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Claiming damages from the offender

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How can I claim damages or other means of redress/satisfaction from an offender in a trial (criminal proceedings), and who should I address this claim to?

You have the right to file a civil action for damages against the accused as part of criminal proceedings. An investigative body or the prosecutor's office must explain to the victim the procedure for filing a civil action, the essential requirements for a civil action, the deadline for filing a civil action, and the consequences of allowing this deadline to pass.

At which point in the criminal proceedings should I present a claim?

You have the right to file a civil action no later than 10 days after examining the criminal file. It is possible to apply to the prosecutor's office for an extension of this deadline.

If the deadline is exceeded the civil action will be returned, but in this case you can bring a claim for compensation before a civil court.

What can I ask for in the claim and how should I present it (indicate a total amount and/or specify the individual losses, lost profits and interests)?

In a civil action, you can raise a claim the objective of which is to restore or remedy the condition of well-being infringed by the act forming the subject of the criminal proceedings. The factual circumstances underlying such a claim must substantially overlap with the facts of the offence being dealt with and it must also be possible to hear such a claim in civil proceedings.

A civil action must be filed in writing and must give details of the plaintiff and the defendant and set out the clearly expressed claim of the victim and the factual circumstances and evidence on which the victim's claim is based. The claim must be complete (i.e. it must include the amounts of all types of damage for which the victim is claiming compensation). In an action for compensation of non-material damage, the amount of the compensation claimed may be left unspecified and fair compensation at the discretion of the court may be requested.

The body conducting proceedings may set a deadline for the elimination of deficiencies in the civil action.

Is there a specific form for such claims?

No specific form has been established for civil actions.

What evidence do I need to present to support my claim?

A civil action must be accompanied by proof of the facts forming the basis of the claim of the victim and upon

which the victim intends to rely regardless of the set of evidence presented by the prosecutor's office.

Are there courts fees or other costs linked to my claim?

Hearing of a civil action in criminal proceedings is exempt from State fees, with the exception of a civil action for the compensation of non-material damage, if the claim for such compensation is based on reasons other than the causing of bodily injury or other health disorder or the death of a provider.

If the civil action is dismissed, expenses related to the proceedings of the civil action or proof of claim in public law are borne by the victim. If the civil action is granted in part, the court divides the expenses related to the proceedings of the civil action between the victim, the accused and the defendant, considering all of the circumstances. The court may also decide that the expenses of the victim related to the proceedings of the civil action are to be borne in part or in full by the victim, if ordering payment of the expenses by the adverse party would be extremely unfair or unreasonable in respect of the latter.

If the court refuses to hear the civil action due to a judgment of acquittal or termination of criminal proceedings, the expenses related to the proceedings of the civil action are borne by the State. If the court refuses to hear the civil action for any other reasons, the court will divide the expenses related to the proceedings of the civil action between the victim and the State, considering all of the circumstances.

Can I obtain legal aid before and/or during the proceedings? Can I get it if I do not live in the country where the proceedings take place?

You will receive State legal aid if the grounds provided for in the State Legal Aid Act exist. If the court finds that your essential interests may be insufficiently protected without the assistance of a lawyer, the court may, on its own initiative, decide to grant you State legal aid on the basis of and according to the procedure provided for in the State Legal Aid Act.

A person may receive State legal aid if their financial situation at the time they require legal aid means that they are unable to pay for competent legal services or if they are able to pay for legal services only partially or in instalments or if their financial situation does not allow them to meet basic subsistence needs after paying for legal services.

State legal aid is granted to persons who, at the time of submission of the application for State aid, has residence in the Republic of Estonia or another Member State of the European Union or is a citizen of the Republic of Estonia or another Member State of the European Union. Other persons are granted legal aid only if this results from an international obligation binding on Estonia.

The Act sets out the grounds for refusal to grant State legal aid. State legal aid is not granted if, for example, the applicant is able to protect their rights on their own; if the applicant owns property which can be sold without major difficulty to cover the costs of legal services; and if the costs of legal services are not presumably more than double the applicant's average monthly income, minus taxes and compulsory insurance payments, amounts earmarked for fulfilment of a maintenance obligation arising from law as well as reasonable housing and transport costs. Neither is State legal aid granted if, under the given circumstances, it is clearly unlikely that the applicant will be able to protect their rights; if State legal aid is applied for in order to file a claim for non-material damages and there are no overriding public reasons in the case; or if the possible gains for the applicant upon adjudication of the case are unreasonably small, in comparison with the estimated legal aid expenses of the State.

State legal aid is granted on the basis of the person's application. If a person applies for State aid as a victim in criminal proceedings, the provision of State legal aid to the person is decided upon by the court hearing the matter or, during the pre-trial investigation of a criminal case, the court that will have jurisdiction to hear the criminal case.

An application for State legal aid must be submitted in Estonian, using the relevant application form. An application may also be submitted in English if legal aid is sought by a natural person who has residence in another Member State of the European Union or who is a citizen of another Member State of the European Union.

A person who applies for State legal aid must append to their application a duly executed and signed statement of the applicant's financial situation, and if possible, other evidence of this situation. If a person's residence is not in Estonia, they must append to their application a statement concerning their income and the income of members of their family during the last three years, issued by the competent authority of the person's country of residence. If this statement cannot be submitted for reasons independent of the applicant, the provision of State legal aid may be decided upon without the statement.

When would the criminal court dismiss or refuse to adjudicate on my claim against the offender?

A court may refuse to hear a civil action, in particular, if the action does not meet the relevant requirements, if the criminal proceedings are terminated, or if a judgment of acquittal is made. A court may also refuse to hear a civil action if the victim or the civil defendant does not appear at the session and the case cannot be heard without their presence. In addition, a court may refuse to hear a civil action if a criminal conviction is made.

A civil action is dismissed if there are no grounds for granting it.

Can I appeal against such a decision or seek other means of redress/satisfaction?

If the court has refused to hear your civil action, you can claim damages in a civil court. You have the right to file an appeal against the ruling of the court of first instance with a district court.

If I am awarded damages by the court, how do I ensure the judgment is enforced against the offender and what help can I get to ensure this?

If the convicted offender fails to pay the amount awarded by the judgment, you are entitled to turn to a bailiff on the basis of the judgment, and the bailiff will arrange enforcement proceedings.

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