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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?

Damages can be claimed from an offender in criminal proceedings either by making an oral submission on the record of the hearing or by submitting a special written petition. A victim who is entitled under law to claim damages from the offender for losses caused by the criminal offence committed against them is also entitled to petition the court to order the defendant to pay damages as part of the conviction; the victim must make such a petition at latest by the end of the investigation or the summary investigation. The petition must clearly state the reasons for the claim and the amount of damages sought. The victim is advised of the right to damages and the procedure for exercising that right in the course of the hearing.

If there is reasonable concern that satisfaction of the victim's claim for compensation for the losses caused by the crime will be obstructed or impeded, the claim up to the probable amount of the losses can be secured against the defendant's assets or other property rights. A decision on seizing assets is taken by the court on the basis of a petition submitted by the prosecutor or victim or, in the case of pre-trial proceedings, by the prosecutor on the basis of a petition submitted by the victim; in pre-trial proceedings, the prosecutor may secure the claim even without a petition by the victim if protection of the victim's interests so requires, especially if there is a risk of delay.

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

In order for a claim for damages to be adjudicated in criminal proceedings, it must be filed by the victim by the end of the investigation or the summary investigation.

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 order for a court to consider a claim for damages in criminal proceedings, the victim must file the claim in a proper and timely manner. To be considered submitted in time, a claim for damages must be submitted by the end of the investigation at the latest, which means that, in principle, it must be submitted before the final examination of the investigation file. The claim for damages must clearly state the reasons it is being submitted and the amount of damages sought by the victim. When deciding on damages in the course of criminal proceedings, the court is then bound by the amount claimed by the victim.

Is there a specific form for such claims?

No.

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

In the course of the investigation, evidence must be presented that demonstrates the reasonableness of the claim for damages and from which the amount of the losses incurred may reliably be determined. In the case of personal injury, an expert may be appointed in the course of the investigation to assess the extent of the personal injury.

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

There are no fees linked to claiming damages in criminal proceedings.

Can I get legal aid before and/or during the proceedings? Can I get it if I'm not living in the country where the proceedings take place?

Where a victim makes a claim for damages and lacks sufficient funds to pay the associated costs, a solicitor may be appointed as their representative by the prosecutor in pre-trial proceedings or by the presiding judge in the trial, even without a petition if they consider it necessary to protect the interests of the victim. The victim must prove that they lack sufficient funds.

On initial contact with the victim, the law-enforcement authority is required to provide them with information in written form on their rights in the criminal prosecution and on victim-support organisations and the services provided by those organisations. Legal advice is also part of those services.

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

If the evidence taken fails to find any basis for declaring liability for damages or if additional evidence going beyond what is required for the criminal prosecution would be needed in order for a decision on liability for damages to be taken.

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

Yes, the victim may appeal against such a decision in relation to the claim for damages.

If the victim's appeal is not satisfied, the victim may subsequently file their claim for damages directly against the offender in civil proceedings.

Any person who has sustained personal injury caused by an intentional violent crime or immaterial harm caused by certain crimes against freedom and human dignity or by the crime of cruelty to a close individual or to an individual in one's care may apply to the Ministry of Justice for damages. Victims of such crimes are entitled to damages even if the judgment, penalty order or other relevant decision has not yet been handed down or become final, provided that the results of the investigation or summary investigation conducted so far do not give rise to any reasonable doubt regarding an act having been committed that constitutes a violent crime and caused the victim personal injury. Once the application has been submitted, the Ministry assesses whether the results of the investigation raise any doubts regarding the facts stated. If there are doubts, damages cannot be awarded. An application can be re-submitted, where justified, for example if there is a delay in the investigation.

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 offender fails to voluntarily fulfil their obligations as ordered by the court in the criminal proceedings, the victim receives an enforcement order once the court's decision becomes enforceable, on the basis of which they can enforce the judgment against the offender under enforced recovery proceedings. In such cases, the victim may seek legal aid from a solicitor.

■ Last update: 27/02/2023

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