance with the circumstances of the case at hand. Alternatively, and as long as the provisions of Article 77 remain in force, the author proposes adopting a new balancing formula between the conflicting interests inherent in the awarding of compensation, according to which the court may award the maximum compensation to each injured party separately, but restrict the applicability of the compensation arrangement in this format and make it applicable only to injured parties in the near circle of victims of the offense.

---

\* Director of the Appeals Department at the State Attorney's Office and lecturer in criminal law. I would express my deep gratitude to Prof. Yoram Rabin, Dr. Sharona Aharoni-Goldenberg, Atty. Ayelet Hashahar Bitton-Perla, Atty. Dikla Vaki, and to members of the MOZNEY MISHPAT editorial board for their illuminating and helpful comments, and to Nir Eisenberg for his great support and dedicated research. The article expresses the personal opinions of the author alone.

1 PLATO, LAWS: BOOK XI (360 B.C.E.).