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State Liability Act

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Amended by the following acts

Passed	Published	Entry into force
19.06.2002	RT I 2002, 62, 377	01.10.2002
22.01.2003	RT I 2003, 15, 86	01.07.2003
28.06.2004	RT I 2004, 56, 405	25.07.2004
11.10.2006	RT I 2006, 48, 360	18.11.2006
17.06.2010	RT I 2010, 44, 261	01.01.2011, entry into force altered 01.07.2011
23.12.2010	RT I, 31.12.2010, 3	01.07.2011
22.03.2011	RT I, 14.04.2011, 4	22.03.2011, judgment of the Supreme Court en banc declares the State Liability Act unconstitutional in the part which does not provide compensation for non-patrimonial damage caused by unreasonably lengthy pre-trial criminal procedure.
30.08.2011	RT I, 13.09.2011, 8	30.08.2011, judgment of the Supreme Court en banc declares the lack of regulation, regarding fair compensation for patrimonial damage lawfully caused by suspension from office in pre-trial criminal procedure, unconstitutional.
31.08.2011	RT I, 13.09.2011, 9	31.08.2011, judgment of the Supreme Court en banc declares the lack of regulation, regarding compensation for patrimonial damage unlawfully caused by suspension from office in pre-trial criminal procedure, unconstitutional.
19.11.2014	RT I, 13.12.2014, 1	01.01.2016, the date of entry into force has been altered to 01.07.2016 [RT I, 17.12.2015, 1]
25.11.2015	RT I, 17.12.2015, 1	20.12.2015, in part 01.01.2016 and 01.07.2016
22.02.2023	RT I, 11.03.2023, 9	01.04.2023

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of Act

(1) This Act provides the bases of and procedure for the protection and restoration of rights violated upon the exercise of powers of public authority and performance of other public duties and compensation for damage caused (state liability).

(2) This Act does not regulate the restoration of rights or compensation for damage in private law relationships.

(3) Causing damage in a private law relationship means a public authority causing damage in the following circumstances:

- 1) upon the violation of a prestation, including providing transport services, health services or other services as a person in private law;
- 2) upon the violation of its obligations as the owner of an immovable, road, body of water or another thing, except the obligations provided for in § 6 of the Traffic Act;
[RT I 2010, 44, 261 - entry into force 01.07.2011]
- 3) when participating in traffic or upon the use of dangerous equipment or possession of hazardous substances without exercising the special rights of public authorities;
- 4) when acting in another manner as a person in private law.

§ 2. Claims for protection and restoration of rights and compensation for damage

(1) On the basis of this Act, a person may request that the state, a local government, another legal person in public law or another person performing public duties on a public law basis outside of relationships of subordination (a public authority):

- 1) repeal an administrative act;
[RT I 2004, 56, 405 - entry into force 25.07.2004]
- 2) terminate a continuing measure;
- 3) refrain from issuing an administrative act or taking a measure;
- 4) issue an administrative act or take a measure;
- 5) compensate for damage caused;
- 6) return a thing or money received without legal basis in a public law relationship.

(2) Additional claims may be prescribed and claims provided for in this Act may be restricted by law in order to restore or protect the rights of persons or to compensate for damage.

(3) In this Act, the terms “administrative act” and “measure” are used within the meaning defined by the Code of Administrative Court Procedure. A challenge can be filed against an administrative act conforming to the characteristics provided for in § 51 of the Administrative Procedure Act.
[RT I 2004, 56, 405 - entry into force 25.07.2004]

Chapter 2 CLAIMS REGARDING ADMINISTRATIVE ACTS OR MEASURES

§ 3. Claim for repeal of administrative act

(1) A person may request the repeal of an administrative act only to the extent that the rights of the person are violated unless otherwise provided by law.

(2) An administrative act is not repealed if the rights of the person are restored by amendment to the administrative act.

(3) Repeal of an administrative act may be refused if:

- 1) a violated procedural requirement or requirement for formal validity could not affect the adjudication of the matter;
- 2) the claim for repeal is filed significantly later than providing information concerning the administrative act to the addressee and the repeal may violate the legitimate expectation of a third person.

(4) Repeal of an administrative act may be requested by an action in an administrative court procedure or by a challenge in an administrative procedure.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

§ 4. Claim for termination of measure

(1) A person may request the termination of a violation of rights which results from a continuing administrative measure if the termination is possible without excessive costs. Costs of the termination of a violation of rights are excessive if the costs exceed substantially the damage caused to the person by the violation of rights.

(2) If unlawful possession of a thing constitutes violation of rights, the entitled possessor of the thing may request the transfer of the thing into his or her possession. An application for the transfer of a thing into lawful possession may be submitted to an administrative authority within thirty years as of the creation of the right of claim.

(3) An application for the termination of a measure may be submitted to the administrative authority taking the measure, or a respective action may be filed with an administrative court.

(4) This section does not preclude the filing of a claim on the bases and according to the procedure provided for in private law.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

§ 5. Claim for refrainment from administrative act or measure

(1) A person may request that an administrative act not be issued or administrative measure not be taken if the administrative act or measure would violate the rights of the person and would probably bring about consequences which would be impossible to eliminate upon later challenge of the administrative act or measure.

(2) An application for refraining from issuing an administrative act or from taking a measure may be submitted to the administrative authority which is competent to issue the administrative act or take the measure, or a respective action may be filed with an administrative court.

(3) This section does not preclude the filing of a claim for refraining from taking an administrative measure on the bases and according to the procedure provided for in private law.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

§ 6. Claim for issue of administrative act or taking of measure

(1) A person may request the issue of an administrative act or taking of a measure if a public authority is required to issue the administrative act or take the measure and if this concerns the rights of the person.

(2) [Repealed – RT I 2004, 56, 405 – entry into force 25.07.2004]

(3) A request to issue an administrative act or take a measure shall be submitted to a respectively competent administrative authority. If a request is not granted or not reviewed on time, the person may file a challenge with an administrative authority or an action with an administrative court.

(4) If, unlawfully, an administrative act is not issued or a measure is not taken, and the issue of such act or taking of measure shall be resolved on the basis of the right of discretion (discretion), a court shall, if the claim is satisfied, issue a precept to a public authority for new adjudication of the matter.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

(5) In the case provided in subsection 4 of this section, a court may issue a precept to a public authority for the issue of an administrative act or taking a measure without further consideration of circumstances only in case the public authority cannot, due to the circumstances of the matter, refuse to issue the administrative act or take the measure upon new adjudication of the matter under any conditions.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

(6) In the case provided in subsection 4 of this section, the administrative authority adjudicating a challenge may choose, if the claim is satisfied, whether to issue a precept to a competent authority for the issue of an administrative act or taking a measure without further consideration of circumstances, or to issue a precept for new adjudication of the matter.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

Chapter 3 COMPENSATION FOR DAMAGE

Subchapter 1 General provisions

§ 7. Bases of liability

(1) A person whose rights are violated by the unlawful activities of a public authority in a public law relationship (hereinafter injured party) may claim compensation for damage caused to the person if damage could not be prevented and cannot be eliminated by the protection or restoration of rights in the manner provided for in §§ 3, 4 and 6 of this Act.

(2) Compensation for damage caused by an omission may be claimed only if an administrative act is not issued in due time or a measure is not taken in due time and the rights of a person are violated thereby.

(2¹) In addition to as provided in subsections 1 and 2 of this section, a person may claim compensation for damage caused by activities or omissions by a public authority in case the European Court of Human Rights

has satisfied the person's individual petition due to a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or any of its protocols by the respective public authority, the person's rights were violated to a significant extent and the person has no other means to restore the person's rights. Compensation for damage may also be claimed by a person who has filed an individual petition with the European Court of Human Rights in a similar matter and on the same legal basis or who has the right to file such a petition in a similar matter and on the same legal basis considering the term provided for in Paragraph 1 of Article 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
[RT I 2006, 48, 360 - entry into force 18.11.2006]

(3) Compensation on the basis of subsections 1 to 2¹ of this section is provided for direct patrimonial damage and loss of income.
[RT I 2006, 48, 360 - entry into force 18.11.2006]

(4) In addition to this Act, the provisions of private law concerning compensation for damage also apply upon the compensation for damage caused upon exercise of public authority unless otherwise provided by law and unless it is in conflict with the nature of public law relationships.

§ 8. Compensation for patrimonial damage

(1) Patrimonial damage shall be compensated for in money. Compensation shall create the financial situation in which the injured party would be if his or her rights were not violated.

(2) If the injured party suffers a bodily injury or health damage, he or she may claim compensation for expenses caused thereby. The injured party may also claim compensation for the following expenses:

- 1) expenses for necessary medical treatment;
- 2) expenses caused by increased needs;
- 3) loss of income due to incapacity for work, including damage caused by a decrease in income or worsening of further economic opportunities.

(3) Compensation for loss of income due to incapacity for work cannot be claimed to the extent to which the injured party is entitled to receive work ability allowance due to the damage caused.
[RT I, 13.12.2014, 1 - entry into force 01.07.2016 (entry into force altered – RT I, 17.12.2015, 1)]

(4) If a permanent health disorder is caused, the damage shall be compensated for by periodic monetary payments payable in advance for every three-month period. Taking into account the nature of damage, this period of time may be altered or a single payment may be prescribed upon the grant or order of payment of compensation.

§ 9. Compensation for non-patrimonial damage

(1) A natural person may claim financial compensation for non-patrimonial damage upon wrongful degradation of dignity, damage to health, deprivation of liberty, violation of the inviolability of home or private life or the confidentiality of messages or defamation of honour or good name of the person.

(2) Non-patrimonial damage shall be compensated for in proportion to the gravity of the offence and taking into consideration the form and gravity of fault.
[RT I 2004, 56, 405 - entry into force 25.07.2004]

(3) Fault for causing damage is not taken into consideration if compensation for non-patrimonial damage is applied for on the basis of a decision of the European Court of Human Rights establishing a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or any of its protocols by a public authority.
[RT I 2006, 48, 360 - entry into force 18.11.2006]

§ 10. Compensation for damage to third persons

(1) Upon the causing of death or a bodily injury or damage to health, a third person is entitled to claim compensation for related expenses incurred, for loss of support and non-patrimonial damage on the bases provided by private law.

(2) Compensation for loss of support cannot be claimed to the extent to which the third person is entitled to survivor's pension due to the death caused. Loss of support shall be compensated for in payments and in a manner similar to that provided for in subsection 4 of § 8 of this Act.

§ 11. Elimination of consequences

(1) Instead of financial compensation, an injured party may request a public authority to eliminate the unlawful consequences of a repealed administrative act or partially amended administrative act or measure.
[RT I 2004, 56, 405 - entry into force 25.07.2004]

(2) A public authority is required, upon the elimination of consequences, to take all lawful measures, including the issue of administrative acts, taking of measures and filing of claims in private law against third persons

if legal basis therefore exists and if the costs of elimination of consequences would not substantially exceed financial compensation.

(3) A public authority may, regardless of the request of the injured party, eliminate consequences in the manner provided for in subsection 2 of this section if financial compensation would substantially exceed the costs of elimination of consequences and if the person does not have good reason for claiming financial compensation. [RT I 2004, 56, 405 - entry into force 25.07.2004]

§ 12. Person obligated to compensate for damage

(1) The public authority whose activities caused damage is required to compensate the injured party for the damage. The public authority who fails to issue an administrative act or take a measure in due time is required to compensate for damage caused by the omission.

(2) Any damage caused directly by a natural person performing the functions of a public authority, regardless of whether the functions are performed on the basis of a service relationship, contract, single order or on another basis, is deemed to be damage caused by the public authority. Natural persons specified in this subsection are not liable to the injured party unless otherwise provided by law.

(3) If damage is caused by a public authority who is a natural person or a legal person in private law, the state, local government or other legal person in public law who authorised the natural person or legal person in private law to perform public duties is liable for the damage unless otherwise provided by law.

(4) If several public authorities are obligated to compensate for damage, the public authorities are solidarily liable to the injured party. Solidary liability of a public authority shall not extend to a person who is liable to the injured party under private law.

(5) If the issue of an administrative act or taking of a measure necessary for the elimination of consequences is not within the competence of the public authority specified in subsection 1 of this section, a competent public authority is obligated to issue the administrative act or take the measure necessary for the elimination of the consequences.

§ 13. Limitation of liability

(1) The following shall be taken into account upon determining the amount of compensation:

- 1) the extent to which the damage was unforeseeable;
- 2) objective obstacles to preventing damage;
- 3) gravity of the violation of rights;
- 4) limitations, provided for in private law, regarding the part the injured party had in causing the damage;
- 5) other circumstances which would render compensation for damage in full unfair.

(2) Loss of income is not compensated for if the person obligated to compensate for the damage proves that the person is not at fault in causing the damage.

(3) A public authority shall be relieved of liability for damage caused in the course of performance of public duties if the damage could not be prevented even while fully observing diligence necessary for the performance of public duties.

(4) An injured party who requests the elimination of consequences is required to incur the costs of elimination of consequences to the extent corresponding to the part the injured party had in causing the consequences. If consequences are not eliminated because the injured party cannot incur the costs corresponding to the part the injured party had in causing the damage, the injured party may request financial compensation corresponding to the share of liability of the public authority.

Subchapter 2 Special cases of liability

§ 14. Damage caused by legislation of general application

(1) A person may claim compensation for damage caused by legislation of general application or by failure to issue legislation of general application only if the damage was caused by a significant violation of the obligations of a public authority, the legal provision forming the basis for the violated obligation is directly applicable, and the person belongs to a group of persons who have been specially injured due to the legislation of general application or by failure to issue legislation of general application.

(2) Subsection 1 of this section does not preclude liability for damage caused by an administrative act issued or measure taken on the basis of legislation of general application.
[RT I 2004, 56, 405 - entry into force 25.07.2004]

§ 15. Damage caused upon administration of justice

(1) A person may claim compensation for damage caused in the course of judicial proceedings, including damage caused by a court decision, only if a judge committed a criminal offence in the course of judicial proceedings.

(2) Subsection 1 of this section is applied also to damage caused in the course of:

- 1) adjudication of a dispute by an authority created for extrajudicial adjudication of disputes by law;
- 2) extrajudicial proceeding of a misdemeanour.

(3) Subsection 1 of this section is not applied to damage caused by an administrative authority in the course of challenge proceedings.

(3¹) In addition to as provided in subsection 1 of this section, a person may claim compensation for damage caused in the course of the proceedings set out in subsections 1 and 2 of this section, including for damage caused by a decision passed on the matter, if the European Court of Human Rights has satisfied the person's individual petition due to a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or any of its protocols in the relevant proceedings, if the violation lead to incorrect adjudication of the matter, and the person has no other means to restore the person's rights.

[RT I 2006, 48, 360 - entry into force 18.11.2006]

(4) Subsections 1 and 2 of this section do not preclude the liability of a public authority if a judge or authority conducting extrajudicial adjudication of a dispute or misdemeanour has caused damage by acts which are not related to administration of justice, adjudication of the dispute or misdemeanour.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

§ 16. Damage caused by lawful administrative act or measure

(1) A person may claim fair compensation for patrimonial damage caused by a lawful administrative act or measure which extraordinarily restricts the fundamental rights or freedoms of the person.

(2) Unless otherwise provided by law, compensation specified in subsection 1 of this section cannot be claimed to the extent where:

- 1) the restriction of fundamental rights or freedoms was caused by the person or the restriction was in the interests of the person;
- 2) special treatment of persons is prescribed by law;
- 3) the person can receive compensation from elsewhere, including from insurance;
- 4) the issue of payment of compensation is regulated by other Acts.

(3) Upon grant of compensation, the benefit gained by the public authority or advance in public interests as result of the restriction of fundamental rights and freedoms, gravity of the restriction, the extent to which the damage was unforeseeable and other relevant circumstances shall be taken into consideration.

Subchapter 3 Procedure for compensation for damage

§ 17. Filing of application or action

(1) To receive compensation for damage, an application may be submitted to the administrative authority which caused the damage or an action may be filed with an administrative court. Applications for compensation for damage caused by courts shall be submitted to the Ministry of Justice.

(2) If damage is caused in a case specified in subsection 3 of § 12 of this Act, the application shall be submitted to the administrative authority which authorised the natural person or legal person in private law who caused the damage to perform public duties. If authority arises expressly from law, the application shall be submitted to the administrative authority exercising state supervision over the natural person or legal person in private law.

(3) An application or action shall be filed within three years as of the date on which the injured party became aware or should have become aware of the damage and of the person who caused it, but not later than within ten years as of the causing of damage or the event which caused the damage regardless of whether the injured party became aware of the damage and of the person who caused it.

§ 18. Review of applications

(1) An administrative authority is required to adjudicate an application within two months as of the submission thereof as required.

(2) If an administrative authority denies an application for compensation for damage or fails to adjudicate an application on time or if the injured party does not agree to the amount or manner of compensation, the injured party may file an action with an administrative court within thirty days for the order of payment of compensation.

Subchapter 4 Recourse

§ 19. Bases for recourse

(1) A public authority who compensates for damage on the basis of this Chapter may file a claim of recourse against a person specified in subsections 2 and 3 of § 12 of this Act whose unlawful activities resulted in the occurrence of damage, or against a public authority for whom damage was compensated for on the basis of solidary liability.

(2) Compensation is reduced if satisfying a claim of recourse in full would be unfair taking into account the orders and instructions issued by the public authority and considering the circumstances specified in subsection 1 of § 13 of this Act.

(3) A person specified in subsection 2 of § 12 of this Act is liable to a public authority only if damage was caused wrongfully.

§ 20. Procedure for claim of compensation

(1) In order to receive compensation on the basis of a claim of recourse, a public authority shall make a written proposal to a person, specifying the extent of, procedure for and the term of compensation for damage and the circumstances which are the basis for claiming compensation. The person shall respond to the proposal in writing.

(2) A proposal may be made within three months as of the date when the public authority became or should have become aware of the circumstances which are the basis of the claim of recourse, but not later than within three years as of the causing of damage regardless of whether or not the public authority became aware of the circumstances. The said term shall not commence before payment of compensation for damage to the injured party by the public authority is decided or the public authority is ordered to pay compensation to the injured party.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

(3) The person shall be given at least two weeks to respond to the proposal.

(4) If a person fails to respond to the proposal in due time, refuses to compensate for damage or fails to compensate for damage during the term indicated in the proposal, the public authority has the right of recourse to an administrative court, within thirty days as of the appearance of the circumstances provided for in this subsection, for the order of payment of compensation.

(5) Upon filing of a claim of recourse, the public authority shall be represented by the administrative authority which decided the compensation for damage to the injured party.

§ 21. Special cases of recourse

(1) An official is liable to a public authority on the bases and pursuant to the procedure provided for in the Public Service Act.

(2) A person who causes damage acting on the basis of a private law relationship between the person and a public authority is liable to the public authority only on the bases provided by private law.

(3) The Estonian Health Insurance Fund has the right of recourse to the extent of health insurance benefit paid by the Fund in the case of damage caused to an insured person by a public authority through health damage or bodily injury. The claim shall be submitted pursuant to the procedure provided for in §§ 17 and 18 of this Act. [RT I, 11.03.2023, 9 – entry into force 01.04.2023]

Chapter 4

UNJUST ENRICHMENT

§ 22. Unjust enrichment in public law relationships

(1) A person may request a public authority to return a thing or money transferred without legal basis in a public law relationship unless otherwise provided by law. If the return of a thing received without legal basis is not possible or involves excessive costs, the entitled person may request compensation for the value of the thing in money.

(2) Unless otherwise regulated by this Act and if it is not in conflict with the nature of the public law relationship, the provisions of private law apply to unjust enrichment in a public law relationship.

(3) A public authority may request from a person the return of a thing or money transferred without legal basis in a public law relationship on the bases and pursuant to the procedure provided by private law.

§ 23. Interest and gains received from thing

In addition to the provisions of subsection 1 of § 22 of this Act, a person may request from a public authority:

- 1) an annual interest of six per cent for money received without legal basis;
- 2) the delivery of gains received from the transfer and use of the thing.

§ 24. Deciding on claims

(1) Claims arising from unjust enrichment in public law relationships shall be decided on, by an administrative act, by the administrative authority which received the thing or money. The manner and extent of the return or compensation shall be indicated in the administrative act. Upon the return to an entitled person of an immovable or another thing entered in a register which is in the ownership of a public authority, an entry concerning the transfer of ownership shall be made in the land register or another register on the basis of the administrative act and a notarised petition of the public authority.

(2) An application shall be filed within three years as of the date on which the entitled person became aware or should have become aware of the claim, but not later than within ten years as of the creation of the claim regardless of whether or not the entitled person became aware of the claim.

[RT I 2004, 56, 405 - entry into force 25.07.2004]

Chapter 5 FINAL PROVISIONS

§ 25.–§ 30.[Omitted from this text]

§ 31. Implementation of Act

(1) The provisions which were in force prior to the entry into force of this Act and general principles of compensation for damage apply upon the review of actions filed prior to the entry into force of this Act for the compensation for damage caused in public law relationships or the return of money or things received without legal basis.

(2) Applications or actions for compensation for damage caused or the return of things or money transferred without legal basis prior to the entry into force of this Act may be filed within the term valid for filing the action to settle the corresponding dispute prior to the entry into force of this Act but not later than within three years as of the entry into force of this Act.

(3) Subsection 2 of this section does not apply if the person becomes aware of the creation of the right of claim after the entry into force of this Act.

(4) Compensation for damage caused by legislation of general application established prior to the entry into force of the Constitution of the Republic of Estonia cannot be claimed on the basis of this Act.

(5) A person whose application for compensation for damage caused by unjust deprivation of liberty is denied by the Ministry of Finance prior to the entry into force of this Act may file an action with an administrative court within six months as of the receipt of notice of the refusal. Actions filed with courts prior to the entry into force of this Act for the compensation for damage caused by unjust deprivation of liberty are reviewed on the bases and pursuant to the procedure valid prior to the entry into force of this Act.

(6) Compensation for loss of income due to incapacity for work specified in clause 3 of subsection 2 of § 8 of this Act cannot be claimed to the extent to which the injured party is entitled to receive pension for incapacity for work due to the damage caused.

[RT I, 13.12.2014, 1 - entry into force 01.07.2016 (entry into force altered – RT I, 17.12.2015, 1)]

§ 32. Entry into force of Act

This Act enters into force on 1 January 2002.