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Compensation for Damage Caused in Offence Proceedings Act

Passed 05.11.2014

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of this Act

(1) This Act provides the grounds, extent of and procedure for compensation for damage caused in offence proceedings by a body that conducted those proceedings.

(2) Unless otherwise provided by law, in addition to this Act and without prejudice to special rules that apply in offence proceedings, compensation for damage caused in offence proceedings is also subject to provisions of private law concerning such compensation.

(3) Compensation for damage caused in offence proceedings is subject to the State Liability Act only in the cases provided in this Act.

§ 2. Person obligated to compensate for damage

(1) Compensation for damage caused in criminal or misdemeanour proceedings by a body that conducted those proceedings is made by the Republic of Estonia through the Ministry of Finance.

(2) If the body that conducted extra-judicial misdemeanour proceedings is a rural municipality or city government, compensation for damage caused by that body in those proceedings is made by the corresponding local authority.

(3) Damage caused by a body that conducted the proceedings is deemed to be damage specified in subsection 12 (2) of the State Liability Act.

(4) If the measure which caused the damage was applied in international co-operation in criminal proceedings, damage caused by the body that conducted the proceedings is deemed to be:

- 1) damage that is caused in offence proceedings and that falls under sections 5 or 6 of this Act, if the Republic of Estonia is the requesting state;
- 2) damage that is caused in offence proceedings and that falls under section 7 of this Act, if the Republic of Estonia is the requested state.

§ 3. Compensation for damage to third parties

Compensation for damage to third parties is made in accordance with section 10 of the State Liability Act.

Chapter 2 GROUNDS FOR COMPENSATION FOR DAMAGE

§ 4. Right to demand compensation for damage caused in offence proceedings

A person may demand compensation for damage caused to them in offence proceedings by the body that conducted those proceedings on the grounds, to the extent and following the procedure provided in this Act.

§ 5. Compensation for damage depending on final outcome of offence proceedings

(1) If a person is acquitted or criminal proceedings are terminated with respect to them on the basis of clause 199 (1) 1), 2) or 5) of the Code of Criminal Procedure, they may demand compensation for damage provided that damage was caused by:

- 1) their being taken into custody;
- 2) their being detained as a suspect;
- 3) their being prohibited to depart from their residence;
- 4) their being removed from office;
- 5) their property being seized or taken;
- 6) unreasonable length of the proceedings.

(2) If misdemeanour proceedings are terminated with respect to a person on the basis of clause 29 (1) 1), 2), 3), 5) or 6) of the Code of Misdemeanour Procedure, that person may demand compensation for damage provided that damage was caused by:

- 1) their detention in misdemeanour proceedings;
- 2) unreasonable length of the proceedings.

(3) If damage within the meaning of subsection 1 of this section was caused to a person in criminal proceedings and, after termination of those proceedings on the basis of clause 199 (1) 1) of the Code of Criminal Procedure, misdemeanour proceedings were commenced with respect to that person in connection with the same act, which were then terminated on the basis mentioned in subsection 2 of this section, the person has the right to demand compensation for the damage caused to them. If damage within the meaning of subsection 2 of this section was caused to a person and, after termination of misdemeanour proceedings on the basis of clause 29 (1) 4) of the Code of Misdemeanour Procedure, criminal proceedings were commenced with respect to that person in connection with the same act, which were then terminated on the basis mentioned in subsection 1 of this section, the person has the right to demand compensation for the damage caused to them.

(4) In the case of a judgment of conviction, the accused or the person subject to proceedings has the right to demand compensation for damage caused by a measure mentioned in subsection 1 or 2 of this section provided the measure that they were subjected to was significantly more burdensome in comparison to what they were sentenced to or to what was determined in their case. Similarly, in the case of a judgment of conviction, the convicted person has the right to demand compensation for damage caused by unreasonable length of the proceedings if their sentence is not reduced regardless of the reasonable length of proceedings being exceeded.

(5) If damage to a third party within the meaning of Chapter 7 of the Penal Code was caused by seizure of property, that party may demand compensation for such damage if the property concerned is not confiscated, except if confiscation of the property is forgone on the grounds described in subsection 83¹(3) of the Penal Code.

(6) If property was taken from a person who was not a suspect or accused in criminal proceedings or from a person subject to misdemeanour proceedings, that person has the right, if they suffer damage, to demand compensation for such damage, provided the offence proceedings are terminated on the basis mentioned in subsections 1 or 2 of this section.

§ 6. Compensation for damage in case of review

(1) If a person's sentence is reduced, a person is acquitted or criminal proceedings are terminated with respect to them on the basis of clause 199 (1) 1), 2) or 5) of the Code of Criminal Procedure as a result of a new hearing of the criminal case resumed due to review, the person may demand compensation for damage caused by the previous sentence.

(2) If a person's sentence is reduced or misdemeanour proceedings are terminated with respect to them on the basis of clause 29 (1) 1), 2), 3), 5) or 6) of the Code of Misdemeanour Procedure as a result of a new hearing in the misdemeanour case resumed due to review, the person may demand compensation for damage caused by the previous sentence.

(3) The provisions of subsection 1 of this section also apply if, by the decision annulled due to review, the person was subjected to other sanctions within the meaning of Chapter 7 of the Penal Code.

§ 7. Compensation for damage regardless of final outcome of offence proceedings

(1) If the body that conducts proceedings negligently or knowingly violates the law that governs those proceedings and thereby causes damage to a person, that person has the right to demand compensation for such damage regardless of the final outcome of the offence proceedings by which the damage was caused.

(2) The body that conducted the proceedings is exempted from liability if they prove that they were not at fault when causing the damage.

(3) If the damage specified in subsection 1 of this section is caused by a court, liability is assumed by the State in accordance with the State Liability Act.

(4) A person has the right to demand compensation for damage caused to them by compulsory placement in a medical institution on the basis of the Code of Criminal Procedure if the court order concerning their placement in the medical institution is annulled.

§ 8. Circumstances precluding compensation for damage

(1) A person has no right to demand compensation for damage if:

- 1) they are acquitted or offence proceedings are terminated with respect to them because they are deemed not guilty, within the meaning of Division 3 of Chapter 2 of the Penal Code, of committing the relevant unlawful act, except in the case of compensation for damage on the basis of section 7 of this Act;
- 2) they intentionally or inadvertently caused the imposition of the measure that caused the damage, including by failure to disclose circumstances constituting the basis for review, by a false admission of guilt, by evasion of proceedings, by a violation of the obligation, imposed as part of a preventive measure, not to leave their residence without permission, or by absconding;
- 3) the unreasonable length of the proceedings is attributed to the person who suffered the damage or to their defence counsel.

(2) In exceptional circumstances, a person may demand compensation for damage also if grounds provided in subsection 1 of this section are present but failure to compensate for damage would be excessively burdensome for them. In such a case, the amount of the compensation paid to the person may be reduced.

Chapter 3

SPECIAL RULES CONCERNING THE EXTENT OF COMPENSATION FOR DAMAGE

§ 9. Extent of compensation for damage

(1) Unless otherwise provided in this Act, determination of the amount of compensation shall be based on subsection 13 (1) of the State Liability Act without prejudice to special rules that apply in offence proceedings.

(2) The body that conducts the proceedings may vary the amount of the compensation provided for in this Chapter if such compensation would be unfair, taking into consideration the significant facts and legitimate interests of the particular case.

§ 10. Compensation for pecuniary damage

(1) Damage caused by the seizure or taking of bank accounts or cash shall be compensated for under sections 5 or 6 of this Act up to a maximum amount that corresponds to interest calculated at the rate of six percent per year on the amount seized or taken. The same limit applies when refunding any amounts paid or collected as fines or pecuniary punishment or fines to the extent of assets.

(2) Under sections 5 or 6 of this Act, pecuniary damage is compensated for up to the maximum amount obtained by multiplying, by 48, the last quarter-based average gross monthly salary figure that is published by Statistics Estonia preceding the month during which the demand for compensation is made.

§ 11. Compensation for non-pecuniary damage

(1) Compensation is made to a natural person for non-pecuniary damage under sections 5 or 6 of this Act only if that person was deprived of liberty in offence proceedings or if the person's right to a reasonable length of proceedings was violated.

(2) Compensation is made to a natural person for non-pecuniary damage under section 7 of this Act only if, in offence proceedings, that person was deprived of liberty, they were tortured or treated in an inhuman or degrading manner, damage has been caused to their health or if the inviolability of their home or of their private life has been infringed, the confidentiality of their messages has been violated or their honour or good name defamed. Where violation of the law governing the proceedings amounted to torturing the person or to inhuman or degrading treatment of the person, the fault of the body that conducted the proceedings does not constitute a prerequisite for compensation for non-pecuniary damage.

(3) Non-pecuniary damage is presumed to arise. Such damage is compensated for in cash to the extent that it cannot be remedied by other means, including by admission of mistake and by apology.

(4) In cases of deprivation of liberty, compensation for non-pecuniary damage is made in accordance with the daily rate for each calendar day that commenced such that the person who demands compensation was deprived of their liberty. The amount of the daily rate is the quotient obtained by dividing, by 30, the last quarter-based

average gross monthly salary figure that is published by Statistics Estonia preceding the month during which the demand for compensation was made.

(5) In cases of unreasonable length of proceedings, compensation for non-pecuniary damage for each year of delay amounts to the last quarter-based average gross monthly salary figure that is published by Statistics Estonia preceding the month during which the demand is made.

Chapter 4

PROCEDURE FOR COMPENSATION FOR DAMAGE

Division 1

Application for Compensation for Damage

§ 12. Application for compensation for damage

Compensation for damage is made on the basis of a written application of the person who suffered the damage. The application shall set out:

- 1) the applicant's name, personal identification code or in the absence thereof the date of birth or registry code, address, telecommunications numbers and bank account number;
- 2) the name, address and telecommunications numbers of the applicant's representative or defence counsel, if the applicant has a representative or defence counsel;
- 3) the amount of the damage caused and of the compensation;
- 4) in the case compensation is demanded for non-pecuniary damage, and in the case it is impossible or unreasonably difficult for the applicant to determine the amount of pecuniary damage, the applicant has the right not to indicate the amount of the compensation in the application and request fair compensation;
- 5) the measure by which the damage was caused;
- 6) content of the measure, name, date, number of the document issued for the application of the measure and the official, or body that conducted the proceedings, who issued or applied it, if the submission of such particulars is possible;
- 7) the factual reasons for the application;
- 8) the evidence which confirms the facts asserted by the applicant, including specific reference as to which evidentiary item is to support which fact;
- 9) when the applicant learned of the order or decision which gave rise to their right to demand compensation for damage, or of the damage caused;
- 10) list of annexes to the application.

§ 13. Dismissal of applications and of appeals

(1) If an application or appeal does not conform to the requirements and shows defects which can be eliminated, the body that conducts the proceedings shall, at the first opportunity, set a reasonable time limit for elimination of those defects. The body shall explain that, should the defects not be eliminated by the due date, and should they prevent consideration of the application or appeal, it may dismiss that application or appeal and return it.

(2) If the application or appeal is submitted after the expiry of the time limit, it shall include a request for reinstatement of that time limit and the reasons why the time limit was allowed to expire. The body that conducts the proceedings shall return the application or appeal without considering it if the time limit for its submission has expired and is not reinstated.

(3) If it is manifest that the person has no right to demand compensation for damage, their application or appeal may be dismissed.

(4) The applicant shall be notified of the dismissal of their application or appeal. The reasons for dismissal of the application or appeal must be stated in writing.

Division 2

Rules for Compensation for Damage in Pre-Court Proceedings and in Extra-Judicial Misdemeanour Proceedings

§ 14. Application for compensation for damage in pre-court and extra-judicial proceedings

(1) When the Prosecutor's Office, investigative body or body that conducts extra-judicial proceedings draws up an order on the basis of which the right to demand compensation for damage under sections 5 or 6 of this Act accrues to a person, it explains to the person to whom such a right accrued the procedure for applying for the compensation provided for in this Act.

(2) In criminal proceedings, the person submits the application for compensation for damage under sections 5, 6 or 7 of this Act to the Prosecutor's Office and in misdemeanour proceedings, to the body that conducts the extra-judicial proceedings.

(3) The application for compensation under sections 5 or 6 of this Act is to be submitted by the person within six months following the day when they became aware or should have become aware of the order of the Prosecutor's Office, investigative body or body that conducts the extra-judicial proceedings on the basis of which the right to demand compensation for damage accrued to them.

(4) The application for compensation under section 7 of this Act is to be submitted by the person within three years following the day when they became aware or should have become aware of the damage but, regardless of whether or not there was such awareness, not later than within ten years after the causing of the damage or the event that caused it.

§ 15. Resolution of the application by the Prosecutor's Office and the body that conducts extra-judicial proceedings

(1) The Prosecutor's Office or the body that conducts the extra-judicial proceedings resolves the application within two months following its submission in compliance with requirements. If the case is particularly extensive or complicated, the corresponding time limit may be extended by order by one month.

(2) If the termination of criminal proceedings is contested in accordance with the rules provided in sections 207 and 208 of the Code of Criminal Procedure, the Prosecutor's Office suspends proceedings on the application submitted under sections 5 or 6 of this Act until the entry into force of the ruling entered in respect of the termination of criminal proceedings.

(3) The Prosecutor's Office or body that conducts the extra-judicial proceedings may, by order:

- 1) deny the application;
- 2) grant the application in part and award compensation to the person to the extent to which their application is granted, or
- 3) grant the application and award compensation as requested in the application.

§ 16. Proceedings on complaint at the Office of the Prosecutor General

(1) If the Prosecutor's Office denies the application in part or in full or dismisses it, the person may file a written complaint against the order of the Prosecutor's Office with the Office of the Prosecutor General within 30 days following the day when he or she became aware or should have become aware of the contested order. If the Prosecutor's Office fails to resolve the application within the applicable time limit, the person may submit a written complaint to the Office of the Prosecutor General within 30 days following the day when the Prosecutor's Office should have resolved the application.

(2) The Office of the Prosecutor General resolves the complaint within two months following its filing in compliance with requirements. If the case is particularly extensive or complicated, the corresponding time limit may be extended by order by one month.

(3) The Office of the Prosecutor General may, by order:

- 1) deny the appeal;
- 2) grant the appeal in part and award compensation to the person to the extent to which their appeal is granted;
- 3) grant the appeal and award compensation as requested in the application;
- 4) annul the order of the Prosecutor's Office by which the application was denied.

§ 17. Proceedings on appeals at the district court

(1) If the Office of the Prosecutor General or the body that conducts the extra-judicial proceedings denies the complaint or application in part or in full or dismisses it or fails to resolve it during the applicable time limit, the person who brought that complaint or application may file, with the district court in whose judicial district the order issued on the basis of sections 5 or 6 of this Act was drawn up or in whose judicial district the damage falling under section 7 of this Act was caused, a written complaint against the order of the Office of the Prosecutor General or of the body that conducts the extra-judicial proceedings.

(2) The complaint is to be submitted within 30 days following the day when the person became aware or should have become aware of the order contested. In the case of failure to resolve the application within the applicable time limit, the complaint is to be filed within 30 days following the day when respectively the Office of the Prosecutor General or the body that conducts the extra-judicial proceedings should have resolved that application.

(3) The district court may, by order:

- 1) deny the complaint;

- 2) grant the complaint in part and award compensation to the person to the extent to which their complaint is granted;
- 3) grant the complaint and award compensation as requested in the application;
- 4) annul the order of the Prosecutor's Office by which the application was denied.

(4) The order of the district court may be appealed to the court of appeal in accordance with the rules provided in Chapter 15 of the Code of Criminal Procedure. The appeal is to be filed within 30 days following the day when the person appealing the order became aware or should have become aware of that order.

Division 3

Rules for Compensation for Damage in Judicial Proceedings

§ 18. Compensation for damage in offence proceedings at district court

(1) In the course of criminal or misdemeanour proceedings, the person concerned submits the application for compensation to the court. The application is to be submitted in the proceedings before the district court before completion of examination of the case by the court.

(2) The court decides the matter of compensation by order or judgment.

§ 19. Contestation of the decision of district court

(1) A judgment on compensation for damage entered by the district court in criminal proceedings may be contested in accordance with Chapters 11 or 15 of the Code of Criminal Procedure.

(2) If the district court dealt with the misdemeanour case under Chapter 11 of the Code of Misdemeanour Procedure, the judgment of that court on compensation for damage may be contested in the court of appeal in accordance with Chapters 13 or 16 of that Code. If the district court dealt with the misdemeanour case on the basis of Chapter 12 of the Code of Misdemeanour Procedure, the judgment of the district court on compensation for damage may be contested in the Supreme Court in accordance with Chapters 14 or 16 of that Code.

(3) The order of the district court on compensation for damage may be contested in criminal proceedings pursuant to Chapter 15 of the Code of Criminal Procedure and in misdemeanour proceedings pursuant to Chapter 16 of the Code of Misdemeanour Procedure.

§ 20. Contesting the decision of the court of appeal

(1) A judgment on compensation for damage entered by the court of appeal in criminal proceedings may be contested in accordance with Chapters 12 or 15 of the Code of Criminal Procedure.

(2) A judgment on compensation for damage entered by the court of appeal in misdemeanour proceedings may be contested in accordance with Chapters 14 or 16 of the Code of Misdemeanour Procedure.

(3) The order of the court of appeal on compensation for damage may be contested in criminal proceedings in accordance with Chapter 15 of the Code of Criminal Procedure and in misdemeanour proceedings in accordance with Chapter 16 of the Code of Misdemeanour Procedure.

§ 21. Filing the application after completion of proceedings before district court

(1) If the person concerned failed, for valid reasons, to file the application for compensation with the district court in criminal proceedings, he or she may, after the district court has pronounced its decision, file it with the court of appeal following Chapters 11 or 15 of the Code of Criminal Procedure.

(2) If the person concerned failed, for valid reasons, to file the application with the district court which dealt with the misdemeanour case under Chapter 11 of the Code of Misdemeanour Procedure, he or she may, after the district court has pronounced its decision, file it with the court of appeal following Chapter 16 of the Code of Misdemeanour Procedure.

(3) The application referred to in subsections 1 and 2 of this section may be filed within six months after the pronouncement of the decision of the district court.

(4) If the person concerned failed, for valid reasons, to submit the application to the court of appeal or if the presence of a cause of the claim for compensation for damage became known only in cassation proceedings and the person failed, for valid reasons, to file the corresponding application with the Supreme Court, that application may be filed with the Prosecutor's Office or the body that conducted the extra-judicial proceedings. The application is to be filed within six months following the day on which the decision of the court of appeal or of the Supreme Court becomes final. When resolving the application, the provisions of Division 2 of Chapter 4 of this Act are to be observed.

Chapter 5

COMPENSATION FOR DAMAGE IN RESUMED CRIMINAL PROCEEDINGS

§ 22. Reclamation of the compensation for damage

(1) If criminal proceedings are resumed in connection with the same criminal offence with respect to the person who suffered damage, their right to compensation under sections 5 or 6 of this Act is extinguished.

(2) If compensation has been paid, the body that conducts resumed criminal proceedings reclaims it, except in the case that body makes a determination on the basis of which a right to demand compensation for damage accrues to the person concerned.

Chapter 6 IMPLEMENTING PROVISIONS

§ 23. Implementation of this Act

(1) Applications for compensation for damage caused in offence proceedings that were commenced prior to entry into force of this Act but that have not been completed shall be filed on the basis and in accordance with the rules provided in this Act.

(2) Applications submitted prior to the entry into force of this Act for compensation for damage caused to a person by the State by unjust deprivation of liberty are considered on the basis and in accordance with the rules valid prior to the entry into force of this Act.

(3) If this Act prescribes compensation for damage caused in offence proceedings in a case which is not covered by the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act, this Act shall apply retroactively.

(4) The application for compensation for the damage referred to in subsection 3 of this Act is to be filed with the Prosecutor's Office or the body that conducted the extra-judicial proceedings. The application is to be filed within the time limit prescribed in the Code of Administrative Court Procedure for submission of compensation actions, but not later than within three years following the entry into force of this Act. When resolving the application, the provisions of Division 2 of Chapter 4 of this Act are to be observed.

(5) An action concerning compensation for damage is only to be adjudicated by administrative courts, courts of appeal and the Supreme Court on the grounds provided in this Act if the administrative court has accepted that action.

§ 24. Omitted from this translation

§ 25. Repeal of Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act

Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act is hereby repealed.

§ 26. – § 28. Omitted from this translation

§ 29. Entry into force of Act

This Act enters into force on 1 May 2015.

Eiki Nestor
President of the Riigikogu