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Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act

Passed 11.06.1997
RT I 1997, 48, 775
Entry into force 01.01.1998

Amended by the following acts

Passed	Published	Entry into force
02.05.2001	RT I 2001, 47, 260	01.01.2002
12.06.2002	RT I 2002, 56, 350	01.09.2002
19.06.2002	RT I 2002, 61, 375	01.08.2002
19.05.2004	RT I 2004, 46, 329	01.07.2004
02.06.2011	RT I, 10.06.2011, 2	02.06.2011 Judgment of Constitutional Review Chamber of Supreme Court of 02.06.2011 declares subsection 1 (1) of the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act to be in conflict with the Constitution in the part where it precludes compensation for damage if criminal proceedings have been terminated on the bases of clause 199 (1) 2) of the Code of Criminal Procedure during the court hearing.

§ 1. Right to receive compensation

(1) Pursuant to the procedure provided for in this Act, the following persons shall be compensated for damage caused by unjust deprivation of liberty:

- 1) persons who were held in custody with the permission of a court and criminal proceedings in whose matters were terminated at the stage of pre-trial investigation or in a preliminary hearing or persons with regard to whom a judgment of acquittal has entered into force;
- 2) persons who were detained on suspicion of a criminal offence or released when the suspicion ceased to exist;
- 3) persons who were held in prison and whose judgment of conviction has been annulled and criminal proceedings in whose matters were terminated and persons with regard to whom a judgment of acquittal has been made;
- 4) persons whose period of imprisonment has exceeded the term of the punishment which was imposed on the person;
- 5) persons with regard to whom unfounded coercive psychiatric treatment has been ordered by a court in connection with the commission of an unlawful act provided for in the Penal Code provided that a court ruling made with regard to such person has been annulled;
- 6) persons who served detention provided that the judgment ordering detention has been annulled;
- 7) persons who were unjustly deprived of liberty by a decision of an official authorised to deprive of liberty or without conducting disciplinary proceedings, misdemeanour proceedings or criminal proceedings if such proceedings were compulsory.

[RT I, 10.06.2011, 2 - entry into force Judgment of Constitutional Review Chamber of Supreme Court of 02.06.2011 declares subsection 1 (1) of the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act to be in conflict with the Constitution in the part where it precludes compensation for

damage if criminal proceedings have been terminated on the bases of clause 199 (1) 2) of the Code of Criminal Procedure during the court hearing.]

(2) The state shall compensate for the damage caused by unjust deprivation of liberty to persons specified in subsection (1) of this section, regardless of the guilt of an official.

(3) The following persons shall not be compensated for damage:

1) persons who, in the course of examination or court hearing, caused the unjust deprivation of liberty by their false admission of guilt or other acts performed intentionally or due to gross negligence;

2) persons who absconded proceedings or pre-trial proceedings regarding a criminal matter, violated the obligation arising from a preventive measure not to leave their residence without the permission of the corresponding official or court, escaped or were hiding;

3) persons with regard to whom criminal proceedings were terminated on the basis of subsection 201 (2) and §§ 202-205 of the Code of Criminal Procedure.

[RT I 2004, 46, 329- entry into force 01.07.2004]

§ 2. Arising of right to apply for compensation

(1) A person has the right to apply for compensation as of the date when a decision on annulment or amendment of a judgment of acquittal or judgment of conviction is made, when a ruling or order on the termination of proceedings enters into force or when a decision to release the person is made by an official.

(2) A court and a prosecutor, preliminary investigator or another official who makes a judgment, decision, ruling or order set out in subsection (1) of this section shall indicate in the judgment, decision, ruling or order the number of days during which the person was unjustly deprived of liberty. If, on the basis of subsection 1 (3) of this Act, the person need not be compensated for the damage caused by unjust deprivation of liberty, the court, prosecutor or preliminary investigator shall indicate it in the judgment, decision, ruling or order.

(3) A judge, prosecutor, preliminary investigator or another official who has made a judgment or decision specified in subsection (1) of this section shall explain to a person who was unjustly deprived of liberty the procedure for applying for compensation provided for in this Act.

[RT I 2002, 56, 350- entry into force 01.09.2002]

§ 3. [Repealed - RT I 2001, 47, 260 - entry into force 01.01.2002]

§ 4. Applying for compensation

(1) [Repealed - RT I 2001, 47, 260 - entry into force 01.01.2002]

The provisions of the Administrative Procedure Act apply to the applying for compensation, taking account of the specifications provided for in this Act.

(2) In order to receive compensation, a written application shall be submitted to the Ministry of Finance within six months as of the date on which the right to receive the compensation arises (subsection 2 (1)). A copy of a judgment, decision, ruling or order on the basis of which the right to apply for the compensation arises shall be appended to the application.

(3) The Ministry of Finance shall verify the authenticity of the documents submitted in order to receive compensation. If a judgment, decision, ruling or order appended to an application does not specify the number of days during which the person was unjustly deprived of liberty, the Ministry of Finance shall apply for specification of the number of the days from the corresponding court or official.

(4) The Ministry of Finance shall pay compensation to an applicant or deliver the decision to deny an application to the applicant by post or by electronic means within one month after the application is submitted. According to the request of the applicant, the compensation shall be paid either by transfer of money in the bank account of the applicant or by drawing of a bank cheque for receipt of the compensation in cash.

(5) The amounts necessary for the payment of compensation shall be prescribed in the state budget.

(6) If an application for compensation is denied or is not reviewed, the person may file an action with an administrative court for the order of payment of compensation under the conditions provided by law.

[RT I 2002, 61, 375- entry into force 01.08.2002]

§ 5. Compensation

(1) Compensation in an amount of seven daily rates (days' wages) shall be paid to a person pursuant to the procedure provided for in § 4 of this Act for each twenty-four hour period during which the person was unjustly deprived of liberty.

(2) The daily rates (days' wages) shall be calculated on the basis of the minimum monthly wage established by the Government of the Republic, valid on the date of entry into force of a decision (order) on release of a person.

The daily rates (days' wages) shall be determined by dividing the minimum monthly wage by 30, without taking account of the fractional part.

(3) Deprivation of liberty for less than one twenty-four hour period is deemed to be deprivation of liberty for one twenty-four hour period.

(4) Loss of profit as a result of unjust deprivation of liberty and non-proprietary damage caused thereby are deemed to be compensated for to a person by payment of compensation provided for in subsection (1) of this section. The amount of compensation for direct proprietary damage is determined in accordance with the provisions of the State Liability Act.

(5) If a ruling of a court or an order of a preliminary investigator specified in subsection 2 (1) of this Act sets out that a person who was unjustly deprived of liberty has paid for legal assistance, he or she shall be compensated for the amount paid for the legal assistance according to the rate which is established for advocates in order to pay for their participation in criminal matters as criminal defence counsel if so requested by the preliminary investigator or the court.

[RT I 2001, 47, 260- entry into force 01.01.2002]

§ 6. [Repealed - RT I 2001, 47, 260 - entry into force 01.01.2002]

§ 7. Right of successors to receive compensation

(1) If a person set out in subsection 1 (1) of this Act dies after he or she has submitted an application for compensation to the Ministry of Finance, the right to request compensation is transferred to his or her successors.

(2) If a person set out in subsection 1 (1) of this Act dies and has not submitted an application for compensation, his or her successors do not have the right to receive compensation.

[RT I 2001, 47, 260- entry into force 01.01.2002]

§ 8. Liability of official

The extent of and procedure related to the liability of an official guilty of unjust deprivation of liberty of a person are regulated separately.

§ 9. Cessation of bases for compensation

If the bases for compensation cease to exist after payment of the compensation, the Ministry of Finance has the right to request the return of the compensation under the conditions and pursuant to the procedure provided by law.

[RT I 2001, 47, 260- entry into force 01.01.2002]

§ 10. Implementation of Act

Pursuant to this Act, a person shall be compensated for the damage caused by unjust deprivation of liberty if the right to apply for compensation (subsection 2 (1)) arises after the entry into force of this Act.

§ 11. Entry into Force of Act

This Act enters into force on 1 January 1998.

§ 12. [Omitted from this text.]