

Victim Assistance Act

Passed 17 December 2003

(RT¹ I 2004, 2, 3),

entered into force 1 February 2004.

Chapter 1

General Provisions

§ 1. Scope of application of Act

(1) This Act regulates the state organisation of victim assistance and the procedure for payment of state compensation (hereinafter compensation) to victims of crime.

(2) This Act prescribes the persons who are entitled to victim assistance services and state compensation and the conditions of and procedure for applying for, granting and paying the compensation.

§ 2. Application of Administrative Procedure Act

The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

Chapter 2

Victim Assistance Services

§ 3. Victim assistance services

(1) For the purposes of this Act, a victim assistance service is a public service aiming at maintaining or enhancing the ability to cope of persons who have fallen victim to negligence, mistreatment or physical, mental or sexual abuse.

(2) Victim assistance services consist of providing counselling and assistance to victims in communicating with state and local government authorities and legal persons.

(3) The requirements for victim assistance services and service providers shall be established by the Minister of Social Affairs.

§ 4. Provision of victim assistance services

- (1) The provision of victim assistance services shall be ensured by the Ministry of Social Affairs in accordance with the principle of regionality.
- (2) The Ministry of Social Affairs shall co-operate with state and local government authorities and legal persons in providing victim assistance services, involve and supervise victim assistance volunteers and organise training for such volunteers.

§ 5. Transfer of duty to provide victim assistance services

- (1) The duty to provide victim assistance services may be transferred to a legal person or local government by a contract under public law.
- (2) A natural person providing victim assistance services through a legal person or local government specified in subsection (1) of this section must have higher education and the moral character required for victim assistance work.
- (3) The Ministry of Social Affairs shall verify the suitability of a natural person specified in subsection (2) of this section for victim assistance work and shall grant or refuse to grant consent within three weeks after the person has submitted his or her *curriculum vitae* to the Ministry of Social Affairs. Refusal to grant consent shall be reasoned.

§ 6. Victim assistance volunteers

- (1) Victim assistance volunteers are persons who provide victim assistance services in their free time without receiving remuneration.
- (2) Persons who are suitable to provide victim assistance services may be victim assistance volunteers. The requirements for victim assistance volunteers and the procedure for supervising volunteers shall be established by the Minister of Social Affairs.
- (3) Victim assistance volunteers shall be compensated for expenses incurred in connection with victim assistance pursuant to the procedure and within the limits established by the Minister of Social Affairs.

Chapter 3

Payment of State Compensation to Victims of Crime

Division 1

Right to and Amount of Compensation

§ 7. Extent of compensation

(1) Compensation shall be paid to victims of crimes of violence committed in the territory of the Republic of Estonia and to their dependants and to persons specified in subsection 9 (4) of this Act.

(2) Compensation shall be paid to the victim of a crime of violence committed abroad if the victim is an Estonian citizen and was abroad for reasons related to studies, employment or service duties or for other good reasons and if the 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 the Republic of Estonia at the time when the crime of violence was committed.

§ 8. Crime of violence

(1) For the purposes of this Act, a crime of violence is an act committed against the life or health of a person which is punishable pursuant to criminal procedure and as a result of which the injured person:

- 1) dies;
- 2) sustains serious damage to his or her health;
- 3) sustains a health disorder lasting for at least six months.

(2) Action which is taken by an injured person or a third party to prevent a criminal offence, apprehend a criminal offender or assist a victim of crime and which results in one of the consequences specified in subsection (1) of this section is also deemed to be a crime of violence.

(3) Acts specified in subsection (1) or (2) of this section are deemed to be crimes of violence even if:

- 1) the offender is incapable of guilt;
- 2) 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.

§ 9. Recipient of compensation

- (1) Estonian citizens who have suffered damage as a result of an act specified in subsection 8 (1) of this Act are entitled to receive compensation.
- (2) An alien is entitled to receive compensation under the conditions provided for in subsection (1) of this section if he or she:
 - 1) resides in Estonia on the basis of a permanent or temporary residence permit;
 - 2) is a citizen of the European Union;
 - 3) is a citizen of a state which is a party to the European Convention on Compensation of Victims of Violent Crimes;
 - 4) is a refugee staying in Estonia.
- (3) If a person specified in subsection (1) or (2) of this section (hereinafter victim) dies as a result of a crime of violence, his or her dependants are entitled to compensation. For the purposes of this Act, a dependant is a person:
 - 1) specified in § 20 of the State Pension Insurance Act (RT I 2001, 100, 648; 2002, 53, 336 and 338; 61, 375; 2003, 20, 116; 48, 343);
 - 2) who has been conceived by the time the criminal offence is committed but who is born after the death of the victim.
- (4) A natural person who bears the expenses relating to the medical treatment or funeral of a victim has the right to be compensated for the expenses.

§ 10. Bases for determining amount of compensation

- (1) The amount of compensation shall be determined on the basis of the following material damage caused by a crime of violence:
 - 1) damage arising from incapacity for work;
 - 2) expenses for the medical treatment of the victim;
 - 3) damage arising from the death of the victim;
 - 4) damage caused to spectacles, dentures, contact lenses and other appliances substituting for bodily functions and to clothes;
 - 5) the victim's funeral expenses.
- (2) Any amounts which a victim or his or her dependant or a person specified in subsection 9 (4) of this Act (hereinafter applicant for compensation) receives or is entitled to receive as compensation for damage resulting from a crime of violence from a source other than the person liable for the damage caused by the crime shall be deducted from the damage serving as the basis for determining the amount of compensation. In determining the amount of the compensation, the compensation paid

to the applicant by the person liable for the damage caused by the crime shall be taken into account to the extent of the amount paid before the grant of compensation on the basis of this Act.

(3) The amount of compensation shall be 70 per cent of the material damage specified in clauses (1)–(4) of this subsection.

(4) The procedure for calculating the amount of compensation shall be established by the Government of the Republic.

§ 11. Damage arising from incapacity for work

(1) Damage arising from incapacity for work is that part of income subject to social tax which is not received due to temporary or permanent incapacity for work arising as a result of a crime of violence.

(2) Damage arising from incapacity for work shall be compensated for on the basis of average income per calendar day. The average income per calendar day shall be calculated by adding together the income subject to social tax calculated for the insured person during the six calendar months preceding the calendar month of the day on which the person is initially released from the performance of his or her duties according to his or her certificate of incapacity for work and dividing the result by the number of calendar days during the period (six months). The number of days for which the insured person is released from the performance of his or her duties according to his or her certificate of incapacity for work shall be deducted from the number of calendar days during the period (six months).

(3) Compensation shall be calculated based on income subject to social tax received during the six months preceding the commission of the crime of violence for the following persons:

- 1) employees, on the basis of an employment contract or a contract of service;
- 2) members of the Riigikogu², the President of the Republic, members of the Government of the Republic and public servants;
- 3) members of the management and supervisory boards and other management bodies of legal persons;
- 4) natural persons employed under a contract for services, an authorisation agreement or any other civil law contract, including a contract provided for in subsection 13 (2) of the Sport Act (RT I 1998, 61, 982; 2002, 53, 336; 90, 521).

(4) For a person specified in clause (3) 1) or 2) of this section who did not receive any income subject to social tax during the six months preceding the commission of the crime of violence because his or her employment or service relationship was suspended, compensation shall be calculated based on income subject to social tax received by the person for the last month prior to the suspension of his or her employment or service relationship.

(5) For sole proprietors, compensation shall be calculated based on the net income received during the calendar year (1 January to 31 December) preceding the commission of the crime of violence.

(6) If income per calendar day is lower than the total of the minimum monthly wage established by the Government of the Republic divided by thirty, the average income per calendar day is deemed to be equal to the minimum monthly wage divided by thirty.

(7) 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 if permanent incapacity for work is caused as a result of the crime. Compensation shall be calculated on the basis of average income per calendar day calculated by dividing the minimum monthly wage established by the Government of the Republic by thirty.

§ 12. Expenses for medical treatment of victim

(1) Expenses for the medical treatment of a victim are essential expenses related to the medical treatment of the victim and acquisition of medicinal products and appliances substituting for bodily functions, alleviation of post-traumatic complications, teaching him or her a new speciality suitable for his or her state of health, and essential travel expenses related to the circumstances specified above.

(2) Expenses relating to the use of the following services are also deemed to be expenses for the medical treatment of a victim:

1) up to ten sessions of psychological counselling:

2) up to fifteen sessions of psychotherapy.

(3) Compensation for expenses for the medical treatment of a victim shall be paid to the person bearing the expenses.

§ 13. Funeral expenses

Compensation in the amount of 5500 kroons less the state funeral benefit received shall be paid to the person who bears the expenses relating to the funeral of a victim of a crime of violence.

§ 14. Damage arising from death of 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 pursuant to § 11 of this Act, as follows:

- 1) 75 per cent of the income in the case of one dependant;
- 2) 85 per cent in the case of two dependants;
- 3) a total of 100 per cent in the case of three or more dependants.

Division 2

Procedure for Compensation

§ 15. Maximum amount of compensation

The amount of compensation payable to one victim and all of his or her dependants on the basis of this Act shall not exceed 50 000 kroons.

§ 16. Circumstances precluding payment of compensation

- (1) 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 or on the basis of subsection 255 (1) or 256 (1) of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 82, 480; 105, 612; 2003, 4, 22) and information concerning his or her punishment has not been deleted from the punishment register pursuant to the Punishment Register Act (RT I 1997, 87, 1467; 2002, 82, 477; 2003, 26, 156);
 - 4) payment of compensation would be unfair or unjustified for other reasons.
- (2) Compensation shall not be paid to a dependant if circumstances specified in clauses (1) 1)–4) of this section were present in his or her behaviour.

(3) Regardless of the circumstances specified in subsection (1) of this section, compensation may be paid to a dependant whose monthly income is below the subsistence level established by the Government of the Republic on the basis of the minimum consumption expenditure.

(4) 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 proving the damages.

§ 17. Method of compensation for damage

(1) In the event of damage arising from incapacity for work or loss of maintenance provider, amounts which were not received until the making of the decision to grant compensation shall be paid as a single payment and, as of the month following the making of the decision to grant compensation, 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 subsection 20 (3) or (5) of the State Pension Insurance Act.

(2) In the case of compensation paid periodically, payments shall be made on a monthly basis unless otherwise prescribed by the decision to grant compensation.

(3) Generally, dependants shall be granted joint compensation. A dependant's portion of compensation may be separated from the joint compensation on the basis of a written application submitted by him or her.

(4) The expenses for the medical treatment or funeral of a victim shall be compensated for by a single payment.

(5) On the basis of a reasoned request from an applicant for compensation, compensation specified in subsection (1) of this section may be paid in instalments or as a single payment.

(6) Compensation for expenses relating to the services specified in subsection 12 (2) of this Act may, by a decision of the Pension Board, be paid to the body which provided the services to the applicant for compensation.

Division 3

Grant of Compensation

§ 18. Grant of compensation

The director of the Pension Board shall decide on the grant of compensation.

§ 19. Applying for compensation

(1) An application for compensation (hereinafter application) shall be submitted to the applicant's local pension office within one year as of the commission of the crime or the date of death of the victim, except in the cases provided for in subsection (2) of this section.

(2) An application submitted later shall be reviewed if:

1) the dependant became aware of the death of the victim more than six months after the date of death and the application is submitted within one year as of the date of becoming aware of the death of the victim;

2) the applicant for compensation sustained a health disorder which lasted longer than six months and timely submission of the application was not possible due to his or her state of health and if the corresponding application is submitted within one year as of his or her state of health improving.

(3) 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.

(4) A list of the documents necessary for applying for compensation shall be established by a regulation of the Minister of Social Affairs.

(5) The format of the document setting out the information which is necessary for applying for compensation and which is to be submitted by a preliminary investigation authority shall be established by a regulation of the Minister of Internal Affairs.

(6) In the application, the applicant for compensation shall indicate the amount of compensation applied for on the basis of medical documents, documents certifying income, documents certifying direct expenses incurred as a result of the crime of violence and documents certifying compensation received or to be received from other sources in connection with the same damage, and all such documents shall be appended to the application. The Pension Board has the right to verify the information submitted by the applicant.

(7) The director of the Pension Board has the right to refer the victim for a supplementary medical examination, the cost of which shall be included in the medical treatment expenses upon payment of compensation.

§ 20. Review of applications

(1) Within thirty days as of the receipt of an application and the documents appended thereto, the director of the Pension Board shall review the application and make a decision concerning the grant of or refusal to grant compensation.

(2) If a person fails to submit the required information or documents together with his or her application or if the application contains any other deficiencies, the Pension Board shall notify the applicant for compensation of the deficiencies by post or by electronic means, grant a term of three months for elimination of the deficiencies and explain that, in the event of failure to eliminate the deficiencies within the term, the director of the Pension Board may make a decision based on the existing information.

§ 21. Postponement of making of decision

(1) The director of the Pension Board may postpone the making of a decision concerning the grant of compensation until a judgment is made by the county or city court if:

- 1) the applicant's right to receive compensation from the person liable for the damage caused by the criminal offence is uncertain, or
- 2) it is obvious that the person liable for the damage caused by the criminal offence agrees and is able to compensate for the damage caused by the criminal offence.

(2) If an applicant's right to receive compensation from a source other than the person liable for the damage caused by the criminal offence or the amount of the compensation is uncertain or disputable, the decision concerning payment of the compensation may be postponed until the right or amount has been conclusively established.

(3) The Pension Board shall immediately notify an applicant by post or by electronic means if the making of the decision is postponed.

(4) If a decision concerning payment of compensation is postponed on the grounds specified in subsections (1) and (2) of this section, the director of the Pension Board shall decide to grant or to refuse to grant compensation within ten days as of

the date on which he or she learns that the circumstances which caused the postponement of the decision have ceased to exist.

§ 22. Compensation paid in advance

- (1) If a decision concerning payment of compensation is postponed in the cases provided for in subsections 21 (1) and (2) of this Act, the director general of the Pension Board has the right to make an advance payment on the basis of a request from the applicant for compensation if the applicant's right to receive compensation is clear and if he or she is in a difficult economic situation.
- (2) The size of an advance payment shall not exceed 10 000 kroons.
- (3) If an advance payment exceeds the amount of compensation granted, the overpaid amount shall be recovered in accordance with § 27 of this Act.
- (4) If compensation is refused, an advance payment may be recovered only if the payment was made as a result of an expression of bad faith by the applicant.

§ 23. Communication of decisions

A decision of the director of the Pension Board to grant or to refuse to grant compensation shall be communicated to the applicant for compensation by post or by electronic means within five working days as of the date on which the decision is made.

§ 24. Contestation of decisions

If an applicant for compensation does not agree with the decision of the director of the Pension Board, the applicant has the right to file a challenge with the pension committee pursuant to the procedure provided for in the Administrative Procedure Act or an appeal with an administrative court pursuant to the procedure provided in the Code of Administrative Court Procedure (RT I 1999, 31, 425; 33, correction notice; 40, correction notice; 96, 846; 2000, 51, 321; 2001, 53, 313; 58, 355; 2002, 29, 174; 50, 313; 53, 336; 62, 376; 2003, 13, 67; 23, 140).

§ 25. Entry of data in register

- (1) Data concerning the grant and payment of compensation to victims shall be entered in the state pension insurance register pursuant to the procedure established by the Government of the Republic.

(2) The personal data of victims and data on the grant and payment of compensation to victims shall be processed in accordance with the Personal Data Protection Act (RT I 2003, 26, 158).

§ 26. Change of amount of compensation and termination of payment of compensation

(1) A recipient of compensation is required to notify the Pension Board of any grounds for reducing the amount of the compensation or terminating the payment of the compensation within fifteen days as of such grounds arising. A submitted notice shall be reviewed within ten days as of the receipt thereof.

(2) In the event of a change in the amount of a state benefit or any other payments, the Pension Board shall make recalculations on its own initiative within ten days as of the date of entry into force of the change.

(3) The amount of compensation shall be reduced or payment of compensation shall be terminated as of the month following the month in which the grounds for the reduction or termination arise.

(4) The amount of compensation shall be increased as of the first day of the month following the submission of documents certifying the grounds for the increase.

(5) At least once a year, the Pension Board is required to review the amounts of compensation paid periodically.

(6) In the case of compensation paid periodically, changes in prices and in the cost of living shall be taken into consideration pursuant to the procedure established by the Government of the Republic.

§ 27. Recovery of overpaid amounts

Overpaid amounts of compensation shall be recovered from the recipient pursuant to the procedure prescribed by civil law.

§ 28. Claims for payment against compensation, and cession and set-off of claims

No claim for payment shall be made against the compensation or a claim for compensation specified in this Act and claims shall not be ceded or set off.

§ 29. Exemption from income tax

Compensation paid on the basis of this Act is not subject to income tax.

§ 30. Right to file civil action

- (1) Application for or grant of compensation on the basis of this Act shall not restrict the right of the recipient to claim compensation, pursuant to general principles, for damage caused by the crime of violence.
- (2) If a recipient of compensation files an action with a county or city court for compensation for damage caused by the crime of violence, he or she is required to notify the Pension Board of the action immediately in writing.

§ 31. State's right of recourse

- (1) After compensation has been paid on the basis of this Act, the recipient's right to claim compensation for damage caused by the criminal offence from the person liable for the damage transfers to the state to the extent of the amount of the compensation paid. The recoverable amount shall not exceed the amount granted upon satisfaction of the civil action.
- (2) In recourse actions, the state shall be represented by the Minister of Social Affairs. The Minister of Social Affairs has the right to delegate authorisation.
- (3) If, after compensation has been granted on the basis of this Act, 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 serving as the basis for determining the amount of compensation pursuant to subsection 10 (2) of this Act, the recipient is required to notify the Pension Board immediately and repay the compensation in the amount calculated when the amount of compensation was determined.

Chapter 4

Financing

§ 32. Financing

- (1) Compensation payable on the basis of this Act is financed and state victim assistance services are financed from allocations from the state budget to the budget of the Ministry of Social Affairs according to the state budget for the corresponding year.

(2) The sources for covering compensation paid on the basis of this Act and the expenses relating to the provision of state victim assistance services are:

- 1) compensation levies paid upon a judgment of conviction;
- 2) amounts recovered by way of recourse on the basis of this Act;
- 3) allocations from the reserves for the previous year;
- 4) other funds allocated from the state budget.

Chapter 5

Implementing Provisions

§ 33. 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 assistance services on the basis of this Act.

§ 34. Recalculation of compensation granted previously

Periodically paid compensation which was granted before the entry into force of this Act and continues to be paid after the entry into force of this Act shall be recalculated in accordance with this Act.

§ 35. Entry into force of Act

- (1) This Act enters into force on 1 February 2004.
- (2) Chapter 2 of this Act enters into force on 1 January 2005.
- (3) Clause 9 (2) 2) of this Act enters into force as of Estonia's accession to the European Union.
- (4) Clause 9 (2) 3) of this Act enters into force as of the entry into force of the Act Ratifying the European Convention on Compensation of Victims of Violent Crimes.

§ 36. Repeal of State Compensation of Victims of Crime Act

The State Compensation of Victims of Crime Act (RT I 1999, 4, 51; 2001, 12, 50; 100, 648; 2002, 56, 350; 61, 375; 110, 660) is repealed.

¹ RT = *Riigi Teataja* = the State Gazette

² Riigikogu = the parliament of Estonia