

**Victim Oriented Tort Law in Action**  
**An Empirical Examination of Catholic Church Sexual Abuse Cases**

*Gijs van Dijck*

# Victim Oriented Tort Law in Action

## An Empirical Examination of Catholic Church Sexual Abuse Cases

Gijs van Dijck<sup>†</sup>

### Abstract

*Abstract.* Catholic Church sexual abuse cases have received worldwide attention, with investigations and many lawsuits reported in various countries. This study examines a procedure, a hybrid between tort litigation and a victims compensation fund, that not only allowed sexual abuse victims to seek monetary compensation on an individual basis, but also non-monetary relief including recognition, an apology, and measures against to accused. The availability of all decisions offers a unique opportunity to analyze what victims pursued by filing a claim, what they received, and what impacted the probability of victims obtaining non-monetary relief. After analyzing over 900 decisions, this study exposes three threats to making tort law and victims compensation funds more victim-oriented. First, a mismatch is found between what victims sought and what they were offered, suggesting that adjudicators will ignore the non-monetary needs expressed by the victims themselves. Second, offering or providing non-monetary relief proved to be detrimental to the defendant's case, which can discourage wrongdoers to offer non-monetary relief prior to the decision in ordinary tort law. Third, the results reveal that adding adversarial elements to a procedure generally reduces the likelihood of victims obtaining non-monetary relief. The findings suggest that making a procedure victim-oriented does not necessarily mean that the procedure will be victim-oriented. This study demonstrates that tort law faces important challenges when addressing non-monetary needs of victims.

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## I. INTRODUCTION

Sexual abuse by the Catholic Church has received worldwide attention. Tens of thousands of victims have come forward in the last decades, urging nations to install investigation commissions in at least Australia,<sup>1</sup> Belgium,<sup>2</sup> Northern Ireland,<sup>3</sup> the Netherlands,<sup>4</sup> and the United States<sup>5</sup>. The outbreak of abuse cases have led to various lawsuits<sup>6</sup> and criminal investigations<sup>7</sup> in a number of countries. Even governments have been held accountable, at least in the European Union, where victims have successfully claimed against their governments, with the governments being ordered to provide for an effective remedy (article 13 ECHR).<sup>8</sup>

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<sup>1</sup> <<http://royalcommission.com.au>> (last accessed 26 February 2016).

<sup>2</sup> Commissie voor de behandeling van klachten wegens seksueel misbruik in een pastorale relatie, "Verslag Activiteiten Commissie Voor De Behandeling Van Klachten Wegens Seksueel Misbruik in Een Pastorale Relatie (Onafgewerkt Wegens Inbeslagname Op 24 Juni 2010)," (2010).

<sup>3</sup> <<http://www.hiainquiry.org>> (last accessed 26 February 2016).

<sup>4</sup> <<http://www.onderzoekrk.nl/eerste-onderzoek/eindrapport.html>> (last accessed 26 February 2016).

<sup>5</sup> Anne Burke et al., "A Report on the Crisis in the Catholic Church in the United States," (The National Review Board for the Protection of Children and Young People, 2004) (reporting 10,667 allegations between 1950 and 2002 against 4,392 priests); Michael D. Schaffer, "Sex-Abuse Crisis Is a Watershed in the Roman Catholic Church's History in America," *Inquirer*, 25 June 2015 (last accessed 26 February 2016) (reporting complaints of sexual abuse by more than 6,000 priests between 1950 and 2011).

<sup>6</sup> For example ———, "Sex-Abuse Crisis Is a Watershed in the Roman Catholic Church's History in America," (reporting over 3,000 lawsuits).

<sup>7</sup> For example, the Belgian "Operatie Kelk", see <<http://newsmonkey.be/article/47186>> for an update (last accessed 26 February 2016).

<sup>8</sup> *O'Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014.

In The Netherlands, an extralegal, victim-friendly procedure for victims of sexual abuse by the Catholic Church was designed and enacted in 2011.<sup>9</sup> This procedure offers a unique insight into whether and how non-monetary needs can be addressed within the context of tort law and compensation funds.<sup>10</sup> The sexual abuse cases that were analyzed include information on why victims claimed and what types of relief (e.g. an apology, recognition of their suffering, an acknowledgement) they obtained. Additionally, differences among cases regarding the level of adversarialism allowed testing whether the presence or absence of adversarial elements impacts the likelihood of victims receiving non-monetary relief. Because all cases are published, it was possible to analyze the entire accessible population.

This paper is structured as follows. *Part II* discusses previous empirical research on non-monetary needs that victims have and how tort law addresses these needs. Additionally, the complaint procedure that was designed for victims of sexual abuse by the Catholic Church in the Netherlands is discussed. The article proceeds in *Part III* with the research questions for which an answer is sought in this paper, followed by a discussion of the methods in *Part IV* that were used to gather and analyze the data. *Part V* presents the results and discusses their implications. The conclusion in *Part VI* summarizes the main findings.

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<sup>9</sup> See section II.B.

<sup>10</sup> For research on victims compensation funds, see Paul Heaton, Ivan Waggoner, and Jamie Morikawa, "Victim Compensation Funds and Tort Litigation Following Incidents of Mass Violence," *Buffalo Law Review* 63 (2015), 1267-1274 (reviewing the literature on victims compensation funds); Francis E. McGovern, "The What and Why of Claims Resolution Facilities," *Stanford Law Review* 57 (2005) (discussing claims resolution facilities in general).

## II. BACKGROUND

### A. Research on Needs of Victims of Child Sexual Abuse

The impact of child sexual abuse on victims' physical and emotional state is well-documented.<sup>11</sup> Victims of priest abuse have been found to display symptoms of grief, anger, depression, sexual issues, sleep disorders, trauma, rage, and distress.<sup>12</sup> Victims of child sexual abuse have various needs. They reportedly seek an apology from the offender, validation (i.e. that stepping forward was the right thing to do), the offender taking responsibility, and closure in order to move on.<sup>13</sup> Sexual abuse victims reportedly pursue benefits in kind such as direct payments and counseling in a legal procedure, in

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<sup>11</sup> Karen J. Terry and Jennifer Tallon, "Child Sexual Abuse: A Review of the Literature " (John Jay College, 2004) (providing an overview of the literature).

<sup>12</sup> E.g. Michael J. Bland, "The Psychological and Spiritual Effects of Child Sexual Abuse When the Perpetrator Is a Catholic Priest," *Dissertation Abstracts International* 63, no. 4-A (2002); Kerry Fater and Jo Ann Mullaney, "The Lived Experiences of Adult Male Survivors Who Allege Childhood Sexual Abuse by Clergy," *Issues in Mental Health Nursing* 21, no. 3 (2000). See also Terry and Tallon, "Child Sexual Abuse: A Review of the Literature " , 40 (providing further references).

<sup>13</sup> Hilary Eldridge and Jenny Still, "Apology and Forgiveness in the Context of the Cycles of Adult Male Sex Offenders Who Abuse Children," in *Transforming Trauma: A Guide to Understanding and Treating Adult Survivors*, ed. Anna C. Salter (Thousand Oaks, CA: Sage Publications, 1995), 133-134.

addition to non-monetary relief.<sup>14</sup> Financial goals have been found to be secondary to therapeutic expectations for victims of sexual abuse.<sup>15</sup>

The process of providing relief to victims of child sexual abuse can be a complicated process. A victim's feeling of self-worth may be attached to the offender, and therapeutic success of any relief provided by the offender is dependent on whether the thinking errors of the offender are continuous.<sup>16</sup> For example, offenders who do not believe the abuse was abusive, who give excuses, or who legitimize their behavior to the extent that the only circumstance that prevents them from the abuse is the risk of getting caught, are likely to make an abusive apology to the victim.<sup>17</sup>

What is particular about the victim-offender relationship in situations of sexual abuse by the Catholic Church is the dependency of the victim on the offender, not only in terms of school performance, but also on a psychological, emotional and developmental level. Additionally, offenders in the context of sexual abuse by the Catholic Church can easily be repeated offenders considering the continuous access to children, particularly in boarding schools. The possible combination of the offenders possibly being repeated offenders and the close relationship between victim and offender is relevant for the results reported below.

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<sup>14</sup> Bruce Feldthusen, Oleana A.R. Hankivsky, and Lorraine Greaves, "Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse," *Canadian Journal of Women & the Law* 12, no. 1 (2000).

<sup>15</sup> Ibid.

<sup>16</sup> Eldridge and Still, "Apology and Forgiveness in the Context of the Cycles of Adult Male Sex Offenders Who Abuse Children," , 136.

<sup>17</sup> Ibid., 137-141.

## B. Research on Non-Monetary Needs and Tort Law

Some studies have found financial reasons to be a primary force for tort victims to start a procedure,<sup>18</sup> particularly in situations where the monetary compensation is essential to get one's life back on track.<sup>19</sup> However, monetary needs are not the only reason for tort victims to claim. Admission of fault or liability by the wrongdoer, an apology, validation, having the wrongdoer feel how much the wrong impacted the victim, and showing compassion are all examples of non-monetary needs that tort victims seek or pursue.<sup>20</sup> Additionally, closure, disclosure, accountability, prevention, and revenge have also been frequently reported in previous research as reasons to initiate legal action.<sup>21</sup>

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<sup>18</sup> Gerald B. Hickson, "Factors That Prompted Families to File Medical Malpractice Claims Following Prenatal Injuries," *JAMA* 267, no. 10 (1992) (reporting monetary needs as prominent reason, immediately followed by the desire for information, revenge, and preventing future harm); LaRae I. Huycke and Mark M. Huycke, "Characteristics of Potential Plaintiffs in Malpractice Litigation," *Annals of Internal Medicine* 120, no. 9 (1994) (502 telephone interviews with callers to U.S. law firms with malpractice complaints, reporting that approximately a third of the callers contacted the law firm because of monetary reasons).

<sup>19</sup> Hickson, "Factors That Prompted Families to File Medical Malpractice Claims Following Prenatal Injuries," (finding that victims claim because they recognized their injured child would have no future).

<sup>20</sup> Tamara Relis, "'It's Not About the Money!' A Theory on Misconceptions of Plaintiff's Litigation Aims," *University of Pittsburgh Law Review* 68, no. 3 (2007).

<sup>21</sup> C. Vincent, A. Philips, and M. Young, "Why Do People Sue Doctors? A Study of Patients and Relatives Taking Legal Action," *The Lancet* 343, no. 8913 (1994) (survey study among 227 English patients and relatives who took legal action after a medical error occurred that finds the desire to prevent future incidents, the need for an explanation about what happened and why, financial compensation for losses

Moreover, non-monetary relief has been found to be more important to tort victims than monetary needs in several instances.<sup>22</sup>

Despite (or: because of) the dominance of monetary compensation in tort law, scholars, policy makers, and practitioners have looked for possibilities to improve the position of tort victims by providing non-monetary relief to victims outside of the legal arena (in addition to common alternative dispute mechanisms such as mediation). The introduction of apology protection laws illustrates this. Apology protection laws are aimed at stimulating wrongdoers to provide non-monetary relief to victims. Several countries have adopted apology protection laws, which essentially protect an apology from being used in civil disputes, thereby supposedly reducing a wrongdoer's fear that an apology will be seen as an admission of fault.<sup>23</sup> Apology protection laws have been

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suffered, and accountability are common reasons for patients to claim); Hickson, "Factors That Prompted Families to File Medical Malpractice Claims Following Prenatal Injuries," (U.S. telephone interview study among mothers of infants who experienced injuries or death as a result of medical malpractice).

<sup>22</sup> F.A. Sloan et al., "The Road from Medical Injury to Claim Resolution: How No-Fault and Tort Differ," *Law and Contemporary Problems* (1997), P. 50; Huycke and Huycke, "Characteristics of Potential Plaintiffs in Malpractice Litigation," (finding that poor relationships with health care providers and not being kept informed were reasons more frequently mentioned by victims who called a law firm for legal advice).

<sup>23</sup> Robyn Carroll, "When 'Sorry' Is the Hardest Word to Say, How Might Apology Legislation Assist?," *Hong Kong Law Journal* 44, no. 2 (2014); Albert W. Wu et al., "Disclosure of Adverse Events in the United States and Canada: An Update, and a Proposed Framework for Improvement," *Journal of Public Health Research* 2, no. 3 (2013), 189; Daniel Shuman, "The Role of Apology in Tort Law," *Judicature* 83 (2000) (describing apology laws).

implemented, or are in the process of being implemented, in the U.S.,<sup>24</sup> Canada,<sup>25</sup> Australia,<sup>26</sup> Hong Kong,<sup>27</sup> the U.K.,<sup>28</sup> and Scotland<sup>29</sup>. Research has discussed the advantages, limitations, and effects of apology protection laws,<sup>30</sup> with empirical research

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<sup>24</sup> Benjamin Ho and Elaine Liu, "Does Sorry Work? The Impact of Apology Laws on Medical Malpractice," *Journal of Risk and Uncertainty* 43 (2011) (reporting States with 'full' and 'partial' protection laws in Table 1); Prue E. Vines, "Apologies and Civil Liability in England, Wales and Scotland: The View from Elsewhere," *Edinburgh Law Review* 12 (2008), Table 1.

<sup>25</sup> Wu et al., "Disclosure of Adverse Events in the United States and Canada: An Update, and a Proposed Framework for Improvement," , 189 ("Apology legislation is in place in 8 of 10 provinces and 2 of 3 territories"); Vines, "Apologies and Civil Liability in England, Wales and Scotland: The View from Elsewhere," , Table 1.

<sup>26</sup> ———, "Apologies and Civil Liability in England, Wales and Scotland: The View from Elsewhere," (providing an overview in Table 1).

<sup>27</sup> In the process of consultation, see <<http://www.doj.gov.hk/eng/public/apology.html>> (last accessed 29 January 2016).

<sup>28</sup> Vines, "Apologies and Civil Liability in England, Wales and Scotland: The View from Elsewhere," (providing an overview in Table 1).

<sup>29</sup> In the process of adoption, see <<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10317&i=94922>> (last accessed 29 January 2016); Charlie Irvine, "The Proposed Apologies Act for Scotland: Good Intentions with Unforeseeable Consequences," *Edinburgh Law Review* 17, no. 1 (2013) (describing Scotland's proposed Apologies Act).

<sup>30</sup> Ho and Liu, "Does Sorry Work? The Impact of Apology Laws on Medical Malpractice," (examining the effects of apology protection laws in the U.S.); Lucinda E. Jesson and Peter B. Knapp, "My Lawyer Told Me to Say I'm Sorry: Lawyers, Doctors, and Medical Apologies," *William Mitchell Law Review* 35 (2009) (discussing the restraints and limitations of apology protection laws in the medical field); Gabriel H. Teninbaum, "How Medical Apology Programs Harm Patients," *Chapman Law Review* 15 (2011)

finding that apology protection laws increase the number of closed claims, reduce payment size, and reduce the number of insignificant injuries that tend to settle quickly, at least in a medical malpractice context.<sup>31</sup>

The introduction of open disclosure programs in the medical field is another example of a legal intervention aimed at providing non-monetary relief to victims. Open disclosure programs are essentially aimed at providing all the relevant information to patients who were harmed (or their relatives) as a result of an adverse medical event. This includes an admission of fault and an apology. Studies on disclosure in the medical field

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(criticizing apology protection laws); Steven E. Raper, "No Role for Apology: Remedial Work and the Problem of Medical Injury," *Yale Journal of Health Policy, Law, and Ethics* 11, no. 2 (2011) (discussing why apology protection laws do not work); Maria Pearlmutter, "Physician Apologies and General Admissions of Fault: Amending the Federal Rules of Evidence," *Ohio State Law Journal* 73, no. 3 (2011) (proposing amendments to include general admissions of fault in apology protection laws). Marlynn Wei, "Doctors, Apologies, and the Law: An Analysis and Critique of Apology Laws," *Journal of Health Law* 39, no. 4 (2006) (discussing potential barriers to physicians' disclosure of medical mistakes and arguing that the underlying problem may lay outside the scope of the law).

<sup>31</sup> Ho and Liu, "Does Sorry Work? The Impact of Apology Laws on Medical Malpractice," 143-144, 146 (finding that severe injuries cases settle 19–20% faster in states that offer apology protection compared to states that do not; finding that apology laws reduce claim payouts most severe cases by \$58,000–\$73,000 per case and claim payouts of the “somewhat” severe cases by \$7,000–\$14,000 per case”; finding differences between ‘full’ and ‘partial’ apology protection laws. See also Jennifer K. Robbennolt, "Apologies and Settlement Levers," *Journal of Empirical Legal Studies* 3, no. 2 (2006), 360 (finding no effect of apology legislation on how observers assess an apology).

have revealed that communication after an adverse event increases patient satisfaction.<sup>32</sup> Additionally, open disclosure programs that standardize the approach of full disclosure have been positively evaluated by patients as well as by health care staff,<sup>33</sup> and are claimed to have reduced payments and the number of claims.<sup>34</sup> Additionally, studies have reported that patients who experienced an adverse event appreciate disclosure, and that a full apology in combination with tangible support is likely to increase victim satisfaction and emotional responses of victims.<sup>35</sup> Some have challenged the positive effects of open disclosure programs,<sup>36</sup> but the findings have been questioned.<sup>37</sup>

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<sup>32</sup> Christine W. Duclos et al., "Patient Perspectives of Patient–Provider Communication after Adverse Events," *International Journal for Quality in Health Care* 17, no. 6 (2005) (effective communication after an adverse event increases patient satisfaction).

<sup>33</sup> Rick A.M. Iedema et al., "The National Open Disclosure Pilot: Evaluation of a Policy Implementation Initiative," *The Medical Journal of Australia* 188, no. 7 (2008) (finding a strong support among patients and health care providers, and providing suggestions to further improve open disclosure in the medical field); Cherri Hobgood et al., "Medical Errors—What and When: What Do Patients Want to Know?," *Academic Emergency Medicine* 9, no. 11 (2002) (finding that a majority of patients want full disclosure regardless of the severity of the mistake).

<sup>34</sup> Steve S. Kraman and Ginny Hamm, "Risk Management: Extreme Honesty May Be the Best Policy," *Annals of Internal Medicine* 131, no. 12 (1999) (reporting that full disclosure at a Veterans Affairs medical system did not result in an increase of the number of liability claims nor in higher liability payouts); Steve S. Kraman et al., "Advocacy: The Lexington Veterans Affairs Medical Center," *Joint Commission Journal for Quality Improvement* 28, no. 12 (2002).

<sup>35</sup> Rick Iedema et al., "Patients' and Family Members' Experiences of Open Disclosure Following Adverse Events," *International Journal for Quality in Health Care* 20, no. 6 (2008); Kathleen M. Mazor et al., "Health Plan Members' Views About Disclosure of Medical Errors," *Annals of Internal Medicine* 140, no. 6 (2004).

As a result, regulation of disclosure in the medical field has been on the rise in various countries, including Australia,<sup>38</sup> Canada,<sup>39</sup> the U.K.,<sup>40</sup> the U.S.,<sup>41</sup> and the

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<sup>36</sup> David M. Studdert et al., "Disclosure of Medical Injury to Patients: An Improbable Risk Management Strategy," *Health Affairs* 26, no. 1 (2007) (disclosure results in less claims but in higher claim volume).

<sup>37</sup> John Wakefield, Christine Jorm, and Cherie Ryan, "Open Disclosure: Details Matter," *Health Affairs* 26, no. 3 (2007) (criticizing the research design); Steve S. Kraman and Ginny Hamm, "Bad Modeling?," *Health Affairs* 26, no. 3 (2007) (rejecting the statistical model used by Studdert et al. (2007)); David Studdert et al., "Disclosure: The Authors Respond," *Health Affairs* 26, no. 3 (2007).

<sup>38</sup> Australian Commission on Safety and Quality in Health Care, Disclosure Framework, 2014, <<http://www.safetyandquality.gov.au/wp-content/uploads/2013/03/Australian-Open-Disclosure-Framework-Feb-2014.pdf>> (last accessed 26 February 2016).

<sup>39</sup> Canadian Patient Safety Institute. *Canadian Disclosure Guidelines*, 2011, <<http://www.patientsafetyinstitute.ca/en/toolsResources/disclosure/Documents/CPSI%20Canadian%20Disclosure%20Guidelines.pdf>> (last accessed 26 February 2016).

<sup>40</sup> U.K. National Patient Safety Agency, *Being Open: Communicating Patient Safety Incidents with Patients and Carers*, 2009, <http://www.nrls.npsa.nhs.uk/EasySiteWeb/GatewayLink.aspx?allId=65172>

<sup>41</sup> For example, *American Medical Association Code of Medical Ethics* 2001, Opinion 8.121, section 3 <<http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page>> ("When patient harm has been caused by an error, physicians should offer a general explanation regarding the nature of the error and the measures being taken to prevent similar occurrences in the future. Such communication is fundamental to the trust that underlies the patient-physician relationship, and may help reduce the risk of liability."); American College of Physicians, *Ethics Manual: Sixth Edition*; Snyder L, American College of Physicians Ethics, Professionalism, and Human Rights Committee, *Ann Intern Med.* 2012 Jan 3; 156(1 Pt 2): 73-104 <[https://www.acponline.org/running\\_practice/ethics/manual/manual6th.htm](https://www.acponline.org/running_practice/ethics/manual/manual6th.htm)> ("physicians should disclose to patients information about procedural or judgment errors made in the course of care if such information

Netherlands,<sup>42</sup> where codes and guidelines urge physicians to disclose adverse events and where materials and guidelines have been developed for how to disclose<sup>43</sup>. However, a discrepancy exists between the rules and what happens in practice. Research that focused on disclosure has found that both patients and physicians have a desire to have disclosed what happened, why it happened, and how an error's consequences can be mitigated and

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is material to the patient's well-being. Errors do not necessarily constitute improper, negligent, or unethical behavior, but failure to disclose them may.”) (websites last accessed 26 February 2016).

<sup>42</sup> KNMG, *Omgaan met incidenten, fouten en klachten: wat mag van artsen worden*, 2007 <<http://www.knmg.nl/web/file?uuid=8e559544-9369-4939-ba58-cc6525e98269&owner=a8a9ce0e-f42b-47a5-960e-be08025b7b04&contentid=37376>> (last accessed 26 February 2016).

verwacht? Utrecht: KNMG 2007, 4 and Appendix 1 <<http://www.knmg.nl/web/file?uuid=8e559544-9369-4939-ba58-cc6525e98269&owner=a8a9ce0e-f42b-47a5-960e-be08025b7b04&contentid=37376>>;

Gedragcode openheid medische incidenten; betere afwikkeling medische aansprakelijkheid (GOMA). Den Haag: De Letselschade Raad 2012, <<http://www.deletselschaderaad.nl/library/repository/GOMA-3dedruk.pdf>>; Johan Legemaate, Arno J. Akkermans, and Roland D. Friele, "Openheid over Medische Fouten: Waar Staan We?," *Nederlands Tijdschrift voor Geneeskunde*, no. 159 (2015) (providing an overview of the state of the art).

<sup>43</sup> Alfred Allan and Brent Munro, "Open Disclosure: A Review of the Literature (October 2008)," (Edith Cowan University, 2008), 5-7 (summarizing what disclosure programs commonly entail); Thomas H. Gallagher, David M. Studdert, and Wendy Levinson, "Disclosing Harmful Medical Errors to Patients," *The New England Journal of Medicine* 356 (2007) (providing an overview of regulatory approaches); Carol B. Liebman and Chris Stern Hyman, "A Mediation Skills Model to Manage Disclosure of Errors and Adverse Events to Patients," *Health Affairs* 23, no. 4 (2004) (proposing a mediation-based model to disclose adverse events); Canadian Medical Protective Association, *Communicating with your Patient about Harm: Disclosure of Adverse Events*, 2008, <[https://www.cmpa-acpm.ca/cmpapd04/docs/resource\\_files/ml\\_guides/disclosure/introduction/index-e.html](https://www.cmpa-acpm.ca/cmpapd04/docs/resource_files/ml_guides/disclosure/introduction/index-e.html)>.

be prevented in the future, but that physicians do not disclose, also because of liability concerns, which can actually cause victims to sue.<sup>44</sup> A lack of skill on how to disclose, the lack of institutional support<sup>45</sup>, the expectation that the patient will not understand the disclosure or would not want to know about the error, and fear for litigation and disciplinary actions<sup>46</sup> are examples of barriers that prevent or discourage physicians and hospitals to disclose adverse events.<sup>47</sup> Consequently, disclosure of mistakes is limited, with studies reporting occurrences of disclosure in approximately 30 percent of situations

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<sup>44</sup> For example, Vincent, Philips, and Young, "Why Do People Sue Doctors? A Study of Patients and Relatives Taking Legal Action," ; Thomas H. Gallagher et al., "Patients' and Physicians' Attitudes Regarding the Disclosure of Medical Errors," *JAMA* 289, no. 8 (2003) (providing further references); Nancy Berlinger, "Broken Stories: Patients, Families, and Clinicians after Medical Error," *Literature and Medicine* 22, no. 2 (2003) (patients', relatives', and spouses' narratives who experienced an adverse medical event); Andrew A. White et al., "The Attitudes and Experiences of Trainees Regarding Disclosing Medical Errors to Patients," *Academic Medicine* 83, no. 3 (2008); Thomas H. Gallagher et al., "U.S. And Canadian Physicians' Attitudes and Experiences Regarding Disclosing Errors to Patients," *Archives of Internal Medicine* 166, no. 15 (2006) (finding that physicians are willing to disclosure but experience obstacles to do so). See also Alfred Allan and Dianne McKillop, "The Health Implications of Apologizing after an Adverse Incident," *International Journal for Quality in Health Care* 22, no. 2 (2010) (arguing positive health implications of disclosure that includes an apology and an admission of fault).

<sup>45</sup> Wu et al., "Disclosure of Adverse Events in the United States and Canada: An Update, and a Proposed Framework for Improvement," .

<sup>46</sup> White et al., "The Attitudes and Experiences of Trainees Regarding Disclosing Medical Errors to Patients," .

<sup>47</sup> Allan and Munro, "Open Disclosure: A Review of the Literature (October 2008)," , 16-19 (providing an overview).

of an adverse medical event,<sup>48</sup> despite the existence of open disclosure programs and ethical guidelines.

Disclosure programs function in the shadow of the law. A gap in scholarly understanding is whether the law, tort law and compensation schemes in particular, can address victims' non-monetary needs, and if not, what prevents the law from doing so.

### *C. Sexual Abuse Complaint Procedure and Compensation Scheme*

The combination of a complaint procedure and compensation scheme that was introduced in The Netherlands is one of the few examples within the context of tort law where a formalized procedure allows addressing monetary needs as well as non-monetary needs. The schemes that were developed and implemented in the Netherlands originated from, as in other countries, a growing number of incidents of sexual abuse that were reported.<sup>49</sup> This resulted in the installment of several committees that investigated the sexual abuse and that offered suggestions for how to deal with the cases of sexual abuse.<sup>50</sup> Ultimately, an independent organization was founded ("Meldpunt Seksueel Misbruik") that became responsible for handling the complaints and that offered support

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<sup>48</sup> Wu et al., "Disclosure of Adverse Events in the United States and Canada: An Update, and a Proposed Framework for Improvement," (reviewing the empirical evidence and providing further references).

<sup>49</sup> Saskia Kinket and Roebijn Schijf, "Herstelrecht Bij (Seksueel) Misbruik. Jeugdzorginstellingen, Pleeggezinnen En De Rooms-Katholieke Kerk," *Tijdschrift voor Herstelrecht* 14, no. 3 (2014), 59.

<sup>50</sup> Commission Deetman I (2011); Commission Bandell (2011); Commission Lindenbergh (2011); Commission Deetman II (2013). See *ibid.* 59 for an overview.

for the sexual abuse victims that sought psychological help or assistance in filing a complaint.

The reason for implementing the procedures was to offer victims of sexual abuse by the Catholic Church a means to seek justice. Because the statute of limitations prevented victims to start a civil or criminal procedure under Dutch law, the procedures that were designed were the only option for them to seek justice by means of an official and formal procedure. The official start date of the procedure was 1 November 2011.<sup>51</sup> The procedures replaced a previous procedure that was more limited in scope. The complaint procedure was free of costs to victims. They were not required to pay a fee for filing a complaint, they were reimbursed for reasonable costs of legal representation, regardless of whether the complaint was granted or not, and attorney fees paid by the accused or Church were not shifted to the victim if the complaint was rejected. Similar rules applied to the compensation scheme.

The procedure consisted of a two-stage process. In the first stage, complainants filed a complaint. They could move on to claim monetary compensation in the second stage if the complaint was granted in the first stage.<sup>52</sup> According to the organization, the complaint procedure and compensation procedure were intended to be victim-oriented: The interests and views of the victims were decisive, the statute of limitations was not an

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<sup>51</sup> Article 26.1 of the Procedural Rules (“Procedureregeling”). The Compensation Procedure was enacted at 1 March 2012  
<<https://www.meldpuntmisbruikrkk.nl/S/Schade/Documents/Compensatieregeling%20R%20-K%20%20Kerk%20minderjarigen%201%20juli%202014.pdf>> (last accessed 26 February 2016).

<sup>52</sup> Since this study focuses on the complaint procedure, the compensation scheme will not be elaborated upon.

obstacle for filing a complaint and compensation requests, and civil procedure law nor criminal procedure law would apply when it comes to rules of evidence.<sup>53</sup> Claims were supposed to be assessed based on whether it was admissible and acceptable.<sup>54</sup>

The complaint procedure commenced with a complaint (Article 2 and 3 of the Procedural Rules). It was first assessed whether the case had standing and whether a settlement could be reached (Article 6). A necessary condition for the complaint to be granted, was that the wrong consisted of sexual abuse, with sexual abuse being defined in Article 1.3 as any conduct where someone who is in a dependent relationship or forced by another to perform, undergo, tolerate sexual acts, sexual advances, or sexual expressions by another person as well as producing sexually explicit images and using or distributing them.<sup>55</sup> Furthermore, the accused and / or the ecclesiastical authorities (hereafter: Church) could essentially only be held responsible if the alleged wrongdoer fell under the responsibility of the Church (Article 1.2). If the accused was or were deceased, the Church would be the defendant, although both the accused and the Church could be the defendant in the procedure. The complainant was allowed legal support before and during the procedure (Article 2.3).

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<sup>53</sup> <<https://www.meldpuntmisbruikrkk.nl/S/Klacht/Paginas/Werkwijze.aspx>> (last accessed 23 December 2015).

<sup>54</sup> <<https://www.meldpuntmisbruikrkk.nl/S/Klacht/Paginas/Werkwijze.aspx>> (last accessed 23 December 2015).

<sup>55</sup> Original text (full): “iedere gedraging waarbij iemand onder dwang of in een afhankelijkheidsrelatie seksuele handelingen moet verrichten ofwel ondergaan ofwel daarvan toeschouwer moet zijn, dan wel seksueel getinte toenaderingen of uitlatingen in welke vorm dan ook moet dulden” and “het maken van seksueel getint beeldmateriaal van iemand en het gebruiken en doorgeven daarvan”.

Claimants were provided a complaint model for filing a complaint.<sup>56</sup> The model included questions on what happened, the impact of the abuse on the victim, and the objectives for filing a complaint. After a possible counter-plea by the accused and / or Church (Article 11) and, possibly, an investigation (Article 12), the next step in the procedure was to have a hearing where both the complainant and the accused or Church could be present. The outcome of the complaint procedure was an advice to the Church. The Church's decision could deviate from the advice, but not before consulting the chairman of the complaint committee (Article 21.2). The recommendations were published on a website, unless the victim disapproved publication. The decisions that followed the recommendations were announced to be published (Article 21.5), but these could not be retrieved. Below, recommendations will be referred to as either recommendations or the decisions.

The rules permitted the adjudicators to recommend the Church to take measures against the accused to prevent future abuse, to prosecute the accused according to canon law, to warn the accused, and to provide support for those involved in the sexual abuse, including the victim, its relatives, the catholic community, and colleagues of the accused (article 19.1). In practice, the adjudicators also advised other measures, including ordering an apology, recognition of suffering, and affirmation of the wrong. A complainant could request a revision of the decision in instances where new facts or circumstances arose (article 22.1).

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<sup>56</sup> <<https://www.meldpuntmisbruikrkk.nl/S/Klacht/Documents/Model%20Klaagschrift.pdf>> (last accessed 26 February 2016).

The Catholic Church initiated a final action to provide satisfaction and compensation for victims whose complaints were not granted.<sup>57</sup> Additionally, victims who made themselves known after the deadline remained eligible for help and support provided by the organization responsible for the sexual abuse victims who sought help (“Platform Hulpverlening”, hereafter: Platform).

The Platform was funded by the Catholic Church, but was otherwise independent.<sup>58</sup> The adjudicators on the complaint committee were experts working in various fields, including law, psychology, psychiatry, and child protection, with the chairmen being judges who are or were recently appointed at a court in the Netherlands.<sup>59</sup> The ratio of members with and without law degrees was approximately 50:50.<sup>60</sup> The complaint committee generally consisted of three members.

### III. RESEARCH QUESTIONS

The question that lies at the heart of this study is whether claimants were able to obtain non-monetary relief, and if not, why. The data allow to answer this question in the following ways. First, the adjudicators were allowed to recommend the accused or

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<sup>57</sup> Press release 30 November 2015, <<https://www.meldpuntmisbruikrkk.nl/S/Paginas/default.aspx>> (last accessed 26 February 2016).

<sup>58</sup> <<https://www.meldpuntmisbruikrkk.nl/S/Melding/Paginas/Veelgestelde%20vragen.aspx>> (last accessed 26 February 2016).

<sup>59</sup> <https://www.meldpuntmisbruikrkk.nl/S/Klacht/Paginas/Werkwijze.aspx>.

<sup>60</sup> A count resulted in 12 law degrees and 10 non-law degrees, see <<https://www.meldpuntmisbruikrkk.nl/S/Klacht/Paginas/Organisatie.aspx>> (last accessed 26 February 2016).

Church to provide non-monetary relief to the complainant, including recognition of suffering, acknowledgment of the sexual abuse, an apology, or for measures to reduce the victim's suffering. However, the fact that adjudicators can provide for non-monetary relief does not mean they actually did. Previous research on court-ordered apologies shows that adjudicators are hesitant to order non-monetary relief, for example because it is believed that court-ordered relief is not sincere or otherwise inappropriate.<sup>61</sup> The present study allows to analyze whether adjudicators recommended non-monetary relief in a procedure that is designed to do so. Moreover, it frequently occurred that victims were offered or provided non-monetary relief by the accused or Church prior to the decision. The availability of data on what the victims pursued and what the types of non-monetary relief they obtained allowed testing whether what complainants sought was associated with what they received.

Second, the accused or Church could (and often did) provide non-monetary relief prior to the decision. Although the accused and Church may have felt the need or pressure to do so, it may have also be detrimental their case. For example, an apology may be seen as an admission of fault, and acknowledging the abuse can lead the adjudicators to grant the complaint, thereby discouraging wrongdoers to offer or provide non-monetary relief to a victim. Research on the effects of non-monetary relief on adjudicators' decisions in a tort law context is scarce and inconclusive.<sup>62</sup> If offering or

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<sup>61</sup> For example Robyn Carroll, "Apologies as a Legal Remedy," *Sydney Law Review* 35 (2013); ———, "You Can't Order Sorrow, So Is There Any Value in an Ordered Apology? An Analysis of Apology Orders in Anti-Discrimination Cases," *University of New South Wales Law Journal* 32, no. 2 (2010).

<sup>62</sup> Jeffrey J. Rachlinski, Chris Guthrie, and Andrew J. Wistrich, "Contrition in the Courtroom: Do Apologies Affect Adjudication?," *Cornell Law Review* 98, no. 5 (2013) (not finding an effect among judges

providing non-monetary relief prior to the decisions turns out to be detrimental to the defendant's case in a victim-oriented procedure, the question arises whether and how tort law can have wrongdoers safely provide for non-monetary relief prior to a decision.

Third, the question whether claimants were able to obtain non-monetary relief, and if not, why, can be answered by analyzing whether the procedure matters. By varying the level of adversarialism, it can be tested whether the introduction of adversarial elements impact the probability of obtaining non-monetary relief. The complaint procedure differs in two important ways from 'ordinary' tort law. First, the accused in the complaint procedure were frequently (but not always) deceased before the start of the procedure, while defendants in ordinary tort law are generally not deceased before and during the procedure. Second, claims are generally disputed in ordinary tort law, but often not in the complaint procedure examined in this paper. Both the accused being deceased and the accused not disputing the complaint are proxies for the procedure becoming less adversarial. An analysis of the effects of both elements on whether the complainant obtained non-monetary relief allows to test whether adversarialism prohibits addressing victims' non-monetary needs.

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in two vignettes); Daniel J. Kaspar and Lamont E. Stallworth, "The Impact of a Grievant's Offer of Apology and the Decision-Making Process of Labor Arbitrators: A Case Analysis," *Harvard Negotiation Law Review* 17, no. 1 (2012); Michelle M. Hoyman, Lamont E. Stallworth, and David Kershaw, "The Decision-Making of Labor Arbitrators in Discipline and Discharge Cases Where a Grievant Offers an Apology: A Policy-Capturing Study" (paper presented at the Dispute Resolution in the Workplace: The Proceedings of the National Academy of Arbitrators, 2010) (both studies finding a mitigating effect on the arbitrator's decision); Robbennolt, "Apologies and Settlement Levers," 364 (finding that a full apology lowered subjects' estimates of what constituted a fair settlement amount).

## IV. METHOD

### A. Sample

The complaint procedure was officially enacted on 1 November 2011 (article 26.1 of the Procedural Rules (“Procedureregeling”). However, eight cases were identified that were already decided under the new regime in September 2011. Victims were allowed to file a complaint up to, but not later than, 1 May 2015. All cases that were decided under the new regime (and published) were included in the analysis.

All cases that were published until September 2015 were coded. The decisions were retrieved from [www.meldpuntmisbruikrkk.nl](http://www.meldpuntmisbruikrkk.nl). The combination of all decisions being published and a sufficient number of available coders allowed studying all available decisions rather than a sample of the decisions.<sup>63</sup> The analysis included 981 decisions, and an additional 24 preliminary decisions that were disregarded.

The number of decisions that were analyzed is slightly lower than the total number of complaints reported on the website. The Platform that published the decisions reported to have received 2,096 complaints, with 1,554 additional victims contacting the Platform but not filing a complaint despite receiving an invitation from the platform to do so.<sup>64</sup> Of the 2,096 complaints that were filed, various were withdrawn, held inadmissible, settled, put on hold pending mediation, or not processed because the victim deceased

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<sup>63</sup> The last complaint decisions are expected to be made and published by the middle of 2016, see <<https://www.meldpuntmisbruikrkk.nl/S/Paginas/default.aspx>>.

<sup>64</sup> Press release 30 November 2015, <<https://www.meldpuntmisbruikrkk.nl/S/Paginas/default.aspx>> (last accessed 26 February 2016).

after filing the complaint. As a result, by the end of 2015, 900 cases (71%) of the complaints that led to a decision ('advice') resulted in the complaint being granted, fully or partially, in addition to 270 cases (21%) where the complaint was not granted.

The difference between the 981 decisions that were analyzed (i.e. found on the Platform's website) and the 1,170 decisions reported by the platform can have several causes. First, the decisions made in October 2015 (n=18) and November 2015 (n=16) were included in the press release but not in this study. Second, because complainants could deny permission to have the decisions published on the website, not all decisions were published. Third, the total number provided by the Platform may also include decisions that overturned previous decisions (n=65). Fourth, it is not clear whether the numbers reported by the Platform include decisions made under the old regime, that is, prior to 1 November 2011 (n=92). Subtracting this total of 191 of the total of 1,170 decisions reported in the press release approximates the 981 decisions in the dataset. If the sample lacks cases of the population, it cannot be determined whether the decisions that were analyzed systematically differ from those that could not be accessed due to reasons of privacy and confidentiality.

### *B. Variables*

The various types of non-monetary relief that the accused or Church offered to the victim prior to the decision served as an independent variable to predict the decision of the adjudicators to grant or reject the complaint (Decision). The categories of non-monetary relief consisted of whether the victim was offered an apology (Apology\_prior), whether accused or Church expressed recognition for the victim's suffering

(Recognition\_suffering\_prior), whether the accused or Church acknowledged the abuse (Acknowledgment\_abuse\_prior), whether the accused or Church offered the victim to have a conversation (Conversation), and whether the accused or Church offered the victim to explore possibilities to reduce the victim's suffering (Reduce\_suffering).

The analysis of whether the objectives that the victims pursued matches the types of non-monetary relief they obtained used the objectives that victims expressed at the start of the procedure for filing a complaint (Objectives) as an independent variable. These objectives include the need for recognition / validation / affirmation, financial compensation (Compensation), an apology by the accused or Church (Apology\_objective), closure / rehabilitation, the need for having a voice, being heard or being understood (Voice), prevention, satisfaction, measures against the accused or those responsible, support for other complaints, retribution / punishment / revenge, a meeting with the accused, help for the victim and help for the accused. The dependent variables were non-monetary relief provided prior to the decision (Relief\_prior), non-monetary relief recommended by the adjudicators (Relief\_decision), and non-monetary relief offered or provided since the start of the procedure (Relief\_afterstart). They consist of the following categories:

- Recognition of suffering by the accused or Church prior to the decision (Recognition\_suffering\_prior) or recommended by the adjudicators (Recognition\_suffering\_decision).
- An acknowledgment of the abuse by the accused or Church prior to the decision (Acknowledgment\_abuse\_prior) or recommended by the adjudicators (Acknowledgment\_abuse\_decision).

- An apology offered by the accused or Church prior to the decision (Apology\_prior) or recommended by the adjudicators (Apology\_decision).

The same dependent variables are used to test whether the accused being deceased and the accused not disputing the complaint impacted whether the complainant obtained non-monetary relief uses. The independent variables consisted of the number of defenses raised by the accused or Church (Defenses\_number), a categorical variable that measured whether the complaint was disputed (Dispute), and of a categorical variable that measured whether the accused was deceased at the start of the procedure (Deceased).

Additionally, a number of control variables are used in the various analyses. The control variables include:

- The type of sexual abuse that took place according to the complainant (Abusetype\_complainant). This theoretical variable consisted of four dummy variables, each representing a different type of sexual abuse, that is, rape / penetration, sexual abuse without physical contact, sexual abuse where the accused performed sexual acts on the victim, and sexual abuse where the accused forced or ordered the victim to perform sexual acts on the accused.
- Frequency of the abuse (Frequency\_abuse), which measured whether the abuse took place once or repeatedly.
- The number of accused that were responsible for the sexual abuse in relation to the complaint (Accused\_number).
- Any type of relief offered or received prior to the decision (Relief\_prior).
- Whether the victim had legal support during the procedure (Support\_legal).

- A continuous variable that measured the amount of evidence that the committee considered appropriate (Evidence).
- The adjudicators who decided on the case (Adjudicators). This theoretical variable consisted of numerous categorical variables (dummies), with each variable representing the presence or absence of an individual adjudicator.

### *C. Procedure*

The decisions were accessed on the Platform's website.<sup>65</sup> An electronic questionnaire was developed to analyze the decisions based on a number of predetermined variables that were extensively pretested. The questionnaire included an instruction (codebook) on how to interpret the questions, items, and / or categories. The decisions were analyzed by 17 coders, with each decision being analyzed by a single coder.<sup>66</sup> The coders consisted of third-year undergraduate (bachelor) law students who were selected after their first year to participate in an honor's program based on their achievements in the first year and motivation for the honor's program. Coders were randomly assigned to the decisions. Furthermore, they were instructed to consult the principal investigator in case questions or difficulties arose when filling out the questionnaires, which resulted in correspondence with several coders on multiple occasions. The data were inspected and recoded where necessary.

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<sup>65</sup> <<https://www.meldpuntmisbruikrkk.nl/S/Klacht/Paginas/Adviezen.aspx>> and <<https://www.meldpuntmisbruikrkk.nl/S/Schade/Paginas/default.aspx>> (last accessed 26 February 2016).

<sup>66</sup> Except for the 40 decisions (20 complaints and 20 damages decisions) that were randomly selected for testing the intercoder reliability (see below).

#### *D. Intercoder Reliability*

A total of 20 randomly selected complaints were independently analyzed by two coders. The nominal categories for which ten or more observations were collected had between 80 percent and 100 percent agreement levels, percentagewise, with an average agreement level of 97 percent (complaints). Corresponding kappa values (Cohen's kappa) varied between .46 and 1.00, which can be considered moderate (0.41– 0.60) to (almost) perfect (0.81–1.00) agreement levels.<sup>67</sup> Correlations for variables measured on the ratio scale varied between .97 and 1.00. Only one item (kappa = -.05,  $p < .82$ ) raised some concerns. Since the level of agreement for this category was 90 percent, the item was included in the final questionnaire, but it was ultimately not used in the analyses.

The coders were trained before measuring the intercoder reliability and the start of the actual data collection by having them apply the questionnaire to a number of decisions (complaints as well as damages cases), by discussing and resolving differences in discussions with fellow students and the researcher, and by altering items, categories, and / or explanations in the codebook that produced differences in answers among the coders. Several sessions were held to improve the development of the questionnaire and how to apply the questionnaire. By the last session, the researcher and the coders concluded that additional alterations to the questionnaire would no longer improve the interpretation and application of the questionnaire.

#### *E. Statistical Analysis*

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<sup>67</sup> Jacob Cohen, "A Coefficient of Agreement for Nominal Scales," *Educational and Psychological Measurement* 20, no. 1 (1960). The 'other' categories were excluded from the analysis.

Descriptive statistics were used to describe the data. Because the vast majority of the variables were measured on a nominal scale, a binary scale in particular, this study relies on cross-tabulation and logistic regression analysis. Since the dataset includes all cases of the accessible population, effect sizes are of primary importance. Levels of statistical significance are reported and further inspected when necessary, for example to find out whether non-significant relationships are the result of a low number of observations for one or more categories.

## V. RESULTS

### A. Case Outcome and Non-Monetary Relief

Sexual abuse victims who filed a claim saw their claim granted in 70.9 percent of the cases (Table 1).

*Table 1: Decision*

<b>Decision</b>	<b>Percentage</b>
Complaint Granted (total)	70.9% (n=695)
Complaint Granted (all)	66.5% (n=652)
Complaint Granted (but not all)	4.4% (n=43)
Complaint Not Granted	27.5% (n=271)
Other	1.5% (n=15)

NOTE: N=981.

Reasons for why a complaint was not granted include circumstances that prevented the adjudicators to decide the case on the merits (3.0%), insufficient evidence (22.9%), no

relationship between the accused, the victim, and / or the Church as defined in the statutes (1.1%), and other reasons (2.0%).<sup>68</sup>

If a complaint was granted, the adjudicators took the opportunity to recommend relief in addition to granting the complaint in several cases. Examples of such recommendations are to have the accused or Church offer apology, acknowledge the abuse, or to recognize the victim's suffering. Descriptive results demonstrate that the adjudicators recommended the accused or Church to offer or provide some type of non-monetary relief to the victim in 37.7 percent (n=261) of the 692 cases where the complaint was granted. An apology (18.4%), exploring possibilities to reduce the suffering (17.8%), and an acknowledgment of the abuse (12.9%) were the types of non-monetary relief most frequently recommended by the adjudicators (Table 2, no. 1).

The accused or Church frequently offered the victim some type of non-monetary relief prior to decision (recommendation) made by the adjudicators. This occurred in 52.4 percent of the cases where the complaint was granted. The accused or Church would offer this relief unconditionally in the majority of the cases. However, in some cases the accused or Church indicated that it would be willing to offer or provide non-monetary relief conditional on whether the complaint were granted. For example, the accused or Church would only be willing to offer an apology if the committee would grant the complaint.

Focusing on non-monetary relief provided unconditionally prior to the decision (but after the complaint was filed), an apology (35.6%), recognition of the victim's suffering (21.2%), a meeting with the accused / Church and the complainant (12.6%), and

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<sup>68</sup> Multiple reasons could be applicable in a single case.

an acknowledgment of the abuse (10.0%) were the types of non-monetary relief most frequently offered to the victim (Table 2, no. 2). Offering or providing non-monetary relief conditional on that the complaint would be granted was less common. Only in case of an apology was the accused or Church sometimes inclined to only provide one dependent on whether the complaint would be granted (11.5%) (Table 2, no. 3). It did not frequently occur that the accused or Church offered non-monetary relief prior to the filing of the complaint (Table 2, no. 4).

Shifting to the types of non-monetary relief that victims obtained regardless of whether non-monetary relief was offered or provided prior to the decision or recommended by the adjudicators in their decisions, the data demonstrate that the complainants received some type of non-monetary relief in 79.3 percent (n=586) of the cases where it was known whether the complainant received some type of non-monetary relief. They were most likely to receive an apology (69.6%), followed by recognition of suffering (37.2%), an acknowledgment of the abuse (29.2%), exploring possibilities to reduce the suffering (20.8%), a meeting with the accused or Church (20.5%), and at some point in the procedure (Table 2, no. 5).

*Table 2: Non-Monetary Relief Offered and Recommended*

<b>Non-Monetary Relief (Type)</b>	<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
Apology	18.4% (n=127)	35.6% (n=349)	11.5% (n=113)	1.0% (n=10)	69.6% (n=495)
Recognition of Suffering	5.8% (n=40)	21.2% (n=208)	4.2% (n=41)	0.3% (n=3)	37.2% (n=442)
Acknowledgment of the abuse	12.9% (n=89)	10.0% (n=98)	3.9% (n=38)	0.3% (n=3)	29.2% (n=201)
Conversation with the	1.2%	12.6%	1.6%	1.5%	20.5% (n=144)

victim	(n=8)	(n=124)	(n=16)	(n=15)	
Reduce_suffering	17.8%	2.4%	0.8%	0.0%	20.8% (n=145)
	(n=123)	(n=24)	(n=8)	(n=0)	
	692	981	981	981	(depending on relief)
N					

NOTE: (1) Non-monetary relief recommended by the adjudicators in their decisions; (2) Non-monetary relief offered before the decision but after the complaint was filed (unconditionally); (3) = Non-monetary relief offered before the decision but after the complaint was filed (conditional on whether the complaint was granted); (4) = Non-monetary relief offered before the complaint was filed; (5) Non-monetary relief offered between filing the complaint and the decision (including the decision). Missing values were excluded from the analysis.

Complainants were particularly more likely to be offered (unconditionally) an apology (35.6% versus 18.4%), recognition for their suffering (21.2% versus 5.8%), and a meeting with the accused or Church (12.6% versus 1.2%) prior to the decision than as a result of the recommendations made by the adjudicators. Only the offer to seek possibilities to reduce the suffering by the victim (2.4% versus 17.8%) was more likely to be proposed by the adjudicators in their decisions than by the accused or Church prior to the decision. Additional analyses did not suggest that the probability of the adjudicators ordering non-monetary relief was dependent on whether the accused or Church already offered or provided non-monetary relief prior to the decision.

Did the accused or Church offering non-monetary relief hurt their case? The descriptive results show that, for the five most common types of non-monetary relief, providing non-monetary relief results in a higher probability of the adjudicators granting the complaint (Table 3). For example, an apology made prior to the decision by the accused or the Church is associated with a 33.8 percent higher probability of the complaint being granted compared to when no apology is offered prior to the decision.

Table 3: Relation Relief Prior to Decision – Decision (Complaint Granted)

<b>Non-Monetary Relief (Type)</b>		<b>Complaint Granted</b>	<b>Difference</b>
Apology_prior	No	10.7% (n=50)	+33.8%***
	Yes	44.5% (n=221)	
Recognition_suffering_prior	No	8.8% (n=22)	+26.0%***
	Yes	34.8% (n=249)	
Acknowledgment_abuse_prior	No	4.3% (n=6)	+27.7%***
	Yes	32.0% (n=265)	
Conversation	No	17.5% (n=27)	+12.5%**
	Yes	30.0% (n=244)	
Reduce_suffering	No	19.4% (n=6)	+8.9%
	Yes	28.3% (n=262)	
N			966

NOTE: Dependent variable: Decision. \* p <.05; \*\*. p <.01; \*\*\* p <.001; † < .10. Significance levels based on Chi-Square cross-tabulation tests. Missing values are excluded.

The strong association has two possible explanations. First, it may be that providing non-monetary relief affects the outcomes of the case. Adjudicators may perceive offering or providing non-monetary relief as evidence against the accused or Church, which would increase the likelihood of granting the complaint compared to when the non-monetary relief would not have been provided or offered prior to the decision.

Alternatively, it could be that whether non-monetary relief is offered or provided depends on how strong the case is. Perhaps the accused or Church was able to predict whether the adjudicators would grant the complaint based on the circumstances of the case and the complaint. Consequently, an association between whether the complaint was granted and whether a certain type of non-monetary relief was offered could be explained by means of the accused's or Church's willingness to provide non-monetary relief in strong cases but not in weak cases.

Various models served to test whether providing non-monetary relief impacts the outcomes of cases or whether it was the expected outcome that had an effect on the accused's or Church's willingness to provide non-monetary relief. Two variables in particular allowed exploring which of the explanations is more likely: whether the accused or Church disputed a complaint (Dispute), and the number of defenses raised by the accused or Church (Defenses\_number). Complaints that are disputed are presumably weaker (for the complainant) than cases where the complaints are not disputed, and cases where several defenses were raised can be considered weak compared to cases with less number of defenses. Information on the variety of evidence (Evidence) was available but not included in the analysis due to multicollinearity issues (all cases with zero types of evidence resulted in a rejection of the complaint). Consequently, Dispute and Defenses\_number served as proxies for how strong the case was. Descriptive results show that the complaint was disputed in 28.3 percent of the cases, with one defense raised in 20.9 percent of the cases, two disputed in 6.8 percent, and three disputed in 0.6 percent.

The effect of offering or providing non-monetary relief prior to the decision on the outcome of the case was analyzed while controlling for Dispute or Defenses\_number. If the effect would diminish or disappear when adding the Dispute variable or the Defenses\_number variable, this would support the idea that the expected outcome impacts the accused's or Church's willingness to offer or provide non-monetary relief prior to the decision. Conversely, similar effects with and without the Dispute and Defenses\_number variables would suggest that offering non-monetary relief prior to the decision impacts the outcome of the case.

Model 1 did not include any of the two variables (i.e. Dispute, Defenses\_number). Models 2 and 3 tested the effects of Dispute and Defenses\_number separately. A model with both Dispute and Defenses\_number was not tested due to multicollinearity concerns (Dispute and Defenses\_number essentially measure the same). Several other control variables were added as well in all three models, including the type of sexual abuse may influence the outcome of the case (e.g. granting a complaint may be more likely in cases of severe abuse) and whether non-monetary relief was offered or provided prior to the decision (e.g. non-monetary relief is more likely to be offered or provided if the abuse is severe compared to cases where the abuse is less severe). The results of logistic regressions without these control variables showed similar patterns as the ones that included the control variables.

*Table 4: Relationship Non-Monetary Relief Prior to Decision – Decision (in odds)*

<b>Variable</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
Apology_prior	1.65***	1.53***	1.55***
Recognition_suffering_prior	1.25*	1.20†	1.20†
Acknowledgment_abuse_prior	2.00***	1.92***	1.94***
Conversation	1.06	.98	1.00
Reduce_suffering	.70†	.67*	.68*
Dispute		2.93***	
Defenses_number			1.95***
N	946	946	946
Chi-Sq.	246.023	227.630	271.178
Log-pseudo likelihood	860.632	829.026	835.477

NOTE: \* p <.05; \*\*. p <.01; \*\*\* p <.001; † < .10. Dependent variable: Decision (complaint granted / not granted). Control variables: Abusetype\_complainant, Abuse\_frequency, Accused\_number, Support\_legal, Adjudicators. Missing values are excluded.

An acknowledgment of the abuse, an apology, and a recognition of the victim's suffering increased the probability of the complaint being granted in all three models, although the effect of an acknowledgment is relatively small. A comparison of the models that included Dispute (Model 2) or Defenses\_number (Model 3) with the model that did not (Model 1) demonstrates that the effects of an acknowledgment or offering an apology are similar in all three models (Table 4). This suggests that offering or providing non-monetary relief prior to the decision makes it less probable that the decision will be granted.

#### *B. Relation Victims' Objectives – Non-Monetary Relief Obtained*

Did the complainants get what they wanted? Relating the objectives victims had (Objectives) and whether they obtained non-monetary relief after filing their complaint (Relief) allowed testing whether the fact that victims indicated their objectives during the procedure had an effect on which types of non-monetary relief they were ultimately offered or provided with.

The objectives victims had is explored in a different paper.<sup>69</sup> The paper finds, among other things, that the vast majority of victims pursue recognition, validation, and affirmation by filing a complaint, followed by financial compensation, an apology by the accused or Church, closure or rehabilitation, to be heard, to prevent future wrongdoing, satisfaction, and truth finding (Table 5).

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<sup>69</sup> Gijs Van Dijck, "Victims of Sexual Abuse by the Catholic Church in the Spotlight: Empirically Examining Victims' Needs," .

Table 5: Objectives (Self-Reported)

Objective	Percentage
Recognition / validation / affirmation	72.4 (n=710)
Compensation	54.3 (n=533)
Apology_objective	27.3 (n=268)
Closure / rehabilitation	25.0 (n=245)
Voice	17.4 (n=171)
Prevention	13.3 (n=130)
Truth finding	12.4 (n=122)
Satisfaction	8.8 (n=86)
Measures against the accused / those responsible	8.7 (n=85)
Support for other complaints	5.3 (n=52)
Retribution / punishment / revenge	3.2 (n=31)
Meeting with accused	2.3 (n=23)
Help for victim	0.7 (n=7)
Help for accused	0.1 (n=1)
Other	7.1 (n=70)
Unknown	2.4 (n=24)

NOTE: N=981. Victims could report multiple objectives per case

Source: Gijs Van Dijk, “Victims of Sexual Abuse by the Catholic Church in the Spotlight: Empirically Examining Victims’ Needs” (Working Paper).

Because analyzing ‘matches’ between the objectives victims had and the specific types of relief is of primary interest (e.g. does stating that one desires an apology increase the likelihood of obtaining one?), a logistic regression analysis was conducted for each type of relief. By matching victims’ objectives to their corresponding categories of non-monetary relief, it was possible to observe whether complainants who sought an apology received one, and whether those who sought recognition obtained recognition. The relationships between recognition as an objective and recognition as an outcome, and apology as an objective and apology as an outcome, were therefore of particular interest. Coefficients with underscores in Table 6 mark these relationships.

The relations were tested for three types of situations: (1) non-monetary relief offered or provided prior to the decision (but after the start of the procedure) (Table 6), and (2) non-monetary relief recommended by the adjudicators (Table 7). Several robustness checks without some and all control variables were conducted. All yielded similar results.

Focusing on situations where non-monetary relief was offered or provided prior to the committee’s decision, no substantial effects were found for any of the matches, except for Apology (Table 6). Complainants who indicated at the start of the procedure that they sought an apology were more likely to be offered or receive an apology by the accused or Church [OR = 1.57,  $p < .02$ ] (controlling for other variables, including other objectives victims had).

*Table 6: Relation Objective – Relief Offered Prior to Decision (per category) (in odds)*

<b>Variable</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
Recognition	<u>.75</u>	<u>1.10</u>	.88
Compensation	1.24	.83	.85
Apology_objective	<u>1.48*</u>	1.23	<u>1.57*</u>
Closure / Rehabilitation	1.02	.82	1.19
Voice	1.15	.87	1.06
Prevention	.83	.93	1.04
Truth Finding	1.13	.48*	1.20
N	920	923	898
Chi-Sq.	157.479	115.952	289.678
Log-pseudo likelihood	892.316	619.826	953.605

NOTE: Model 1: DV = Recognition\_suffering\_prior; Model 2: DV = Acknowledgment\_abuse\_prior; Model 3: DV = Apology\_prior; Control variables: Objectives, Abusetype\_complainant, Abuse\_frequency, Number of Accused, Support\_legal, Defenses\_number, Evidence, Adjudicators, Decision. Missing values are excluded. \*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ ; †  $< .10$ .

Interestingly, relating the objectives to the specific types of non-monetary relief that were offered or provided by the adjudicators (Relief\_decision per category) resulted in a somewhat different pattern of how the variables are related. The most visible pattern that emerged was that complainants who indicated to pursue one of the objectives that were reported in 10 percent or more of the cases were less likely to obtain recognition for their suffering (controlling for other variables, including other objectives victims had) (Table 7, Model 1).

*Table 7: Relation Objective – Relief Provided in Decision (per category) (in odds)*

<b>Variable</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
Recognition_objective	<u>.63</u>	<u>1.09</u>	1.00
Compensation	.77	1.77*	1.00
Apology_objective	.53	1.54	<u>1.31</u>
Closure / Rehabilitation	.19*	1.15	.88
Voice	.60	1.61	1.65
Prevention	.27	1.41	1.07
Truth Finding	.74	1.69	1.29
N	678	678	672
Chi-Sq.	136.361	117.167	157.228
Log-pseudo likelihood	162.087	398.577	482.470

NOTE: Model 1: DV = Recognition\_suffering\_decision; Model 2: DV = Acknowledgment\_abuse\_decision; Model 3: DV = Apology\_decision; Control variables: Objectives, Abusetype\_complainant; Abuse\_frequency, Accused\_number, Support\_legal, Defenses\_number, Evidence, Decision. Missing values are excluded. \* p <.05; \*\* p <.01; \*\*\* p <.001; † <.10.

Other relationships do not have an immediate explanation.

It was subsequently tested whether Objectives impacted Relief that was offered or recommended since the start of the procedure. Again, the seven most ‘popular’ objectives were selected and included in the analysis. The Relief\_afterstart variable consisted of

situations where the adjudicators recommended non-monetary relief in their decisions as well as instances where the accused or Church offered or provided non-monetary relief after the start of the procedure.

The results demonstrate that none of the objectives had a significant and / or substantial effect on whether they would actually receive some sort of non-monetary relief, and that, as far as they did, the effects are mostly negative, suggesting that expressing the need for non-monetary relief reduced the likelihood of obtaining the relief (Table 8). A model without control variables yielded similar results.

*Table 8: Relation Objective – Non-Monetary Relief Obtained (since start procedure)*

<b>Variable</b>	<b>Model 1 (in odds)</b>
Recognition_objective	.90
Compensation	.76
Apology_objective	1.50
Closure / Rehabilitation	.92
Voice	.95
Prevention	.89
Truth Finding	.58†
N	723
Chi-Sq.	134.345
Log-pseudo likelihood	603.959

NOTE: Dependent variable: Relief\_afterstart. Control variables: Objectives, Abusetype\_complainant, Abuse\_frequency, Accused\_number, Support\_legal, Defenses\_number, Evidence, Adjudicators, Decision. Missing values (n=258) are excluded. \* p <.05; \*\*. p <.01; \*\*\* p <.001; † < .10.

Only Apology\_objective (not statistically significant) was positively associated with whether any non-monetary relief was offered.

The objectives as expressed by the complainant also had no or only marginal effects on whether the victim was offered or provided some non-monetary relief prior to the decision (but after the start of the procedure) (Relief\_prior) (Table 9).

*Table 9: Objective –Non-Monetary Relief Prior to Decision*

<b>Variable</b>	<b>Model 1 (in odds)</b>
Recognition_objective	.87
Compensation	.95
Apology_objective	1.48*
Closure / Rehabilitation	1.07
Voice	.92
Prevention	1.02
Truth Finding	.91
N	932
Chi-Sq.	363.392
Log-pseudo likelihood	922.430

NOTE: Dependent variable: Relief\_prior. Control variables: Objectives, Abusetype\_complainant, Abuse\_frequency, Accused\_number, Support\_legal, Defense\_number, Evidence, Adjudicators, Decision. Missing values (n=49) are excluded. \* p < .05; \*\*. p < .01; \*\*\* p < .001; † < .10.

Some differences were found for some objectives when relating Objectives to whether non-monetary relief was recommended by the adjudicators (Relief\_decision), but the differences are, again, mostly negative, which indicates that stating an objective generally decreases the likelihood of adjudicators recommending non-monetary relief (controlling for other variables, including other objectives victims had) (Table 10).

*Table 10: Relation Objective – Non-Monetary Relief in Decision*

<b>Variable</b>	<b>Model 1 (in odds)</b>
Recognition_objective	.81
Compensation	.78
Apology_objective	1.08

Closure / Rehabilitation	.65*
Voice	.90
Prevention	.72
Truth Finding	.84
N	681
Chi-Sq.	148.665
Log-pseudo likelihood	753.021

NOTE: Dependent variable: Relief\_decision. Control variables: Objectives, Abusetype\_complainant, Abuse\_frequency, Accused\_number, Relief\_prior, Support\_legal, Defenses\_number, Evidence, Adjudicators. Missing values (n=276) are excluded. \* p <.05; \*\* p <.01; \*\*\* p <.001; † <.10.

These results suggest no effects, or marginal effects at best, of expressing an objective on the probability of obtaining some type of non-monetary relief.

### C. *Adversarialism*

The data allowed to test whether the introduction of adversarial elements impacted the adjudicators' decision to recommend non-monetary relief, and to test whether the adversarial elements affected the accused's or Church's willingness to offer or provide non-monetary relief prior to the decision. Two variables are important in this respect: the number of defenses the accused or Church raised (including no defense) (Defenses\_number) and whether the accused was deceased at the start of the procedure (Deceased).

The accused or Church challenged victims' complaints in 28.6 percent (n=278) of the 981 cases. If the accused or Church disputed a complaint, a lack of evidence that the abuse took place (74.1%), and a lack of evidence that the abuse was committed by the accused (37.4%) were the most frequently used arguments. Furthermore, the data reveal

that the accused was (or were, in case of multiple accused) alive at the start of the procedure in 19.5 percent (n=191) of the cases, while the accused was deceased in 75.2 percent (n=738).<sup>70</sup> In the remaining cases, it was either unknown (3.4%, n=33) whether they were deceased or only some (but not all) of the accused deceased (1.9%, n=19). These cases were excluded from the analysis.

Whether the accused deceased was strongly related to whether the complaint was disputed (Disputed) [OR = .08,  $p < .001$ ] (controlling for Type of Abuse, Frequency of Abuse, Legal Support for Victim, and Number of Accused): the probability that a complaint would be disputed was more than 11 times higher if the accused was alive at the time of the procedure compared to when the accused was deceased. An analysis without control variables yielded similar results.

The strong relation between Deceased and Disputed confirms that an accused was more inclined to dispute a complaint than the Church, presumably because the accused had more interests in doing so (e.g. protecting one's reputation) and because it was in the Church's interests not to fight too many complaints, since a hard stance could cause public outrage.

Does disputing the complaint and the accused being deceased also impact the likelihood of victims obtaining non-monetary relief? Several models were tested, with Defenses\_number, and / or Deceased as independent variables. The effects were tested for different types of non-monetary relief (the dependent variables). The number of defenses raised by the accused or Church (Defenses\_number) was used instead of

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<sup>70</sup> The percentages changed to 85.2% (n=568) for Accused Deceased and 14.8% (n=99) for Accused NOT Deceased if only cases were selected where the complaint was granted.

whether the complaint was disputed (Disputed) due to multicollinearity concerns. Furthermore, separate analyses are presented for non-monetary relief obtained as a result of a recommendation of the adjudicators (Relief\_decisions per category) and non-monetary relief offered or provided prior to the decision (but after the complaint was filed) (Relief\_prior per category).

A breakdown of how Defenses\_number, and Deceased affects specific types of non-monetary relief indicates that the effects are different for various types of non-monetary relief. This applies to relief recommended by the adjudicators (Table 11) as well as to non-monetary relief offered or provided prior to the decision (Table 12). The direction of the effects are also different for the various types of relief.

Focusing on the types of non-monetary relief recommended by the adjudicators, the results reveal that an increase of the number of defenses made it less likely for victims to receive recognition for their suffering [OR = .36,  $p < .10$ ], an acknowledgment of the abuse [OR = .57, ns], and an apology [OR = .68, ns] (controlling for Accused Deceased and other variables) (Table 11). A disputed complaint did make it more likely for victims to be offered or provided measures to reduce their suffering [OR = 1.91,  $p < .01$  (controlling for Accused Deceased and other variables).

In contrast, the accused being deceased was mostly positively associated with the various types of non-monetary relief, indicating that the chances of the adjudicators recommending non-monetary relief generally increased if the accused was deceased compared to when the accused was alive at the start of the procedure. The impact is the strongest for acknowledgment of the abuse procedure [OR = 5.34,  $p < .01$ ] (controlling for Disputed and other variables) (Table 11). It is therefore more than five times more

likely that the adjudicators would recommend the respondent to acknowledge the abuse when the accused has deceased compared to when the deceased was alive at the time of the procedure. Smaller, but still substantial effects are found for the recommendation of offering an apology [OR = 2.39,  $p < .05$ ] and the recommendation to the Church to reduce the victim's suffering [OR = 3.12,  $p < .01$ ] (controlling for Disputed and other variables) (Table 11). A negative association was only found Recognition\_suffering [OR = .32,  $p < .10$ ], indicating that it became three times less likely that that adjudicators would recommend the Church (or accused) to recognize the victim's suffering when the accused was deceased compared to when the accused was alive at the start of the procedure (controlling for Disputed and other variables) (Table 11).

*Table 11: Effect Disputed and Deceased on Relief\_decision (per category) (in odds)*

<b>Variable</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>
Defenses_number	.36†	.57	.68	1.91**
Deceased	.32†	5.34**	2.39*	3.12**
N	656	656	656	656
Chi-Sq.	128.244	117.339	158.696	122.335
Log-pseudo likelihood	162.002	384.712	468.541	498.915

NOTE: Model 1: DV = Recognition\_suffering; Model 2: DV = Acknowledgment\_abuse\_prior; Model 3: DV = Apology\_decision; Model 4: DV = Reduce\_suffering. Control variables: Abusetype\_complainant, Abuse\_frequency, Accused\_number, Support\_legal, Relief\_prior (per category), Evidence, Adjudicators. Missing values (n=325) are excluded. \*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ ; †  $p < .10$ .

Disputing a claims had very strong effects for each type of non-monetary relief that was offered prior to the decision (controlling for Accused Deceased and other variables) (Table 12). This finding does not surprise. Offering or providing non-monetary relief is inconsistent with expressing doubts about the validity of the complaint.

Table 12: Effect Disputed and Deceased on Relief Offered Prior to Decision (per category) (in odds)

Variable	Model 1	Model 2	Model 3	Model 4	Model 5
Defenses_number	.28***	.19***	.20***	.17***	.31
Deceased	.87	.47*	.53*	1.97†	2.60
N	889	893	868	883	898
Chi-Sq.	147.796	105.550	196.148	126.994	47.797
Log-pseudo likelihood	879.087	614.002	1020.491	614.461	201.526

NOTE: Model 1: DV = Recognition\_suffering; Model 2: DV = Acknowledgment\_abuse\_prior; Model 3: DV = Apology\_decision; Model 4: DV = Conversation; Model 5: DV = Reduce\_suffering. Control variables: Abusetype\_complainant, Abuse\_frequency, Accused\_number, Support\_legal, Adjudicators. Missing values are excluded. \* p < .05; \*\* p < .01; \*\*\* p < .001; † < .10.

Finally, the accused being deceased at the time of the procedure made it less likely for victims to receive an acknowledgment of the abuse by the respondent [OR = .47, p < .05], less likely to receive an apology offered by the respondent [OR = .53, p < .05], more likely to be offered a conversation with the respondent [OR = 1.97, p < .10], more likely to have the respondent take measures to reduce the suffering [OR = 2.60, ns], and somewhat less likely to receive recognition from the respondent for one's suffering [OR = .87, ns] compared to when the accused was alive.

## VI. DISCUSSION

The findings expose three threats to making tort law and victims compensation funds more victim-oriented. First, offering or providing non-monetary relief seems to be detrimental to the defendant's case. Particularly acknowledging the abuse and offering apologies prior to the decision increased the probability of the adjudicators granting the complaint. Providing these types of non-monetary relief seems to hurt a wrongdoer's

case, considering that the effect was still present when controlling for whether the accused or Church disputed the complaint. The fact that the odds of offering non-monetary relief were the highest for acknowledgment of the abuse (i.e. approximately 2.00) further illustrates this. Admitting the abuse may be seen as evidence for establishing fault on the side of the accused or Church, which would result in the Committee granting the complaint.

This result implies that the law, even if it is victim-oriented, may discourage wrongdoers to provide non-monetary relief, even though such relief has proven to be beneficial to the recovery of victims and settlement negotiation.<sup>71</sup> The results stress the importance of creating a safe legal environment for wrongdoers to acknowledge the abuse or apologize for the abuse, providing support for apology protection laws. Moreover, the findings add knowledge to existing research on the effects of apologies on judicial decision-making. Prior studies on the effect of apologies on legal decisions have shown somewhat ambiguous results.<sup>72</sup> Studies in a tort law context have focused on decision-makers (e.g. judges, juries) who had to assess the amount of damages. However, offering or providing non-monetary relief may not only have an effect on the damages

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<sup>71</sup> See the sources in *Part II.B*.

<sup>72</sup> Rachlinski, Guthrie, and Wistrich, "Contrition in the Courtroom: Do Apologies Affect Adjudication?," (not finding an effect among judges in two vignettes); Kaspar and Stallworth, "The Impact of a Grievant's Offer of Apology and the Decision-Making Process of Labor Arbitrators: A Case Analysis," ; Hoyman, Stallworth, and Kershaw, "The Decision-Making of Labor Arbitrators in Discipline and Discharge Cases Where a Grievant Offers an Apology: A Policy-Capturing Study" (both studies finding a mitigating effect on the arbitrator's decision); Robbenolt, "Apologies and Settlement Levers," 364 (finding that a full apology lowered subjects' estimates of what constituted a fair settlement amount).

level, but also on the fault level (e.g. whether the wrongdoer acted negligently). This study suggests that offering or providing non-monetary relief prior to the decision impacts the judicial decision on the fault level.

A second threat to victim-oriented tort law that was exposed was the mismatch that was found between what victims sought and what they were offered. The adjudicators took the opportunity to recommend non-monetary relief if they advised to grant the complaint, with an apology, exploring possibilities to reduce the suffering, and an acknowledgment of the abuse being the types of non-monetary relief that were recommended the most. The willingness to provide for such relief is less obvious than it may seem, considering the resistance within a part of the legal community to order relief that is not voluntarily provided by the wrongdoer.<sup>73</sup>

The relief that was offered to complainants, either by the adjudicators or by the accused or Church prior to the decision, was not associated with the objectives victims had expressed at the start of the procedure. It was expected that pursuing recognition would increase the probability of the adjudicators recommending the accused or Church to recognize the victim's suffering and / or acknowledging the abuse, and increase the likelihood of the accused or Church voluntarily offering such relief prior to the decision. In contrast, the relationships that were tested turned out to be substantial nor statistically significant. Only the victim's desire to receive an apology resulted in a somewhat higher probability of obtaining an apology, but the relation was relatively weak and only

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<sup>73</sup> For example Carroll, "You Can'T Order Sorrow, So Is There Any Value in an Ordered Apology? An Analysis of Apology Orders in Anti-Discrimination Cases," (identifying the views by Australian judges on an apology that is not offered voluntarily, including concerns regarding sincerity and freedom of expression).

statistically significant at the .10 level. Seeking recognition even resulted in a lower probability of the adjudicators recommending the accused or Church recommending to recognize the victim's suffering.

The results suggest that complainants may have been better off not indicating what they pursued to actually receive what they wanted. Those who sought recognition had the same probability of a recommendation to acknowledge the abuse compared to those who did not seek recognition. Perhaps the adjudicators felt that granting the complaint provided sufficient recognition. Moreover, it is remarkable to observe negative associations between the victims' objectives and whether the adjudicators were inclined to recommend the accused or Church to recognize the suffering or to take measures to reduce a victim's suffering. Strong associations were found, with odds found as low as .19 and .27. This indicates that mentioning objectives can hurt the victim's chances of obtaining certain types of non-monetary relief, recognition of one's suffering and measures taken to reduce the victim's suffering in particular. In contrast, seeking financial compensation, an apology, the need to be heard, and the desire to prevent future wrongdoing resulted in a higher probability of the adjudicators recommending the accused or Church to admit the abuse. No explanation is available for this finding.

The general impression that follows from the analysis is that the adjudicators seemed to have operated rather independently from what the objectives complainants had expressed at the start of the procedure. One explanation for this finding relates to the idea that individuals will adhere to the rules of behavior that are considered acceptable in a

group.<sup>74</sup> The mere fact that the committee members were put in a position of adjudicator made them behave in a way that corresponds with what they believe adjudicators are supposed to do. Furthermore, the selection of judges as adjudicators could have resulted in the judges doing adjudicating the cases in similar ways they would normally have, that is, when handling a case as a judge in court. Alternatively, the adjudicators may simply not have paid attention to the victims' objectives when deciding.

Regardless of which explanation holds, the results presented in this paper suggest that making a procedure more victim-oriented may ultimately be detrimental to victims in pursuing their goals. To ask what objectives victims have may contribute to victims believing that they are heard and involved in the procedure, thereby increasing perceived levels of procedural justice. However, this positive effect may have backfired, considering that the objectives victims had were subsequently ignored, or at least not used. Not only does such a procedure create false expectations, it may also result in complainants being worse off compared to when they would not have been asked about the objectives they were pursuing.

The mismatch between what victims sought and what the adjudicators recommended raises the question whether an adjudicator effect exists: are individuals, in their role as adjudicator, less receptive to victims' non-monetary needs than they otherwise would, and if so, how to make them more receptive? Future research should provide more clarity on the matter.

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<sup>74</sup> Robert B. Cialdini, Raymond R. Reno, and Carl A. Kallgren, "A Focus Theory of Normative Conduct: Recycling the Concept of Norms to Reduce Littering in Public Places," *Journal of Personality and Social Psychology* 58, no. 6 (1990).

Third, the results reveal that adding adversarial elements to a procedure generally reduces the likelihood of victims obtaining non-monetary relief. Victims whose complaints were disputed were less likely to obtain relief by the adjudicators granting the complaint, the adjudicators providing non-monetary relief, or the accused or Church offering or providing non-monetary relief prior to the decision. For the adjudicators, a complaint that is disputed may signal to the adjudicators that recommending non-monetary relief may be meaningless because the relationship between the complainant and the respondent was damaged, or because the non-monetary relief that would be provided by the wrongdoer or respondent would not be sincere.

The results also clearly demonstrate differences between respondents and adjudicators with respect to when and to what extent they are willing or inclined to offer, provide, or recommend non-monetary relief. For example, the accused being deceased increased the probability of the adjudicators recommending the respondent to admit the abuse or to make an apology, but it decreased the likelihood that the respondent would do so prior to the decision.

These results indicate that a more adversarial procedure has an effect on the outcomes victims can expect. The combination of a disputed claim and the accused being deceased reduces a victims' chances of obtaining several types of relief, particularly an acknowledgment of the abuse and an apology. This finding has important implications for making tort law more victim-oriented. In tort law, the wrongdoer is commonly alive and will dispute the claim forwarded by the plaintiff. The results presented in this research suggest that, under these circumstances, it will be difficult to provide tort victims with non-monetary relief, as adjudicators will not be inclined to order or

recommend such relief, even if the procedure is designed in a victim-friendly way like the sexual abuse scheme analyzed in this paper. Future research should analyze to what extent this mechanism can and should be overcome.

As with all research, this study has limitations. First, it relies on the decisions (recommendations) of the adjudicators as published on the Platform's website. Consequently, only data could be used that was included in those decisions. For example, the study does not include information on how complainants experienced the procedure, how they valued the outcomes (e.g. granting the complaint, obtaining non-monetary relief), and how their satisfaction relates to their objectives and obtaining non-monetary relief (or not). Furthermore, the effects that were found are not necessarily causal. Although this study was able to control for several important variables, effects of omitted variables cannot be ruled out.

## **VII. CONCLUSION**

The central question of this study was whether claimants were able to obtain non-monetary relief, and if not, why. The observation that providing non-monetary relief prior to the decision is detrimental to a defendant's case, the mismatch between what victims wanted and what they obtained, and the effect of a complaint being disputed and the accused being deceased all suggest that making the law more victim-oriented does not necessarily mean that the procedure will be more victim-oriented.

The findings contribute to a better the understanding of whether and how tort law can address non-monetary needs in addition to monetary needs. Additionally, they offer insight in how non-monetary relief can be integrated in 'ordinary' tort law (or in other

dispute mechanisms), and in the obstacles one may experience when designing a victim-oriented procedure. The results are of importance to scholars, policy makers, and legal practitioners who are contemplating making tort law or compensation funds more victim-oriented. Future research may focus on the challenges as to how to stimulate ordering non-monetary relief while balancing the interests of plaintiffs and defendants.