



Tiesīcību ministrija

Project No.JUST/2010/KPEN/AG/1546 “Possibilities of solution of topical problems of restorative justice in the European Union”

Conference „Mechanisms of victim compensation in criminal proceedings in European Union”

22 May 2012, Riga

“State compensation to victims of crime in Estonia”

**Conference “Compensation mechanisms
for victims of crime in criminal proceedings in the European Union”**
Riga, 22 May, 2013

Liina Hallik
Social Insurance Board
of the Republic of Estonia

Introduction

- In the aftermath of crime different victims have very different needs, which can be practical, material, emotional or social. The needs of victims can be grouped in the following five broad categories:
 - Respect and recognition
 - Protection
 - Support
 - Access to justice
 - **Compensation and restoration**
- Ensuring that victims have access to compensation is a basic need for the victims. Ensuring **appropriate** and **fair** compensation awards, as the Directive 2004/80/EC sets for, is essential in the recognition of the victims in their rights and specific needs.

The right to compensation

In order to receive compensation the victim is entitled to:

1) bring civil claim against the offender:

- file a civil action through an investigative body or the Prosecutor's Office in criminal proceedings;
- file a claim in civil proceedings;

2) compensate damages through private insurance;

3) compensate damages through general social and health insurance (*e.g pension for incapacity for work, survivor's pension, sickness benefits etc*);

4) apply for state compensation.

- The obvious source for compensation is the offender, but reality is that offenders are not always caught or even identified, and many lack the means to compensate their victims. In this case, state compensation schemes are resources of last resort.

State compensation scheme in Estonia

- A scheme of State compensation for victims of violent crimes was established in Estonia in 1998 (entered into force 2001).
- Compensation is a matter of social law rather than a matter of criminal or tort law.
- Providing compensation to victims of crime is a part of the general social welfare system (*expression of social solidarity*).
- The extent and conditions of paying compensation are largely for the legislator to decide. As Estonia has joined the European convention on paying compensation to victims of violent crime, help must at least be provided on the conditions provided by the convention and EU law.

State compensation scheme in Estonia

Institutional organisation:

- The assisting and deciding authority is Social Insurance Board, which is a government authority operating within the government area of the Ministry of Social Affairs.
 - Helps applicants with their compensation claims.
 - Decides whether to award the compensation.
 - If possible presents a claim of recourse against the perpetrator of the crime for the compensation paid.

The sources for financing the compensation scheme are:

- compensation levies paid upon a judgement of conviction;
- amounts recovered by way of recourse on the basis of the Victim Support Act;
- allocations from the reserves for the previous year;
- other funds allocated from the state budget of Estonia.

The legal basis for compensation

National legislation:

- **Victim Support Act (*Ohvriabi seadus*)**- sets the bases for state organisation of victim support and the procedure for payment of state compensation to victims of crime.

EU regulations:

- **European Convention on the Compensation of Victims of Violent Crimes** - *sets the basic principles.*
- **Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims** -*sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations.*

Eligible persons:

- Direct victim – the person towards whom the crime was committed, also include persons helping the victim or helping the police to prevent a crime.
- Indirect victim - if the victim dies as a result of a crime of violence, his or her dependants are entitled to compensation. A dependant is a person specified in the State Pension Insurance Act (persons entitled to survivors pension) and who has been conceived by the time the criminal offence is committed but who is born after the death of the victim.
- A natural person who bears the expenses relating to the medical treatment or funeral of a victim has the right to be compensated for these expenses.

Territoriality vs nationality

- The compensation shall be paid to victims of crimes of violence committed in the territory of the Republic of Estonia (***principle of territoriality***).
- **The following persons are entitled to compensation:**
 - Estonian citizens;
 - persons residing in Estonia on the basis of a residence permit of a long-term resident, a temporary residence permit or the right of residence;
 - citizens of the European Union;
 - citizens of a state which is a party to the European Convention on Compensation of Victims of Violent Crimes;
 - persons enjoying international protection staying in Estonia.
 - victims of human trafficking or sexually abused minors, regardless of whether he or she has a legal basis for stay in the Republic of Estonia.

Territoriality vs nationality

- **Compensation is paid to the victim of violent crime committed abroad if:**
 - the victim is a permanent resident of Estonia or an Estonian citizen who does not reside permanently in Estonia;
 - the victim was abroad for reasons related to studies, employment or service duties or for other good reasons;
 - victim is not entitled to similar compensation under the law of the country where the crime was committed.
 - If the victim dies, compensation shall be paid to a dependant who was permanently residing in Estonia at the time when the crime of violence was committed.

Term „crime of violence”

- A crime of violence is an act committed directly against the life or health of a person which is punishable pursuant to criminal procedure and as a result of which the injured person:
 - dies;
 - sustains serious damage to health;
 - sustains a health disorder lasting for at least six months.
- Acts are deemed to be crimes of violence even if:
 - the offender is incapable of guilt;
 - the offender has not been identified or apprehended or if the offender cannot be convicted for other reasons but the evidence collected with regard to the criminal matter suggests that a crime of violence has been committed.
- The aspect of ‘**intention**’ is not required. Compensation is also available to victims of violent crimes committed through negligence.

Compensable injuries

- **Serious damage to health is a damage which results in:**
 - 1) danger to life;
 - 2) severe physical illness;
 - 3) severe mental disorder;
 - 4) miscarriage;
 - 5) permanent mutilating facial injury; or
 - 6) loss or cessation of functioning of an organ,
- The degree of the criminal offence (such as whether serious health damage has been suffered or not) is determined by forensic medical examination.
- Any other health disorder lasting for at least six months – is determined by reference of incapacity for work.

Circumstances of refusal

- **Compensation shall not be paid if:**
 - 1) the victim caused or facilitated the commission of the crime or the occurrence of the damage by his or her intentional or reckless behaviour;
 - 2) the victim fails to give notice of the crime within fifteen days, although he or she would have been capable of doing so, and the police have not become aware of the crime in any other way;
 - 3) the victim has been convicted of the commission of a crime of violence and information concerning his or her punishment has not been deleted from the punishment register pursuant to the Punishment Register Act;
 - 4) payment of compensation would be unfair or unjustified for other reasons.
- Payment of compensation may be refused if the applicant for compensation has refused to co-operate with the law enforcement authorities in ascertaining the facts relating to the criminal offence, identifying or apprehending the criminal offender or providing the damages.

Circumstances of refusal

- Compensation shall not be paid to a dependant if circumstances of refusal were present in his or her behaviour.
- It is not possible to reduce the amount of compensation proportionally by the degree of guilt of the victim in much the same way as in civil law practice.
- Regardless of the circumstances of refusal, compensation may be paid to a dependant whose monthly income is below the subsistence level (In 2013 the subsistence limit is **76.70 euros** a month for a person living alone).

The extent of Compensation

- The purpose of the state compensation is not to cover full amount of the victim's loss as measured by civil law standards.
- Pursuant to the Victim Support Act, the amount of compensation shall be **80% of the material damage** but no more than a total of **9590 euros** to one victim and all his dependants (in comparison – average wage in Estonia in 2012 was ca 879,5 euros, the minimum wage is 320 euros).

Compensable damages

- The amount of compensation shall be determined on the basis of the following material damage caused by a crime of violence:
 - damage arising from incapacity for work;
 - expenses for the medical treatment of the victim;
 - damage arising from the death of the victim;
 - damage caused to spectacles, dentures, contact lenses and other appliances substituting for bodily functions and to clothes;
 - the victim's funeral expenses.
- Non-patrimonial or moral damage (such as pain and suffering, etc.) is not compensated.

Damage arising from incapacity for work

- Is that part of income which is not received due to temporary or permanent incapacity for work arising as a result of a crime of violence.
- The amount of compensation shall be determined on the basis of the victim's average income per calendar day. The average income per calendar day shall be calculated from the victim's income subject to social tax of the previous six months.
- Compensation for damage arising from incapacity for work to a victim residing in another Member State of the European Union is calculated on the basis of income from employment of the victim of the six months preceding the commission of criminal offence.
- Compensation shall be paid to persons who are not working or are unemployed at the time of falling victim to a crime of violence only in the case of permanent incapacity for work. Compensation shall be calculated on the basis of average income per calendar day calculated by dividing the minimum monthly wage by thirty.

Damage arising from the death of the victim

- The dependants of a victim who dies as a result of a crime of violence shall receive compensation based on the victim's previous income calculated as follows:
 - 1) 75 % of the income in the case of one dependant;
 - 2) 85 % of the income in the case of two dependants;
 - 3) a total of 100 % of the income in the case of three or more dependants.

- **Funeral expenses**
 - A fixed amount - 448 euros (simplifies the procedure for receiving compensation, since there is no need to justify each expense incurred for the funeral – which was a major source of dispute between applicants and officials in the past).
 - The amount of funeral expenses subject to compensation is based on minimum funeral expenses, of which 80% is compensated (it is the general principle of the law that 80% of the incurred expenses are compensated).

Payment of Compensation

- The expenses for the medical treatment or funeral of a victim shall be compensated for by a single payment.
- In the event of damage arising from incapacity for work or loss of maintenance provider the compensation is paid periodically:
 - 1) until the victim's capacity for work is restored, the victim acquires a new speciality by way of re-training, or the victim dies;
 - 2) until the dependant meets the conditions to be granted compensation as prescribed in the State Pension Insurance Act.
- On the basis of a reasoned request from an applicant for compensation, compensation may be paid in instalments or as a single payment.
- In cross-border cases compensation is paid as a single payment (compensation shall be paid for the whole period of time during which the applicant is permanently incapacitated for work or meets the requirements for receiving a survivor's pension).

Applying for compensation

- It is important that complicated proceedings do not induce victims to forget their right to apply for compensation and secondary victimisation is not caused by the procedure of applying for and receiving payment of state compensation.
- Access to the national compensation scheme must be as simple for victims as possible, with no excessive procedural hindrances and formalities.
- Procedural requirements can become a particular hindrance in cases where applications for compensation are submitted from a foreign country.

Applying for compensation

- Compensation may be applied for **within three years** as of the commission of the crime or the date of death of the victim.
- **An application submitted later shall be reviewed if:**
 - the dependant became aware of the death of the victim more than one year after the date of death and the application is submitted within three years as of the date of becoming aware of the death of the victim.
 - the applicant for compensation sustained a health disorder which lasted longer than one year and timely submission of the application was not possible due to his or her state of health and if the application is submitted within three years as of his or her state of health improving;
 - the basis for applying for compensation is a sexual offence and the application was submitted within three years after the victim became an adult unless the reason for the criminal proceedings became evident before he or she became an adult.

Burden of proof

- An application shall set out information on the applicant for compensation, on the criminal offence and the damage caused and on whether compensation for the damage is received from other sources.
- Principle of investigation - During proceedings in a matter, an administrative authority is required to establish the facts relevant to the matter and, if necessary, collect evidence on its own initiative for such purpose.
- By signing the application the victim authorizes the Social Insurance Board to acquire documents necessary for determining the compensation and if necessary, control the correctness of presented documents.

Application of subsidiarity principle

- Although state compensation for crime victims is secondary in nature, victims don't have to turn for compensation first against the person who committed the crime before claiming for state compensation.
- If possible, the state later presents a claim of recourse against the perpetrator of the crime for the compensation paid. The recoverable amount shall not exceed the amount granted upon satisfaction of the civil action.
- Any amounts which a victim or his or her dependant receives or is entitled to receive as compensation for damage resulting from a crime of violence shall be deducted from the the amount of compensation.
- If, after compensation has been granted the recipient receives compensation for the same damage from the person liable for the damage caused by the criminal offence or from any other source and such compensation was not deducted from the damage, the recipient is required to notify immediately and repay the compensation in the amount calculated when the amount of compensation was determined.

Length of procedure

- Social Insurance Board shall review the application and make a decision concerning the grant of or refusal to grant compensation **within thirty days** as of the receipt of an application and the documents appended hereto. In cross-border cases **within three months**.
- The Social Insurance Board may postpone the making of a decision concerning the determination of compensation until a judgment is made by the county or city court if the applicant's right to receive compensation from the person liable for the damage caused by the criminal offence is uncertain.
- If a decision concerning payment of compensation is postponed the Social Insurance Board has the right to make an **advance payment** if the applicant's right to receive compensation is clear and if he or she is in a difficult economic situation. The amount of an advance payment shall not exceed 640 euros.

Informing the victims

- Lack of information to victims of the possibility to apply for compensation (specially for crimes happened abroad).
- Victims have right to receive information from first contact with a competent authority on their entitlement to compensation and on the right to access advice and support from victims support scheme relevant to obtaining compensation
- **Notification obligation** - preliminary investigation authorities are required to provide information regarding the content of this Act to victims and dependants who are entitled to receive compensation or victim support services.”(**§ 33 Victim Support Act**)

Cross-border cases

- Foreign victims have to cope with different culture, language, legal structure, lack of information, lack of support – that may cause revictimisation.
- The 2004/80EC directive provides for a cooperation system between competent authorities of Member States which should significantly assist those victimised in a foreign country and their dependants when applying for compensation.
- Estonia translates documents into all the languages of the EU and accepts applications in all the EU languages.
- Little experience (ca 5 cases per year).

Statistics – State compensation in Estonia (2008-2012)

Year	Recipients	Average compensation per recipient
2008	171	753,07 euros
2009	191	772,95 euros
2010	171	1021,10 euros
2011	197	1038,18 euros
2012	207	1099,59 euros

Challenges

- Informing crime victims of their rights for compensation.
- Assistance to crime victims in claiming or applying for state compensation.
- Ensuring fairness, adequacy and appropriateness of state compensation awards.
 - Fair and relevant compensation can be ensured by considering the real needs of the victim while ensuring the equal treatment of victims.
 - Considering the nature of the compensation paid to the victim, fair compensation can be deemed that which is as close as possible to what the victim would have received if the claim had been filed against the perpetrator of the crime pursuant to the tort law.
- Focus on offenders liability to provide compensation.

Thank You!

Contacts:

Liina Hallik

liina.hallik@ensib.ee

Social Insurance Board of
the Republic of Estonia
Lembitu 12, 15092 Tallinn