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**Conference „Mechanisms of victim
compensation in criminal proceedings in
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VICTIM COMPENSATION SYSTEM IN ESTONIA AND COURT PRACTICE IN LATVIA

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Legal framework and support programs

- Victim Support Act of 2003
- Estonian government has approved the program "Creation of the system of aid to victims of crime" the aim of which is to develop a victim support system, to shape understanding and supportive public opinion, to create and update victim register and to carry out research while promoting and implementing legislative changes.

Victim support services

- Victim support service is a public service intended for supporting persons who have suffered from negligence, mistreatment or physical, psychological or sexual abuse.
- Victim support services include (1) consultations, (2) **crime victim compensation** and (4) helping the victims by contacting state and municipal institutions and legal persons, as well as (4) conciliation.



Meaning of "offence"

- For the purpose of Victim Support Act, offence is an action that illegally injures someone (person's health and life) and is penal.
- Compensation is paid if serious damage is done to the victim's health, the victim has health problems for at least 6 months or the victim dies because of the damage done by the offender.
- For the purpose of Victim Support Act, offence is also an action turned against a person who has tried to prevent an offence, has helped the victim or has detained the offender, if any of the aforementioned consequences have been identified.

Meaning of "offence"

- According to the Part 3 of Section 8 of the Victim Support Act such actions are considered offences even if the offender is not criminally liable, has not been identified or detained or the offender cannot be tried due to other reasons, but the evidence shows that the offence is committed.

Compensation subjects

- Natural person who has become a victim in Estonia;
- Permanent resident of Estonia or a citizen who is not living in the Estonia permanently and was abroad due to reasons provided for by the law, for example, in connection with studies, employment or provision of services, moreover, if the victim has not received the compensation in the country of offence;
- Dependent of the victim, if the victim is dead;
- Natural person taking upon himself/herself the costs of victim's medical care or burial.



The amount of compensation is determined by taking into account the following:

- damages resulting from disablement;
- costs of victim's medical care;
- damages resulting from victim's death;
- costs of health related damages — for substituting bodily functions, for example, costs of glasses, prosthesis, contact lenses and other devices as well as clothing;
- costs of victim's burial.

The amount of compensation

- for material damages cannot exceed 80% of the total damages done to the victim (cannot exceed EUR 9590);
- one can start a civil claim regarding personal or moral abuse;
- damages resulting from disablement is the fraction of income the person is not getting because of temporary or permanent disablement;
- if victim's death is caused by the offence, victim's dependants receive the compensation based on the victim's previous income.
- compensation for the costs of victim's burial is EUR 448.

Compensation is not paid in case:

- victim has caused the commitment of the offence or contributed to it or the damage has been caused by intentional or ill-judged behaviour of the victim.
- victim has not reported the offence after 15 days even though he/she could have done it, and police has not been informed about this offence in any other way;
- victim has been convicted for offence and the criminal record has not been erased from the Punishment register;
- payment of the compensation would be unfair or groundless due to other reasons.

Compensation payment procedure

- A decision is taken by Social Insurance Board.
- Criminal proceedings started by the police are a prerequisite for submitting an application for compensation.
- Usually the application for compensation is submitted not later than 1 year after commitment of the offence or after victim's death.
- Victim or his/her dependants have to submit the following documents:
 - application for compensation;
 - identity documents and documents confirming the commitment of the offence;
 - documents confirming the damage done.
- Social Insurance Board has the right to ask the victim to attend additional medical tests, the costs of which are included in the treatment expenses to be compensated.

Crime victim compensation

- Social Insurance Board can postpone the decision making until the circumstances are clear or the court has made a judgement, if:
 - rights of the applicant to receive compensation from the person caused damage or committed offence are uncertain; or
 - it is clear that the person responsible for the damages resulting from the offence agrees that such damages are done and is able to compensate them.
- Social Insurance Board can pay the compensation in advance, if the conditions of the case are clear and the victim is in a bad financial position.

Appeal procedure

- Decisions of the Social Insurance Board can be appealed within 30 days in the Dispute settlement commission established by Social Insurance Board, while decision of the commission can be appealed in court according to Administrative Procedure Law.

Recourse rights

- After the state has paid the compensation, right to demand of the amount of victim's compensation is transferred from the victim to state.
- In the regress procedure state is represented by Ministry of Social Affairs having the right to substitution of power.

Right to bring a civil action

- Submitting the application to receive the compensation accordingly to the Victim Support Act does not limit the right of the recipient to claim the compensation in accordance with the general principles of damages done to him/her as a result of an offence.
- In case the receiver of the compensation brings a civil action against the offender regarding compensation of damages, his/her obligation is to immediately inform the Social Insurance Board about this in writing.

Conclusions

- Victim support service is a public service. State provided compensation is just one of such services.
- Victim Support Act provides the right to ask for compensation for damages resulting from an offence and aimed at person's health and life.
- State provided compensation is paid when the criminal proceedings are still in process if the actual and legal conditions are clear. Compensation is paid in closed criminal proceedings only in exceptional cases if there have been any doubts about the conditions.
- Decision regarding the payment of compensation is made and appealed according to the administrative procedure.

ANALYSIS OF LATVIAN COURT JUDGEMENTS

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Victims

- **Natural persons** — material damages, moral damage
- **Legal persons** (society, enterprise, state) — material damages and non-material damages (*see Constitutional court adjudgement case No 2011-21-01*)
- Submission of the compensation claim and maintaining the claim is one of the main incentives for the victim to take part in lengthy proceedings. Cases when the victim does not exercise these rights are rare.

Grounds for paying the compensation

- **Private insurance**, for example, compulsory liability insurance of land vehicle owners
- **Social insurance**, for example, sick-pay during disablement
- **Settlement with the offender**
- **Court judgement**



Compensation

- People are usually claiming compensation both for moral damages and material damages at the same time.
- Compensations claimed for moral damages are the biggest.
- Court approach — mathematical.

Compensation in criminal proceedings

- In case compensation is not determined or the claim has not been reviewed, the person still has the right to claim compensation of damages in accordance with civil legal procedures.
- *Turning to the state of affairs, Court at first remarks that the claimants filed their civil claim against the society in the framework of criminal proceedings started against a driver in order to receive compensation for bodily injuries done to the other claimant that was the basis for criminal proceedings. When the court did not review their civil claim under the criminal proceedings, (..), the claimants were suggested to file their civil claim in accordance with civil legal procedures. Thus the Court recognizes that the results of criminal proceedings were of crucial importance in regard to claimants' civil claim regarding compensation of damages and the civil aspect of Section 6 of the Convention is to be applied. Both aforementioned processes were closely related, thus the Court considers it ungrounded to separate them and evaluate the length separately. **Ligeres (Liégeres) v. Latvia, ECtHR judgement of June 28, 2011***
- From the point of view of system's efficiency, it would be important to provide the victim with fair and adequate compensation during criminal proceedings.

Compensation in criminal proceedings

- If the victim does not agree to the amount of compensation determined by the court in the criminal proceedings, according to the Part 3 of Section 350 of Criminal Procedure Law, the victim has the right to request the compensation thereof in accordance with the procedures specified in the Civil Procedure Law.
- "To fulfil its positive obligations under Article 1 of Protocol No. 1 if the lack of prospects of success of civil proceedings is the direct consequence of exceptionally serious and flagrant deficiencies in the conduct of criminal proceedings arising out of the same set of facts, as outlined in the preceding paragraph." (*Blumberga v. Latvia*" (70930/01), Paragraph 68)

Order and efficiency of the execution of a judgement

- Application of Section 634 of Criminal Procedure Law.
- The number of cases where the bailiff has to satisfy civil claims is growing each year, however the proportion of cases closed each year is not big.
- The number of remaining enforcement cases in the beginning of reporting period is also growing, besides the number of cases where the enforcement has been stopped without levy is comparatively big.
- The issue of bailiff rates — there are several actions that the bailiff has to finance from the financial means acquired in other cases.
- Minimum costs for carrying out enforcement actions in an enforcement case (for example, in case the victim's compensation is LVL 100.00) is LVL **67.09**.
- Lengthy proceedings and the fact that the attachment possibilities are not used to the fullest extent.
- Legal and identified financial position of the convict.
- Victim fund.

Thank you!

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