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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 rules for compensation for harm caused in offence proceedings by a proceedings authority.

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

(3) The State Liability Act applies to compensation for harm caused in offence proceedings only in the cases provided for in this Act.

§ 2. Person obligated to compensate for harm

(1) Compensation for harm caused in criminal or misdemeanour proceedings by a proceedings authority is made by the Republic of Estonia through the Ministry of Finance.

(2) Where, in misdemeanour proceedings, the out-of-court proceedings authority is the executive of a local authority, compensation for harm caused by the proceedings authority in such proceedings is made by the local authority.

(3) The harm that is deemed to have been caused by a proceedings authority is harm mentioned in subsection 2 of § 12 of the State Liability Act.

(4) If the measure that caused the harm was applied in international co-operation in criminal proceedings, the proceedings authority is deemed to have caused:

- 1) the harm that was 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) the harm that was caused in offence proceedings and that falls under section 7 of this Act, if the Republic of Estonia is the executing state.

§ 3. Compensation for harm to third parties

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

Chapter 2 GROUNDS FOR COMPENSATION FOR HARM

§ 4. Right to claim compensation for harm caused in offence proceedings

A person may claim compensation for harm caused to them in offence proceedings by the proceedings authority on the grounds, to the extent and following the rules provided in this Act.

§ 5. Compensation for harm 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 1, clause 2 or clause 5 of subsection 1 of § 199 of the Code of Criminal Procedure, they may claim compensation for harm provided the harm was caused by:

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

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

- 1) their having been arrested in those proceedings;
- 2) unreasonable length of the proceedings.

(3) If harm 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 1 of subsection 1 of § 199 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 a right to claim compensation for the harm caused to them. If harm 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 4 of subsection 1 of § 29 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 a ground mentioned in subsection 1 of this section, the person has a right to claim compensation for the harm caused to them.

(4) In the case of a judgment of conviction, the accused or the person subject to proceedings has a right to claim compensation for harm 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 the sentence or sanction that was imposed on them. Similarly, in the case of a judgment of conviction, the convicted person has a right to claim compensation for harm caused by unreasonable length of the proceedings if their sentence has not been reduced regardless of the reasonable length of proceedings having been exceeded.

(5) If harm to a third party within the meaning of Chapter 7 of the Penal Code was caused by an attachment of property, that party may claim compensation for such harm provided the property concerned is not confiscated, except where confiscation of the property is forgone on the grounds mentioned in subsection 3 of § 83¹ of the Penal Code.

(6) If property was seized from a person who was not a suspect or accused in criminal proceedings or from a person who was not subject to misdemeanour proceedings, that person has a right, if they have been caused harm, to claim compensation for such harm, provided the offence proceedings are terminated on the basis mentioned in subsection 1 or 2 of this section.

§ 6. Compensation for harm on review of a judicial disposition that has entered into effect

(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 1, 2 or 5 of subsection 1 of § 199 of the Code of Criminal Procedure as a result of retrial of a criminal case reopened on review, the person may claim compensation for any harm caused to them 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 1, 2, 3, 5 or 6 of subsection 1 of § 29 of the Code of Misdemeanour Procedure as a result of retrial of a misdemeanour case reopened on review, the person may claim compensation for any harm caused to them by the previous sentence.

(3) The provisions of subsection 1 of this section apply also if, by the judicial disposition set aside on review, the person had been subjected to other sanctions within the meaning of Chapter 7 of the Penal Code.

§ 7. Compensation for harm regardless of the final outcome of offence proceedings

(1) If the proceedings authority negligently or knowingly violates procedural law and thereby causes harm to a person, the person has a right to claim compensation for such harm regardless of the final outcome of the offence proceedings by which the harm was caused.

(2) The proceedings authority is exempted from liability if it proves that it did not cause the harm intentionally or through negligence.

(3) If the harm mentioned 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 a right to claim compensation for harm 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 has been set aside.

§ 8. Circumstances precluding compensation for harm

(1) A person has no right to claim compensation for harm if:

- 1) they are acquitted or offence proceedings are terminated with respect to them because they are deemed not guilty, within the meaning of Subchapter 3 of Chapter 2 of the Penal Code, of committing the relevant unlawful act, except in a situation where compensation for harm is to be made under § 7 of this Act;
- 2) they intentionally or inadvertently caused the imposition of the measure that led to the harm, including by omission to disclose circumstances constituting grounds for review of a judicial disposition that has entered into effect, by a false admission of guilt, by evading the proceedings, by violating the prohibition – imposed as part of a compliance enforcement measure – to depart from their residence, or by absconding;
- 3) the unreasonable length of proceedings was due to the person who suffered the harm or to their defence counsel.

(2) In exceptional circumstances, a person may claim compensation for harm also if grounds provided in subsection 1 of this section are present and a refusal of compensation would be excessively burdensome for them. In such a situation, the amount of compensation to be paid to the person may be reduced.

Chapter 3

SPECIAL RULES CONCERNING THE EXTENT OF COMPENSATION FOR HARM

§ 9. Extent of compensation for harm

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

(2) Where the amount of the compensation provided for in this Chapter is not fair, it may be varied by the proceedings authority, taking into consideration the material facts and legitimate interests of the case.

§ 10. Compensation for pecuniary harm

(1) Under sections 5 or 6 of this Act, harm caused by the attachment or seizure of a bank account or cash is compensated for up to a maximum amount that corresponds to interest calculated at the rate of six percent per year on the amount attached or seized. The same limit applies when amounts paid or collected as a fine or pecuniary penalty or forfeiture of property are refunded.

(2) Under sections 5 or 6 of this Act, pecuniary harm 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 claim for compensation is made.

§ 11. Compensation for non-pecuniary harm

(1) Under § 5 or § 6 of this Act, compensation is made to a natural person for non-pecuniary harm only if the person was deprived of liberty in offence proceedings or if the person's right to a reasonable length of proceedings was violated.

(2) Under § 7 of this Act, compensation is made to a natural person for non-pecuniary harm only if, in offence proceedings, the person was deprived of liberty; they were tortured or treated in an inhuman or degrading manner; harm has been caused to their health or 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 a violation of procedural law has subjected the person to torture or to inhuman or degrading treatment, the making of compensation for non-pecuniary harm is not predicated on the intention or negligence of the proceedings authority.

(3) It is presumed that non-pecuniary harm has been suffered. Such harm 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 harm is made in accordance with the daily rate for each calendar day that commenced such that the person was deprived of their liberty. The amount of the daily rate is 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 claim for compensation was made.

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

Chapter 4

PROCEDURE FOR COMPENSATION FOR HARM

Subchapter 1

Applying for Compensation for Harm

§ 12. Application for compensation for harm

Compensation for harm is made on a written application of the person who suffered the harm. The application sets out:

- 1) the applicant's name, personal identification code or in the absence of such a code the date of birth or registration number, 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 harm caused and of the compensation;
- 4) where compensation is claimed for non-pecuniary harm, or where it is impossible or unreasonably difficult for the applicant to determine the amount of pecuniary harm, the applicant may forgo stating the amount of the compensation in the application and apply for a fair compensation;
- 5) the measure by which the harm was caused;
- 6) the substance of the measure, the name, date and number of the document issued for the application of the measure and the official, or proceedings authority, who issued or applied it, if presentation of such particulars is possible;
- 7) the factual reasons for the application;
- 8) evidence to confirm the facts asserted by the applicant, specifically indicating which item of evidence is intended to prove which fact;
- 9) when the applicant learned of the order or decision which gave rise to their right to claim compensation for harm, or of the harm caused;
- 10) a list of annexes to the application.

§ 13. Dismissal of an application and of an appeal

(1) If an application or appeal does not conform to the requirements and shows defects which can be cured, the proceedings authority, at the first opportunity, sets a reasonable time limit for the applicant or appellant to cure those defects. The authority explains that, should the defects not be cured by the due date, and should they present an obstacle to consideration of the application or appeal, it may dismiss the application or appeal and return it.

(2) If the application or appeal is filed after expiry of the time limit, the applicant or appellant includes in it an application for reinstatement of that time limit and the reasons why the time limit was allowed to expire. The proceedings authority returns the application or appeal without considering it if the time limit for its filing has expired and is not reinstated.

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

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

Subchapter 2

Rules for Compensation for Harm: Pre-Trial Proceedings and Out-of-Court Proceedings in a Misdemeanour Case

§ 14. Application for compensation for harm in pre-trial and out-of-court proceedings

(1) When the Prosecutor's Office, an investigative authority or an out-of-court proceedings authority makes an order which gives a person a right to claim compensation for harm under §§ 5 or 6 of this Act, it explains to the person entitled to make the claim the rules for applying for the compensation provided for in this Act.

(2) An application for compensation for harm under §§ 5, 6 or 7 of this Act is filed, in criminal proceedings, with the Prosecutor's Office and, in misdemeanour proceedings, with the out-of-court proceedings authority.

(3) An application for compensation under § 5 or § 6 of this Act is filed by a 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 authority or out-of-court proceedings authority which entitles them to claim compensation for harm.

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

§ 15. Disposing of the application by the Prosecutor's Office and by the out-of-court proceedings authority

(1) The Prosecutor's Office or the out-of-court proceedings authority disposes of the application within two months following its having been filed in compliance with the requirements. If the case is particularly extensive or complicated, that time limit may be extended by one month by an order.

(2) If the termination of criminal proceedings is contested in accordance with the rules provided in §§ 207 and 208 of the Code of Criminal Procedure, the Prosecutor's Office suspends proceedings on an application filed under §§ 5 or 6 of this Act until the entry into effect of the decision made in respect of the termination of criminal proceedings.

(3) The Prosecutor's Office or the out-of-court proceedings authority 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 appeal at the Office of the Prosecutor General

(1) If the Prosecutor's Office denies an application in part or in full or dismisses it, the person may file a written appeal against the order of the Prosecutor's Office with the Office of the Prosecutor General within 30 days following the day when they became aware or should have become aware of the order to be contested. If the Prosecutor's Office omits to dispose of the application within the relevant time limit, the person may file a written appeal with the Office of the Prosecutor General within 30 days following the day on which the Prosecutor's Office should have disposed of the application.

(2) The Office of the Prosecutor General disposes of the appeal within two months following its having been filed in compliance with the requirements. If the case is particularly extensive or complex, the time limit may be extended by one month by an order.

(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) set aside the order of the Prosecutor's Office by which the application was denied.

§ 17. Proceedings on appeal before the District Court

(1) If the Office of the Prosecutor General or the out-of-court proceedings authority denies the appeal or application in part or in full or dismisses it or omits to dispose of it during the relevant time limit, the person may file a written appeal, with the District Court in whose service area the order rendered under § 5 or § 6 of this Act was made or in whose service area the harm falling under § 7 of this Act was caused, against the order of the Office of the Prosecutor General or of the out-of-court proceedings authority.

(2) An appeal is submitted within 30 days following the day when the person became aware or should have become aware of the order to be contested. On omission to dispose of the application within the relevant time limit, the appeal is filed within 30 days following the day when, respectively, the Office of the Prosecutor General or the out-of-court proceedings authority should have disposed of that application.

(3) The District Court 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 was granted;
- 3) grant the appeal and award compensation as requested in the application;
- 4) set aside the order of the Prosecutor's Office by which the application was denied.

(4) An interim appeal may be filed against an order of the District Court to the Circuit Court of Appeal in accordance with the rules provided in Chapter 15 of the Code of Criminal Procedure. The interim appeal is filed

within 30 days following the day when the person became aware or should have become aware of the court order to be contested.

Subchapter 3

Rules for Compensation for Harm: Proceedings before the Courts

§ 18. Compensation for harm during trial of the offence before the District Court

(1) At the trial stage of a criminal or misdemeanour case, a person makes the application for compensation to the court. The application is made in trial proceedings before completion of examination of evidence in the case.

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

§ 19. Contesting a disposition of the District Court

(1) A decision of the District Court concerning compensation for harm in criminal proceedings may be contested in accordance with Chapter 11 or Chapter 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 Court's decision on compensation for harm may be contested before the Circuit Court of Appeal in accordance with Chapter 13 or Chapter 16 of that Code. If the District Court dealt with the misdemeanour case under Chapter 12 of the Code of Misdemeanour Procedure, the Court's decision on compensation for harm may be contested before the Supreme Court in accordance with Chapter 14 or Chapter 16 of that Code.

(3) An order of the District Court concerning compensation for harm 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.

§ 20. Contesting a disposition of the Circuit Court of Appeal

(1) A decision of the Circuit Court of Appeal concerning compensation for harm in criminal proceedings may be contested in accordance with Chapter 12 or Chapter 15 of the Code of Criminal Procedure.

(2) A decision of the Circuit Court of Appeal concerning compensation for harm in misdemeanour proceedings may be contested in accordance with Chapter 14 or Chapter 16 of the Code of Misdemeanour Procedure.

(3) An order of the Circuit Court of Appeal concerning compensation for harm may be contested, in criminal proceedings, following Chapter 15 of the Code of Criminal Procedure and, in misdemeanour proceedings, following Chapter 16 of the Code of Misdemeanour Procedure.

§ 21. Filing the application after completion of proceedings before the District Court

(1) If a person, for a valid reason, did not file the application for compensation with the District Court in criminal proceedings, they may, after that Court's disposition has been pronounced, file it with the Circuit Court of Appeal following Chapter 11 or Chapter 15 of the Code of Criminal Procedure.

(2) If a person, for a valid reason, did not file the application for compensation with the District Court which dealt with the misdemeanour case under Chapter 11 of the Code of Misdemeanour Procedure, they may, after that Court's disposition has been pronounced, file it with the Circuit 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 following pronouncement of the District Court's disposition.

(4) If a person, for a valid reason, omitted to file the application with the Circuit Court of Appeal or if the presence of a cause of the claim for compensation for harm became known only in proceedings on appeal to the Supreme Court and the person, for a valid reason, omitted to file the application with the Supreme Court, the application may be filed with the Prosecutor's Office or the out-of-court proceedings authority. The application has to be filed within six months following the day on which the disposition of the Circuit Court of Appeal or of the Supreme Court entered into effect. When disposing of the application, the provisions of Subchapter 2 of Chapter 4 of this Act are observed.

Chapter 5

COMPENSATION FOR HARM IN RESUMED CRIMINAL PROCEEDINGS

§ 22. Reclaiming the compensation for harm

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

(2) If compensation has been paid, the proceedings authority that conducts resumed proceedings reclaims it, except where that authority makes a determination that would give the person a right to claim compensation for harm.

Chapter 6 IMPLEMENTING PROVISIONS

§ 23. Implementation of this Act

(1) An application for compensation for harm caused in offence proceedings that were commenced prior to entry into force of this Act but that have not been completed is filed on the grounds and in accordance with the rules provided in this Act.

(2) Applications for compensation for harm caused to a person by the State by unjust deprivation of liberty that have been filed prior to the entry into force of this Act are considered on the grounds and in accordance with the rules in effect prior to the entry into force of this Act.

(3) If this Act prescribes compensation for harm caused in offence proceedings in a situation which is not covered by the Act Providing for Compensation for Harm Caused by the State to a Person by Unjust Deprivation of Liberty, this Act is applied retroactively.

(4) An application for compensation for the harm referred to in subsection 3 of this Act is filed with the Prosecutor's Office or the out-of-court proceedings authority. The application is filed within the time limit prescribed in the Code of Administrative Court Procedure for the making of compensation complaints, but not later than within three years following the entry into force of this Act. When disposing of the application, the provisions of Subchapter 2 of Chapter 4 of this Act are observed.

(5) A complaint seeking compensation for harm is only disposed of by the Administrative Court, the Circuit Court of Appeal and the Supreme Court according to the rules provided in this Act if it has been accepted by the Administrative Court.

§ 24. Omitted from this translation

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

The Act Providing for Compensation for Harm Caused by the State to a Person by Unjust Deprivation of Liberty 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