VOLUME II

ANNEXES

L’INDEMNISATION DES CITOYENS ET DES RESIDENTS PERMANENTS EUROPEENS VICTIMES DE LA CRIMINALITÉ OU DU TERRORISME EN DEHORS DU TERRITOIRE DE L’UNION EUROPEENNE

LA PRÉSENTE ÉTUDE A ÉTÉ PRÉPARÉE À LA DEMANDE DE LA COMMISSION EUROPEENNE, DIRECTION GÉNÉRALE DE LA JUSTICE ET DES AFFAIRES INTÉRIEURES. TOUTEFOIS ELLE NE REFLETTÉ QUE LE POINT DE VUE DU CONSULTANT ET NE SAURAIT CONSTITUER UNE PRISE DE POSITION OFFICIELLE DE LA COMMISSION.
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TITRE I - EUROPE

SOUS-TITRE I - REGIMES D’INDEMNISATION DES ANCIENS ETATS MEMBRES
ALLEMAGNE
Gesetz über die Entschädigung für Opfer von Gewalttaten

Datum: 11. Mai 1976
Fundstelle: BGBl I 1976, 1181
Textnachweis Geltung ab: 1. 1.1982
Maßgaben aufgrund EinigVtr vgl. OEG Anhang EV
Stand: Neugefasst durch Bek. v. 7. 1.1985 I 1;
geändert durch Art. 10 Nr. 11 G v. 30. 7.2004 I 1950

OEG § 1 Anspruch auf Versorgung


(2) Einem tätlichen Angriff im Sinne des Absatzes 1 stehen gleich 1. die vorsätzliche Beibringung von Gift, 2. die wenigstens fahrlässige Herbeiführung einer Gefahr für Leib und Leben eines anderen durch ein mit gemeingefährlichen Mitteln begangenes Verbrechen.

(3) Einer Schädigung im Sinne des Absatzes 1 stehen Schädigungen gleich, die durch einen Unfall unter den Voraussetzungen des § 1 Abs. 2 Buchstabe e oder f des Bundesversorgungsgesetzes herbeigeführt worden sind; Buchstabe e gilt auch für einen Unfall, den der Geschädigte bei der unverzüglichen Erstattung der Strafanzeige erleidet.

(4) Ausländer haben einen Anspruch auf Versorgung, 1. wenn sie Staatsangehörige eines Mitgliedstaates der Europäischen Gemeinschaften sind oder 2. soweit Rechtsvorschriften der Europäischen Gemeinschaften, die eine Gleichbehandlung mit Deutschen erforderlich machen, auf sie anwendbar sind oder 3. wenn die Gegenseitigkeit gewährleistet ist.

gewöhnlichen Aufenthalt oder ständigen Aufenthalt in dem Gebiet, in dem dieses Gesetz schon vor dem Beitritt gegalten hat.


(9) Einer Schädigung im Sinne des Absatzes 1 stehen Schädigungen gleich, die ein Berechtigter oder Leistungsempfänger nach Absatz 1 oder 8 Verbindung mit § 10 Abs. 4 oder 5 des Bundesversorgungsgesetzes, eine Pflegeperson oder eine Begleitperson bei einer notwendigen Begleitung des Geschädigten durch einen Unfall unter den Voraussetzungen des § 8a des Bundesversorgungsgesetzes erleidet.

(10) Einer gesundheitlichen Schädigung im Sinne des Absatzes 1 steht die Beschädigung eines am Körper getragenen Hilfsmittels, einer Brille, von Kontaktlinsen oder von Zahnersatz gleich.

(11) Dieses Gesetz ist nicht anzuwenden auf Schäden aus einem tätlichen Angriff, die von dem Angreifer durch den Gebrauch eines Kraftfahrzeugs oder eines Anhängers verursacht worden sind.

(12) § 64e des Bundesversorgungsgesetzes findet keine Anwendung. § 1 Abs. 3, die §§ 64 bis 64d, 64f sowie 89 des Bundesversorgungsgesetzes sind mit der Maßgabe anzuwenden, daß an die Stelle der Zustimmung des Bundesministeriums für Arbeit und Sozialordnung die Zustimmung der für die Kriegsopferversorgung zuständigen obersten Landesbehörde tritt, sofern ein Land Kostenträger ist (§ 4). Dabei sind die für deutsche Staatsangehörige geltenden Vorschriften auch für von diesem Gesetz erfasste Ausländer anzuwenden.

(13) § 20 des Bundesversorgungsgesetzes ist mit den Maßgaben anzuwenden, daß an die Stelle der in Absatz 1 Satz 3 genannten Zahl die Zahl der
rentenberechtigten Beschädigten und Hinterbliebenen nach diesem Gesetz im Vergleich zur Zahl des Vorjahres tritt, daß in Absatz 1 Satz 4 an die Stelle der dort genannten Ausgaben der Krankenkassen je Rentner die bundesweiten Ausgaben je Mitglied treten, daß Absatz 2 Satz 1 für die oberste Landesbehörde, die für die Kriegsopferversorgung zuständig ist, oder die von ihr bestimmte Stelle gilt und daß in Absatz 3 an die Stelle der in Satz 1 genannten Zahl die Zahl 1,3 tritt und die Sätze 2 bis 4 nicht gelten.

(14) Im Rahmen der Heilbehandlung sind auch heilpädagogische Behandlung, heilgymnastische und bewegungstherapeutische Übungen zu gewähren, wenn diese bei der Heilbehandlung notwendig sind.

OEG § 2 Versagungsgründe

(1) Leistungen sind zu versagen, wenn der Geschädigte die Schädigung verursacht hat oder wenn es aus sonstigen, insbesondere in dem eigenen Verhalten des Anspruchstellers liegenden Gründen unbillig wäre, Entschädigung zu gewähren. Leistungen sind auch zu versagen, wenn der Geschädigte oder Antragsteller 1. an politischen Auseinandersetzungen in seinem Heimatstaat aktiv beteiligt ist oder war und die Schädigung darauf beruht oder 2. an kriegerischen Auseinandersetzungen in seinem Heimatstaat aktiv beteiligt ist oder war und Anhaltspunkte dafür vorhanden sind, daß die Schädigung hiermit in Zusammenhang steht, es sei denn, er weist nach, daß dies nicht der Fall ist oder 3. in die organisierte Kriminalität verwickelt ist oder war oder einer Organisation, die Gewalttaten begeht, angehört oder angehört hat, es sei denn, er weist nach, daß die Schädigung hiermit nicht in Zusammenhang steht.

(2) Leistungen können versagt werden, wenn der Geschädigte es unterlassen hat, das ihm Mögliche zur Aufklärung des Sachverhalts und zur Verfolgung des Täters beizutragen, insbesondere unverzüglich Anzeige bei einer für die Strafverfolgung zuständigen Behörde zu erstatten.

OEG § 3 Zusammentreffen von Ansprüchen

(1) Treffen Ansprüche nach diesem Gesetz mit Ansprüchen aus einer Schädigung im Sinne des § 1 des Bundesversorgungsgesetzes oder nach anderen Gesetzen, die eine entsprechende Anwendung des Bundesversorgungsgesetzes vorsehen, zusammen, so ist unter Berücksichtigung der durch die gesamten Schadensfolgen bedingten Minderung der Erwerbsfähigkeit eine einheitliche Rente festzusetzen.

(2) Die Ansprüche nach diesem Gesetz entfallen, soweit auf Grund der Schädigung Ansprüche nach dem Bundesversorgungsgesetz oder nach einem Gesetz, welches eine entsprechende Anwendung des Bundesversorgungsgesetzes vorsieht, bestehen.

(3) Trifft ein Versorgungsanspruch nach diesem Gesetz mit einem Schadensersatzanspruch auf Grund fahrlässiger Amtspflichtverletzung zusammen, so wird der Anspruch nach § 839 Abs. 1 des Bürgerlichen Gesetzbuchs nicht dadurch ausgeschlossen, daß die Voraussetzungen des § 1 vorliegen.

(4) Bei Schäden nach diesem Gesetz gilt § 4 Abs. 1 Nr. 2 des Siebten Buches Sozialgesetzbuch nicht.

OEG § 4 Kostenträger

(1) Zur Gewährung der Versorgung ist das Land verpflichtet, in dem die Schädigung eingetreten ist. Sind hierüber Feststellungen nicht möglich, so ist das Land Kostenträger, in dem der Geschädigte zur Tatzeit seinen Wohnsitz oder gewöhnlichen Aufenthalt hatte. Hatte er im Geltungsbereich dieses Gesetzes keinen Wohnsitz oder gewöhnlichen Aufenthalt, oder ist die
Schädigung auf einem deutschen Schiff oder Luftfahrzeug außerhalb des Geltungsbereichs dieses Gesetzes eingetreten, so ist der Bund Kostenträger.

(2) Der Bund trägt vierzig vom Hundert der Ausgaben, die den Ländern durch Geldleistungen nach diesem Gesetz entstehen. Zu den Geldleistungen gehören nicht solche Geldbeträge, die zur Abgeltung oder an Stelle einer Sachleistung gezahlt werden.

(3) In den Fällen des § 3 Abs. 1 sind die Kosten, die durch das Hinzutreten der weiteren Schädigung verursacht werden, von dem Leistungsträger zu übernehmen, der für die Versorgung wegen der weiteren Schädigung zuständig ist.

OEG § 5 Übergang gesetzlicher Schadensersatzansprüche

(1) Ist ein Land Kostenträger (§ 4), so gilt § 81a des Bundesversorgungsgesetzes mit der Maßgabe, daß der gegen Dritte bestehende gesetzliche Schadensersatzanspruch auf das zur Gewährung der Leistungen nach diesem Gesetz verpflichtete Land übergeht.

(2) Die innerhalb eines Haushaltsjahres eingezogenen Beträge führt das Land jährlich bis zum 31. März des folgenden Jahres zu 7,5 vom Hundert an den Bund ab.

OEG § 6 Zuständigkeit und Verfahren

(1) Die Versorgung nach diesem Gesetz obliegt den für die Durchführung des Bundesversorgungsgesetzes zuständigen Behörden. Ist der Bund Kostenträger, so sind zuständig
1. wenn der Geschädigte seinen Wohnsitz oder gewöhnlichen Aufenthalt in einem Land hat, die Behörden dieses Landes,
Abweichend von Satz 2 sind, wenn die Schädigung auf einem deutschen Schiff oder Luftfahrzeug eingetreten ist, die Behörden des Landes zuständig, in dem das Schiff in das Schiffsregister eingetragen ist oder in dem der Halter des Luftfahrzeugs seinen Sitz oder Wohnsitz hat.

(2) Die örtliche Zuständigkeit der Behörden bestimmt die Landesregierung durch Rechtsverordnung.

(3) Das Gesetz über das Verwaltungsverfahren der Kriegsopferversorgung, mit Ausnahme der §§ 3 bis /* 5, */ sowie die Vorschriften des Sozialgerichtsgesetzes über das Vorverfahren sind anzuwenden.


OEG § 7 Rechtsweg


(2) Soweit die Versorgung in der Gewährung von Leistungen besteht, die den Leistungen der Kriegsopferfürsorge nach den §§ 25 bis 27h des Bundesversorgungsgesetzes entsprechen, ist der Verwaltungsrechtsweg gegeben.
OEG § 8 (Änderung der Reichsversicherungsordnung)
-
OEG § 9 (Änderung des Pflichtversicherungsgesetzes)
-
OEG § 10 Übergangsvorschriften


OEG § 10a Härteregelung

1. allein infolge dieser Schädigung schwerbeschädigt sind und
2. bedürftig sind und
3. im Geltungsbereich dieses Gesetzes ihren Wohnsitz oder gewöhnlichen Aufenthalt haben.
§ 31 Abs. 4 Satz 2 erster Halbsatz des Bundesversorgungsgesetzes gilt.

(2) Bedürftig ist ein Anspruchsteller, wenn sein Einkommen im Sinne des § 33 des Bundesversorgungsgesetzes den Betrag, von dem an die nach der Anrechnungsverordnung (§ 33 Abs. 6 Bundesversorgungsgesetz) zu berechnenden Leistungen nicht mehr zustehen, zuzüglich des Betrages der jeweiligen Grundrente, der Schwerstbeschädigtenzulage sowie der Pflegezulage nicht übersteigt.

(3) Übersteigt das Einkommen den Betrag, von dem an die vom Einkommen beeinflussten Versorgungsleistungen nicht mehr zustehen, so sind die Versorgungsbezüge in der Reihenfolge Grundrente, Schwerstbeschädigtenzulage und Pflegezulage um den Übersteigenden Betrag zu mindern. Bei der Berechnung des übersteigenden Betrages sind die Einkünfte aus gegenwärtiger Erwerbstätigkeit vor den übrigen Einkünften zu berücksichtigen. § 33 Abs. 4, § 33a Abs. 2 und § 33b Abs. 6 des Bundesversorgungsgesetzes gelten nicht.


OEG § 10b Härteausgleich

Soweit sich im Einzelfall aus der Anwendung des § 1 Abs. 5 und 6 eine besondere Härte ergibt, kann mit Zustimmung der obersten Landesbehörde im Benehmen mit dem Bundesministerium für Arbeit und Sozialordnung ein Härteausgleich als einmalige Leistung bis zur Höhe des Zwanzigfachen der monatlichen Grundrente entsprechend einer Minderung der Erwerbsfähigkeit um 70 vom Hundert, bei Hinterbliebenen bis zur Höhe des Zehnfachen der Hinterbliebenengrundrente einer Witwe gewährt werden. Das gilt für
einen Geschädigten nur dann, wenn er durch die Schädigung schwerbeschädigt ist.

OEG § 10c Übergangsregelung

Neue Ansprüche, die sich auf Grund einer Änderung dieses Gesetzes ergeben, werden nur auf Antrag festgestellt. Wird der Antrag binnen eines Jahres nach Verkündung des Änderungsgesetzes gestellt, so beginnt die Zahlung mit dem Zeitpunkt des Inkrafttretens, frühestens jedoch mit dem Monat, in dem die Voraussetzungen erfüllt sind.

OEG § 10d Übergangsvorschrift


OEG § 11 (Inkrafttreten)

OEG Anhang EV Auszug aus EinigVtr Anlage I Kapitel VIII Sachgebiet K Abschnitt III (BGBl. II 1990, 889, 1069) – Maßgaben für das beigetretene Gebiet (Art. 3 EinigVtr) –

Abschnitt III

Bundesrecht tritt in dem in Artikel 3 des Vertrages genannten Gebiet mit folgenden Maßgaben in Kraft:

   a) Die in den §§ 14, 15, 26c Abs. 6, § 31 Abs. 1 und 5, § 32 Abs. 2, § 33a Abs. 1, § 35 Abs. 1, § 36 Abs. 1 und 3, §§ 40, 40b Abs. 3, § 41 Abs. 2, §§ 46, 47 Abs. 1, § 51 Abs. 1 bis 3 und § 53 in der jeweils geltenden Fassung genannten Deutsche Mark-Beträge sind mit dem Vomhundertsatz zu multiplizieren, der sich aus dem jeweiligen Verhältnis der verfügbaren Standardrente (§ 68 Abs. 3 des Sechsten Buches Sozialgesetzbuch) in dem in Artikel 3 des Vertrages genannten Gebiet zur verfügbaren Standardrente in dem Gebiet, in dem das Bundesversorgungsgesetz schon vor dem Beitritt gegolten hat, ergibt. Dieser Vomhundertsatz gilt auch für den Bemessungsbetrag nach § 33 Abs. 1 Buchstabe a und die nach § 30 Abs. 5 letzter Satz bekannten Vergleichseinkommen sowie die in § 64e Abs. 7 genannten Rentenleistungen. Der in § 15 Satz 2 genannte Multiplikator ist ebenfalls mit dem in Satz 1 genannten Vomhundertsatz zu multiplizieren. Die sich ergebenden Beträge sind auf volle Deutsche Mark abzurunden, und zwar bis 0,49 Deutsche Mark nach unten und von 0,50 Deutsche Mark an nach oben. Abweichend hiervon ist der Multiplikator in § 15 Satz 2 auf drei Dezimalstellen nach dem Komma zu runden.
   Der Bundesminister für Arbeit und Sozialordnung gibt den maßgebenden Vomhundertsatz und den Veränderungstermin jeweils im Bundesanzeiger bekannt.
   b) § 16c ist mit folgenden Maßgaben anzuwenden:

bb) In Absatz 2 tritt an die Stelle des Wortes "jährlich" das Wort "jeweils".

c) § 19 Abs. 2, §§ 22, 26 Abs. 3 Nr. 2 sind mit folgender Maßgabe anzuwenden: An die Stelle der dort genannten rentenrechtlichen Bestimmungen treten die entsprechenden Bestimmungen, die in dem in Artikel 3 des Vertrages genannten Gebiet gelten.

d) § 25c ist mit folgenden Maßgaben anzuwenden:

aa) Geldleistungen sind nach Absatz 1 mindestens in der sich nach dem Bundessozialhilfegesetz ergebenden Höhe zu gewähren.

bb) Einkommen und Vermögen sind nach Absatz 2 höchstens in der sich nach dem Bundessozialhilfegesetz ergebenden Höhe einzusetzen.

e) § 26a Abs. 6 erster Halbsatz ist entsprechend der für § 16c Abs. 1 Satz 1 erster Halbsatz bestimmten Maßgabe anzuwenden.

f) § 56 findet von dem Zeitpunkt an Anwendung, zu dem das nach Buchstabe a Satz 1 maßgebende Verhältnis den Wert 100 vom Hundert erreicht.


a) In § 1 Abs. 2 Satz 1 wird das Wort "besondere" gestrichen.
b) § 6 findet keine Anwendung.
c) Die in Artikel 1 Abs. 1 des Vertrages genannten Länder können Aufgaben der von ihnen zu errichtenden Landesversorgungsämter und Versorgungsämter aufgrund von Vereinbarungen ganz oder teilweise durch andere Bundesländer wahrnehmen lassen.


a) Auf Berechtigte nach § 1 Abs. 1 Satz 1, die ihren Wohnsitz oder gewöhnlichen Aufenthalt in dem in Artikel 3 des Vertrages genannten Gebiet haben, sowie auf Berechtigte aus dem vorgenannten Gebiet, die nach der Schädigung ihren Wohnsitz oder gewöhnlichen Aufenthalt in das Gebiet, in dem das Opferentschädigungsgesetz schon vor dem Beitritt gegolten hat, verlegt haben, sind die Vorschriften des Bundesversorgungsgesetzes mit den unter Nummer 1 aufgeführten Maßgaben anzuwenden.
b) § 6 ist in dem in Artikel 3 des Vertrages genannten Gebiet mit den unter Nummer 2 aufgeführten Maßgaben anzuwenden.
AUTRICHE
Federal Law of 9 July 1972 on the granting of assistance payments to the victims of crimes

Federal Law Gazette no. 288 (Crime Victims Assistance Act) in the version valid from 1 January 1999

Public offer of assistance payments; eligible persons

s.1 (1) In issuing a public offer (s. 860 of the allgemeinen bürgerlichen Gesetzbuches (Civil Code)), the Federal Minister of Labour, Health and Social Affairs has placed the Federal Government under an obligation to provide assistance in accordance with this Federal Law to the victims of crimes or their survivors. This public offer is to be announced through publication in the Federal Law Gazette.

(2) Assistance will be granted to Austrian citizens if it can be assumed with probability that
1. they have suffered a physical injury or damage to health as a result of an illegal and deliberate action which carries a prison sentence of more than six months, or
2. have suffered physical injury or damage to health as uninvolved bystanders in connection with an action within the meaning of subpara. 1 above, unless claims in accordance with the Amtshaftungsgesetz (Public Authority Liability Law), Federal Law Gazette no.20/1949 arise therefrom, and as a result, have incurred medical costs or their earning capacity has been reduced.

(3) Assistance will also be paid if
1. the action which is subject to a legal penalty was committed in a state where the perpetrator lacked criminal responsibility or acted in an excusable emergency.
2. criminal prosecution of the perpetrator is not permissible because of his/her death, limitations of time or any other reason, or
3. the perpetrator is not known or cannot be prosecuted because of his/her absence.

(4) In those cases where there is a reduced earning capacity, assistance will only be paid if
1. this condition is expected to last at least six months, or
2. an action within the meaning of paragraph 2 has led to a serious physical injury (s. 84 (1) StGB (Penal Code), Federal Law Gazette no. 60/1974).

(5) If an action within the meaning of paragraph 2 has led to a person’s death, the survivors will be granted assistance in respect of maintenance for which the deceased person was legally responsible, if they are Austrian citizens and if the death has led to the loss of such maintenance.

(6) Assistance within the meaning of paragraph 5 shall be paid to children until the completion of their 18 year. Beyond this, they will also be
paid assistance if
1. they are not yet able to maintain themselves because of academic or other regular college or vocational training, up to the proper completion of this training, at most, however, until the completion of their 27th year. Assistance will be paid to children attending an institution named in s. 3 of the Studienförderungsgesetz (Law on Student Funding) of 1992, Federal Law Gazette no. 305 only if they are pursuing a proper course seriously and with determination within the meaning of s. 2 (1) lit. b of the Familienlastenausgleichsgesetz (Law on Equalisation of Family Obligations) of 1967, Federal Law Gazette no. 376, as amended by federal law, Federal Law Gazette no. 311/1992;
2. they are permanently incapable of earning a living as a result of physical or mental damage, provided such damage occurred before the completion of their 18th year or during the period described in subpara. 1 above and for as long as this condition continues.

(7) Assistance will be paid to citizens of countries which are signatories to the Agreement on the European Economic Area in the same manner as to citizens of Austria, if the action in accordance with paragraph 2
1. was committed in Austria or on an Austrian ship or aircraft, regardless of where it is situated, or
2. was committed outside Austria and if as a result of the freedom of settlement and the freedom of movement established in Articles 28 and 31 of the main section of the Agreement on the European Economic Area, they have established their permanent residence in Austria.

**Forms of assistance**

s.2 The following forms of assistance are provided:
1. Compensation for loss of earnings or maintenance;
2. Medical assistance
   a) Medical care,
   b) Medicines,
   c) Therapeutic aids,
   d) Institutional care,
   e) Dental care,
   f) Measures for securing health (s. 155 of the Allgemeines Sozialversicherungsgesetz (ASVG 1955 - General Social Security Act), Federal Law Gazette no. 189/1955);
3. Orthopaedic care
   a) Provision of replacement body parts, orthopaedic and other aids, replacement and renewal of these,
   b) Reimbursement of costs for alterations to objects and articles of everyday life and for the installation of sanitary facilities for disabled persons,
   c) Grants towards the cost of adapting multiple track vehicles for use by people with disabilities,
   d) Assistance with the purchase of multiple track vehicles,
   e) Necessary travel and transport costs;
4. Medical rehabilitation
   a) Accommodation in hospitals designed primarily for rehabilitation,
b) Medical care, medicines and therapeutic aids, if such assistance is required directly following or in connection with the measure listed under lit. a,
c) Necessary travel and transport costs;
5. Occupational rehabilitation
a) Occupational training for the recovery or enhancement of earning capacity,
b) Training for a new occupation,
c) Grants or loans (s. 198 (3) ASVG 1955);
6. Social rehabilitation
a) Grant towards the costs for obtaining a driving licence, if use of public transport is no longer reasonable as a result of the disability,
b) Transitional allowance (s. 306 ASVG 1955);
7. Nursing allowances, blind person’s allowances;
8. Reimbursement of funeral costs.

Compensation for loss of earnings or maintenance
s.3 (1) Assistance in accordance with s. 2 (1) shall be paid monthly in each case at the level of the earnings which either have been or will in future be lost by the disabled person as a result of the injury or damage to health (s. 1 (4)) suffered or the maintenance which has been or will be lost by survivors through the death of the person legally obliged to provide such maintenance. However, taken in combination with the income in accordance with paragraph 2, this sum must not exceed ATS 23,411 per month. This limit will be raised to ATS 33,533 if the person entitled to the claim maintains his/her spouse to a large extent. The limit shall be increased by a further ATS 2,457 for each child (s. 1(6)). In the case of widows (widowers) the income limit is set at ATS 23,411. The limit for orphans up to the end of their 24 year is ATS 8,740, if both parents have died ATS 13,333 and after the end of their 24 year ATS 15,527, if both parents have died ATS 23,411. These sums should be multiplied by the adjustment factor fixed within the scope of the Allgemeines Sozialversicherungsgesetz with effect from 1 January 1992 and subsequently with effect from 1 January of each year. The index related sums should be rounded off to the nearer full Austrian Schilling. If the assistance in accordance with s. 2 (1) together with the income in accordance with paragraph 2 exceeds the income limit, the compensation for loss of earnings or maintenance will be reduced by the amount in excess of the income limit.
(2) All income which is actually earned or may be earned in money or goods shall be regarded as income, including returns from assets, if they can be obtained without reducing the real value, as well as maintenance payments that are based on an obligation. Family allowances in accordance with the Familienlastenausgleichsgesetz of 1967, Federal Law Gazette no. 376, social assistance payments, free welfare care payments and income granted because of a special physical condition (long-term care allowance, nursing allowance, blind person’s allowance and similar payments) shall not be taken into account in determining the level of income. Maintenance payments based on an obligation will not be included if they have only been granted as a result of an action within the meaning of s. 1 (2).

Medical assistance
s.4 (1) Assistance in accordance with s. 2 subsection 2 shall be provided
only for physical injuries and damage to health within the meaning of s. 1 (2). Disabled persons who, as a result of an action within the meaning of s. 1 (2), can no longer carry out a reasonable occupation for which protection is guaranteed in the context of legal health insurance, and survivors (s. 1 (5)) will receive medical assistance if they suffer from a health disorder.

(2) Assistance in accordance with s. 2 subsection 2 will be provided
1. by the relevant legal health insurance provider, if the disabled person or the survivor is covered by the legal health insurance or a voluntary health insurance or if he/she is eligible for payments from a health insurance provider,
2. otherwise by the relevant local Gebietskrankenkasse (health insurance provider). The benefits listed in s. 2 subsection 2, shall be provided to the extent to which they are granted to a compulsorily insured person by the relevant local Gebietskrankenkasse in accordance with the law and the statutes.

(3) The Federal Government shall reimburse the health insurance provider named in paragraph 2 subpara. 2 for the costs incurred and the health insurance provider named in paragraph 2 subpara. 1 for the costs incurred in excess of the payments they would have incurred had they made such payments on the basis of another Federal Law and the statutes. Moreover, the Federal Government shall reimburse the health insurance providers for a proportion of the administrative costs.

(4) Where disabled persons or survivors have borne the costs for medical assistance themselves, these costs shall be reimbursed to the extent the Federal Government would have had to pay, had the medical assistance been rendered by the health insurance provider on the basis of this Federal Law.

(5) Where the health insurance provider grants the disabled person or the survivors a contribution towards the cost of psychotherapeutic treatment required as a result of an action within the meaning of s.1 (2) on the basis of the statutes, the costs for the number of sessions approved by the health insurance provider which the disabled person or the survivor has to pay himself/herself, shall be transferred up to the level of three times the sum of the contribution made by the health insurance provider.

Orthopaedic care

s.5 (1) Assistance in accordance with s.2 subsection 3 shall be paid only for physical injuries and damage to health within the meaning of s.1 (2). Disabled persons who, as a result of an action within the meaning of s.1(2), can no longer carry out a reasonable occupation for which protection is provided under health insurance legislation, and survivors (s.1 (5)) shall receive orthopaedic care for each physical injury.

(2) Assistance in accordance with s. 2 subsection 3 lit. a to d shall be granted in accordance with s.32 (3) of the Kriegsopferversorgungsgesetz (War Victims’ Pensions Act) of 1957, Federal Law Gazette no. 152.

(3) If a disabled person or a survivor purchases a replacement body part, an orthopaedic or other aid for him/herself, the costs will be reimbursed to the extent the Federal Government would have had to pay, had the orthopaedic care been provided in accordance with this Federal Law.

(4) Indispensable travel costs (s. 9a) incurred by a disabled person or survivor for the purpose of obtaining replacement body parts, orthopaedic
or other aids, or for having them repaired or replaced by new ones, shall be reimbursed in accordance with s. 49 of the Kriegsopferversorgungsgesetz of 1957, Federal Law Gazette no. 152.

**Rehabilitation**

s.5a (1) Assistance in accordance with s. 2 subsections 4 to 6 shall be paid for physical injuries and damage to health within the meaning of s. 1 (2) in the absence of legal provisions requiring the competent social insurance provider to take adequate measures, or if, as a result of an action within the meaning of s. 1 (2), the disabled person can no longer carry out a reasonable occupation for which protection is provided in accordance with legal health insurance.

(2) Assistance in accordance with s. 2 subsections 4 to 6 shall be provided under the conditions and to the extent to which it is available to an insured person or the recipient of a pension in an insurance case where there is a reduced capacity to work within the meaning of s. 300 of the Allgemeines Sozialversicherungsgesetz of 1955.

(3) The Bundessozialamt (Federal Office for Social Affairs) can transfer the implementation of rehabilitation measures to the Pensionsversicherungsanstalt der Arbeiter (Pension Insurance Institution for Workers) in return for the reimbursement of proven actual costs and an appropriate proportion of the administrative costs, if this is desirable for a more rapid and efficient assistance.

(4) Taking into account the number of persons eligible for benefits and the average costs for medical, occupational and social rehabilitation measures granted in these cases, the Federal Government may agree with the Pensionsversicherungsanstalt der Arbeiter on annual lump sum payments as a reimbursement of costs.

**Nursing allowances and blind persons’ allowances**

s.6 If, as a result of an action within the meaning of s. 1 (2), a disabled person is so helpless that he/she requires the assistance of another person to carry out the necessary basic activities, he/she will be granted a nursing allowance in accordance with s.18 of the Kriegsopferversorgungsgesetz of 1957. If a disabled person has gone blind as a result of an action within the meaning of s. 1 (2), he/she will be granted a blind person’s allowance in accordance with s. 19 of the Kriegsopferversorgungsgesetz of 1957. In this context, a physical injury or damage to health within the meaning of s. 1 (2) is comparable to a service injury within the meaning of the Kriegsopferversorgungsgesetz of 1957.

**Reimbursement of funeral costs**

s.7 If an action within the meaning of s. 1 (2) has led to a person’s death, the person who has paid the funeral costs will be reimbursed for his/her expenses up to an amount of ATS 23,411. This sum will be multiplied by the adjustment factor fixed for the scope of the Allgemeines Sozialversicherungsgesetz with effect from 1 January 1992 and subsequently with effect from 1 January each year. The index-related sum will be rounded off to the nearer full Austrian Schilling. Single payments granted from resources of the statutory social insurance scheme or other public funds in connection with the death, shall be deducted from this sum.

**Exclusion provisions**

s.8 (1) Disabled persons will be excluded from the assistance payments if
1. they were involved in the crime,
2. in the absence of a reason recognised by law, deliberately caused
   the perpetrator to commit the crime or, in the absence of any
   recognisable reason, negligently exposed themselves to the risk of
   becoming a victim of the crime,
3. participated in a brawl in which they suffered the injury or damage
   to health (s.1 (2)), or
4. culpably failed to assist the authorities in the discovery of the crime,
   the identification of the criminal or the establishment of the
   damage.

(2) Survivors (s. 1 (5)) will be excluded from assistance payments if
1. they or the disabled person were involved in the crime,
2. in the absence of a reason recognised by law, they or the disabled
   person deliberately caused the perpetrator to commit the crime, or
3. they culpably failed to assist the authorities in the discovery of
   the crime, the identification of the criminal or the establishment
   of the damage.

(3) Persons who have waived their right to claim damages as a result of
the crime or are entitled to receive similar government payments on the
basis of foreign legal provisions, shall be excluded from such assistance
payments.

(4) Persons who refuse a therapeutic or rehabilitation procedure which
could be reasonably expected of them, or who endanger or obstruct the
success of a procedure of this kind through their behaviour, shall be
excluded from assistance payments in accordance with s. 2 subsections
1 and 5 lit. c, 6 and 7.

(5) Compensation for loss of earnings or maintenance (s.2 subsection
1) shall be reduced in proportion to the extent to which the disabled
person or the survivor deliberately or negligently failed to keep the damage
to a minimum.

(6) Persons who are entitled to claim payments of a similar kind on the basis
of legal provisions, shall be excluded from receiving orthopaedic care (s.2
subsection 3). Claims for compensation based on the provisions of civil law
shall not be considered as payments of a similar kind.

**Application for assistance payments and their implementation**

s.9 (1) Applications for assistance payments should be addressed to the
Bundessozialamt (Federal Office for Social Affairs) in the region in which
the applicant has his/her residence. In the absence of such residence, the
choice shall depend on his/her place of abode. If the applicant’s residence is
outside Austria, the application will be dealt with by the Bundessozialamt
für Wien Niederösterreich und Burgenland (Federal Office for Social Affairs
for Vienna, Lower Austria and Burgenland).

(2) The locally competent Bundessozialamt shall determine applications
for assistance payments in accordance with s. 2.

(3) The Bundessozialamt shall determine whether criminal proceedings
have been instituted as a result of the facts underlying the application, and if
so, what the stage of these proceedings is. The criminal courts of fi rst instance
and public prosecutors are under an obligation to answer without delay
pertinent enquiries by the Bundessozialamt. Where the public prosecutor
has deferred charges or has withdrawn from prosecution or has withdrawn
(4) Where the establishment of the facts depends on questions relating to the specialist area of medicine, medical experts named in the lists of the Bundessozialämter (Federal Offices for Social Affairs) shall be consulted. Experts other than those named in the lists of the Bundessozialämter, may be consulted only if there is imminent danger, the necessary examination of the disabled person is not possible or possible only with difficulty or if an examination is required in an area for which no experts are indicated in the lists. As regards the remuneration for the time spent and the efforts taken by the medical expert, s. 91 of the Kriegsopferversorgungsgesetz of 1957 applies.

**Reimbursement of travelling expenses**

s.9a Travelling expenses incurred by the recipient of an assistance payment (applicant for assistance) in connection with interviews with offices appointed for the implementation of this Federal Law, or in connection with s. 5 (4), shall be reimbursed in accordance with s. 49 of the Kriegsopferversorgungsgesetz of 1957.

**Beginning and end of assistance payments, repayments and suspension**

s.10 (1) Payments in accordance with s. 2 subsections 1 and 7 may be made only from the month in which the conditions for such payments have been fulfilled, provided the application is made within six months following the physical injury or damage to health (s1 (2)) or after the disabled person’s death (s. 1 (5)). For payments made in accordance with s.2 subsections 2 to 6 and 8, this period shall be 2 years. If an application is not made until after the end of the period specified, the payments under s.2 subsections 1 to 7 will be made at the start of the month following the application.

(2) Assistance payments will no longer be made if the circumstances that are relevant to such payments have changed, if a reason for exclusion (s. 8) arises at a later date or if it turns out later on that the prerequisites for receiving assistance payments have not been fulfilled.

(3) Assistance payments will only be made if the recipient has previously committed him/herself to

1. notifying the competent Bundessozialamt without delay of any changes that are relevant to such payment and
2. returning any assistance payments received unlawfully if he/she has drawn the assistance payment or continued to draw the assistance payment deliberately or through gross negligence by giving false information, by failing to disclose relevant facts or by contravening the obligation to notify the authorities in accordance with subpara. 1 above, this shall not affect any other claims by the Federal Government under civil law.

(4) The Bundessozialamt may in certain circumstances and contrary to paras. 2 and 3, refrain from requiring the recipient to pay back incorrectly drawn amounts, having regard in particular to the recipient’s family and income situation as well as his/her assets. It may also do so if the proceedings for indemnifying the Federal Government were associated with costs or
complications that are disproportionate to the sums in question. Agreements regarding repayment in instalments are permissible; interest on arrears shall not be prescribed.

(5) Assistance in accordance with s.2 (7) shall be suspended during any medical treatment in addition to which full board is provided, as from the day after the medical treatment began.

Exemption of assistance payments from income tax and other charges

s.11 (1) Any payments made on the basis of this Federal Law shall not be subject to income tax.

(2) Any applications made and powers of attorney given in the implementation of this Federal Law shall be exempt from stamp charges.

Transfer of right to claim compensation

s.12 If persons who are receiving payments under this Federal Law are entitled to claim compensation for the damage incurred as a result of an action within the meaning of s. 1 (2) on the basis of other legal provisions, their right will be transferred to the Federal Government to the extent the Federal Government renders assistance in accordance with this Federal Law.

As regards the effectiveness of this transfer vis-à-vis the party liable to pay compensation, the last clause of s. 1395 and the first clause of s. 1396 of the allgemeinen burgerlichen Gesetzbuches apply mutatis mutandis.

Reimbursement of social assistance and disability assistance payments

s.13 (1) If a provider of social assistance or disability assistance supports a disabled person or survivor on the basis of a legal obligation for a period for which assistance in accordance with this Federal Law is granted at a later date, the Federal Government will reimburse the provider of social or disability assistance for the support payments rendered by it up to the level of payments approved in accordance with this Federal Law. This is, however, not the case with long-term care allowances made in accordance with provincial laws.

(2) Any assistance provided under this Federal Law shall be reduced by the amounts required for reimbursing the provider of the social or disability assistance.

Notification

s.14 Persons who have suffered damage and are eligible to assistance payments under this Federal Law, shall be informed about the content of this Federal Law. Responsibility to provide such information lies with the security authority which establishes the facts of the case and with the criminal court of first instance; however, if the public prosecutor withdraws the charge, he/she will be responsible for doing so.

Allowance for hardship

s.14a If particular hardship arises as a result of the provisions of this Federal Law, the Federal Minister of Labour, Health and Social Affairs may, in agreement with the Federal Minister of Finance, grant similar (equalisation) payments. No right to receive such payments shall accrue under the law or as a result of this public offer.

Financial provisions

s.15 The costs arising from this Federal Law including any administrative costs shall be paid from federal resources.

Reference to other Federal Laws

s.15a Insofar as reference is made in this Federal Law to provisions
enshrined in other federal laws, these laws shall be applied in their respective version.

**Transitional provisions**

s.15b (1) Section 10 (1) last clause in the version valid until 31 December 1997, shall continue to apply to cases where the application was made prior to 1 January 1998 and where a decision as to possible assistance payments has not yet been taken.

(2) Where an action within the meaning of s. 1 (2) took place prior to the entry into force of the Federal Law published in the Federal Law Gazette vol. 1 no. 11/1999, s.10 (1) shall apply to applications for a reimbursement of costs in accordance with s. 4 (5) with the proviso that the twoyear period for such an application begins on 1 January 1999.

**Entry into force**

s.16 (1) This Federal Law shall enter into force on 1 September 1972.

(2) This Federal Law shall, with the exception of s. 1 (7), be applied in those cases where an action within the meaning of s.1 (2) took place prior to the entry into force of this Federal Law but after 25 October 1955.

(3) Section 1 (7) shall be applied in those cases where an action within the meaning of s. 1 (2) took place after the entry into force of the Agreement on the European Economic Area.

(4) Section 1 (6) (1) in the version of the Federal Law published in the Federal Law Gazette vol. 1 no. 139/1997 shall enter into force on 1 September 1996, s.3(2). the heading relating to s. 10. s.10(1) last clause, s.10 (5) and s.15b together with the heading in the version of the Federal Law published in the Federal Law Gazette vol. 1 no. 139/1997 shall enter into force on 1 January 1998.

(5) Sections 4 (5) and 15b in the version of the Federal Law published in the Federal Law Gazette vol. 1 no. 11/1999 shall enter into force on 1 January 1999. Section 4 (5) shall be applied in accordance with paragraphs 2 and 3.

**Enforcement and implementation**

s.17 (1) The following bodies are entrusted with the enforcement of this Federal Law

1. with regard to ss. 4, 5a and 9a the Federal Minister of Labour, Health and Social Affairs,

2. with regard to s. 9 (3) last clause and (4) last clause, s. 11 and s. 15 the Federal Minister of Labour, Health and Social Affairs acting in agreement with the Federal Minister of Finance.

3. with regard to s. 9 (3) second and third clauses and s. 12 the Federal Minister of Justice.

4. with regard to s. 14 the Federal Minister of Justice and the Federal Minister of the Interior, and

5. with regard to s. 9 (3) penultimate clause the Federal Minister of Labour, Health and Social Affairs acting in agreement with the Federal Minister of Finance and the Federal Minister of the Interior.

(2) Responsibility for carrying out the tasks to be fulfilled by the Federal Government as holder of private rights under this Federal Law, shall

1. with regard to s.14a the Federal Minister of Labour, Health and Social Affairs acting in agreement with the Federal
Minister of Finance and
2. with regard to all other provisions the Federal Minister of
Labour, Health and Social Affairs acting in agreement with
the Federal Minister of Justice.
BELGIQUE
III.A Loi du 1er août 1985 portant des mesures fiscales et autres

CHAPITRE III. - ORGANISATION JUDICIAIRE ET SECURITE DES CITOYENS.

SECTION II. — Aide de l'État aux victimes d'actes intentionnels de violence.

Art. 28. Il est institué au budget du Ministère de la Justice un Fonds spécial pour l'aide aux victimes d'actes intentionnels de violence.

(Alinéa 2 abrogé) <L 2003-04-22/43, art. 2, 020; En vigueur : 01-01-2004>


Lors de chaque condamnation à une peine principale criminelle ou correctionnelle, le juge condamne à l'obligation de verser une somme de 25 cents à titre de contribution au Fonds. Cette somme est soumise à l'augmentation prévue par la loi du 5 mars 1952 relative aux décimes additionnels sur les amendes pénales et peut être modifiée par arrêté royal délibéré en Conseil des ministres.

Le service public fédéral Finances procède au recouvrement des sommes visées à l'alinéa précédent, selon les règles applicables au recouvrement des amendes pénales. Les sommes recouvrées sont versées trimestriellement au Fonds.

Les paiements faits par le condamné s'imputent d'abord sur les frais de justice dus à l'État, ensuite sur la contribution visée à l'alinéa 1er, et enfin sur l'amende pénale, sous réserve de l'application de l'article 49 du Code pénal.

Art. 30. § 1er. Il est institué une (Commission pour l'aide financière aux victimes d'actes intentionnels de violence), qui statue sur les demandes d'octroi d'une aide (d'urgence), (d'une aide financière) ou d'un complément d'aide. <L 1997-02-17/54, art. 3, 013; En vigueur : 11-09-1997> <L 2003-04-22/43, art. 4, 020; En vigueur : 01-01-2004>

§ 2. La Commission pour l'aide financière aux victimes d'actes intentionnels de violence, ci-après dénommée " la commission ", est divisée en chambres. Le Roi détermine le nombre de chambres.

Le président et les vice-présidents de la commission sont des magistrats de l'ordre judiciaire. Le nombre de vice-présidents est égal au nombre de chambres moins un.

La commission comprend en outre autant d'avocats ou avocats honoraires et de
fonctionnaires ou fonctionnaires retraités de niveau 1 qu'il y a de chambres. D'autres catégories de membres de la commission peuvent être désignées par le Roi. A cet effet, celui-ci peut imposer des conditions particulières. La moitié des membres appartient au rôle linguistique français, l'autre moitié au rôle linguistique néerlandais. Le président, les vice-présidents et chaque membre ont un suppléant;

Le président doit justifier de la connaissance de la langue française et de la langue néerlandaise, conformément à la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire. Au moins une des personnes mentionnées à l'alinéa précédent doit justifier de la connaissance suffisante de la langue allemande, selon les modalités précisées par le Roi. Le président, les vice-présidents, les membres et leurs suppléants sont désignés par le Roi. La moitié des fonctionnaires est désignée sur proposition du Ministre des Finances, l'autre moitié sur proposition du ministre qui a la Santé publique dans ses attributions.

Le mandat du président, des vice-présidents, des membres et de leurs suppléants a une durée de six ans, sans que le titulaire de ce mandat puisse dépasser l'âge de 70 ans. Le mandat est renouvelable.

La commission est assistée par un secrétaire et au moins autant de secrétaires adjoints moins un et autant de secrétaires suppléants qu'il y a de chambres; l'effectif du secrétariat de la commission ne peut être inférieur à quatorze personnes. Ils sont désignés par le Ministre de la Justice. La moitié appartient au rôle linguistique français, l'autre moitié au rôle linguistique néerlandais.

Chaque chambre est présidée par le président ou un vice-président, ou par leur suppléant.

§ 3. Les chambres statuent sur les demandes d'aide financière et sur les demandes de complément d'aide visées aux articles 31bis et 37. Les présidents des chambres siègent seuls en matière de demandes d'aide d'urgence visées à l'article 36, en matière de demandes manifestement irrecevables ou manifestement non fondées, ou lorsqu'ils décrètent le désistement de l'instance ou raient l'affaire du rôle.

§ 4. Les frais de fonctionnement de la commission et du secrétariat sont à charge du budget du Service public fédéral Justice.) <L 2003-04-22/43, art. 4, 020; En vigueur : 01-01-2004>

Art. 31. <L 2003-03-26/68, art. 2, 019; En vigueur : 09-01-2004> La Commission pour l'aide financière au victimes d'actes intentionnels de violence, ci-après dénommée " la commission " peut octroyer une aide financière :

1° aux personnes qui subissent un préjudice physique ou psychique important résultant directement d'un acte intentionnel de violence;

2° aux proches d'une personne ou aux personnes qui vivaient dans un rapport familial
durable avec une personne dont le décès est la suite directe d'un acte intentionnel de violence;

3° aux père et mère d'un mineur ou aux personnes qui ont à leur charge un mineur, qui suite à un acte intentionnel de violence, a besoin d'un traitement médical ou thérapeutique de longue durée;

4° aux parents jusqu'au deuxième degré d'une victime ou aux parents qui vivaient dans un rapport familial durable avec une victime disparue depuis plus d'un an, dont il est admis que la disparition est due selon toute probabilité à un acte intentionnel de violence.

Art. 31bis. <inséré par L 2003-03-26/68, art. 3; En vigueur : 09-01-2004> L'aide financière visée à l'article 31 est octroyée aux conditions suivantes :

1° L'acte de violence a été commis en Belgique.

Est assimilé à un acte intentionnel de violence commis en Belgique, celui qui est commis à l'étranger et dont est victime une personne en service commandé visée à l'article 42, § 2.

2° Au moment où l'acte de violence est commis, la victime est de nationalité belge, a le droit d'entrer, de séjourner ou de s'établir dans le Royaume, ou s'est vue octroyer par la suite par l'Office des étranger un permis de séjour à durée indéterminée dans le cadre d'une enquête relative à la traite des êtres humains.

3° Une décision judiciaire définitive sur l'action publique est intervenue et le requérant a tenté d'obtenir réparation de son préjudice en s'étant constitué partie civile, en ayant procédé à une citation directe ou en ayant intenté une procédure devant un tribunal civil.

Lorsque le dossier pénal est classé sans suite parce que l'auteur est demeuré inconnu, la commission peut estimer que le dépôt de plainte ou l'acquisition de la qualité de personne lésée par le requérant est suffisant. L'aide peut également être demandée lorsqu'un délai d'un an minimum s'est écoulé depuis la date de constitution de partie civile et que l'auteur demeure inconnu.

4° La demande est introduite dans un délai de trois ans. Le délai prend cours, selon le cas, à partir de la première décision de classement sans suite, de la décision de la juridiction d'instruction, du jour où il a été statué sur l'action publique par une décision définitive ou du jour à partir duquel une décision sur les intérêts civils est intervenue postérieurement à la décision sur l'action publique.

5° La réparation du préjudice ne peut pas être assurée de façon effective et suffisante par l'auteur ou le civilement responsable, par une régime de sécurité sociale ou par une assurance privée, ou de toute autre manière.

Art. 32. <L 2003-03-26/68, art. 4, 019; En vigueur : 09-01-2004> § 1er. Pour l'octroi d'une aide aux personnes visées à l'article 31, 1°, la commission se fonde exclusivement sur les
éléments suivants du dommage subi :

1° le dommage moral, tenant compte de l'invalidité temporaire ou permanente;
2° les frais médicaux et d'hospitalisation, en ce compris les frais de prothèses;
3° l'invalidité temporaire ou permanente;
4° une perte ou une diminution de revenus résultant de l'incapacité de travail temporaire ou permanente;
5° le dommage esthétique;
6° les frais de procédure;
7° les frais matériels;
8° le dommage résultant de la perte d'une ou de plusieurs années de scolarité.

§ 2. Pour l'octroi d'une aide aux personnes visées à l'article 31, 2°, la commission se fonde exclusivement sur les éléments suivants du dommage subi :

1° le dommage moral;
2° les frais médicaux et d'hospitalisation;
3° la perte d'aliments pour les personnes qui, au moment du décès de la victime, étaient à sa charge;
4° les frais funéraires;
5° les frais de procédure;
6° le dommage résultant de la perte d'une ou de plusieurs années de scolarité.

§ 3. Pour l'octroi d'une aide aux personnes visées à l'article 31, 3° et 4°, la commission se fonde exclusivement sur les éléments suivants du dommage subi :

1° le dommage moral;
2° les frais médicaux et d'hospitalisation;
3° les frais de procédure.

§ 4. L'aide pour les préjudices décrits au § 1er, 6° et 7°, au § 2, 4° et 5°, et au § 3, 3°, est octroyée suivant les conditions et les montants maximaux déterminés par arrêté royal délibéré en conseil des ministres.

Art. 33. <L 2003-03-26/68, art. 5, 019; En vigueur : 09-01-2004> § 1er. Le montant de l'aide est fixé en équité.

La commission peut notamment prendre en considération :
- le comportement du requérant lorsque celui-ci a contribué directement ou indirectement à la réalisation du dommage ou à son aggravation;
- la relation entre le requérant et l'auteur.

§ 2. L'aide est octroyée par cas et par requérant pour un dommage excédant 500 euros et est
limitée à un montant de 62.000 euros.

Art. 33bis. <inséré par L 2003-03-26/68, art. 5; En vigueur : 09-01-2004> L'aide peut également être octroyée lorsque aucune décision judiciaire définitive sur les intérêts civils n'est intervenue. Dans ce cas, la commission évalue elle-même le dommage qu'elle prend en considération. Cette évaluation ne lie pas les cours et tribunaux.

Art. 34. <L 2003-04-22/43, art. 5, 020; En vigueur : 01-01-2004> La demande d'aide financière, d'aide d'urgence ou de complément d'aide est formée par requête en double exemplaire, déposée au secrétariat de la commission ou à lui adressée par lettre recommandée à la poste. Elle est signée par le requérant ou par son avocat.

La requête contient :
1° l'indication des jour, mois et an;
2° les nom, prénoms, profession, domicile et nationalité de la victime, du requérant et, le cas échéant, du représentant légal;
3° la date, le lieu et une description sommaire de l'acte intentionnel de violence;
4° la date du dépôt de plainte, de l'acquisition de la qualité de personne lésée et, le cas échéant, la date de la constitution de partie civile;
5° les moyens dont dispose le requérant pour obtenir une indemnisation;
6° l'évaluation des différents éléments du dommage pour lesquels une aide est demandée et le montant total de l'aide demandée.

La requête se termine par les mots : " J'affirme sur l'honneur que la présente déclaration est sincère et complète. "

A la requête sont jointes :
- une copie, selon le cas, de la décision de classement sans suite pour auteur inconnu, de la décision de la juridiction d'instruction, de la décision judiciaire définitive statuant sur l'action publique et, le cas échéant, de la décision statuant sur les intérêts civils;
- les pièces justificatives des différents éléments du dommage pour lequel une aide est demandée, dont les attestations et rapports médicaux.

Art. 34bis. <inséré par L 2003-04-22/43, art. 6; En vigueur : 01-01-2004> La commission peut procéder ou faire procéder à toutes investigations utiles qui sont destinées à vérifier la situation financière du requérant et de l'auteur de l'acte intentionnel de violence. Elle peut requérir de toute autorité des renseignements sur leur situation professionnelle, financière, sociale et fiscale, sans que puisse lui être opposée son obligation de garder le secret. Elle peut demander aux services de police de procéder à une enquête financière, moyennant l'autorisation du procureur général ou de l'auditeur général.
La commission peut se faire communiquer le dossier répressif ou une copie de celui-ci, moyennant l'autorisation du procureur général ou de l'auditeur général.

La commission peut charger l'office médico-légal de procéder ou de faire procéder à une expertise en vue de constater et de décrire les lésions encourues par la victime. Elle peut éventuellement désigner d'autres experts et entendre des témoins.

Le résultat des mesures d'instruction est exclusivement destiné à l'examen de la demande et reste couvert par le secret professionnel.

Chacun des membres des chambres peut procéder ou faire procéder aux mesures d'instruction visées aux alinéas 1er à 3.

Le secrétaire et les secrétaires adjoints préparent et complètent les dossiers. Ils établissent un rapport pour chaque affaire et peuvent proposer aux membres de la commission d'ordonner une mesure d'instruction visée aux alinéas 1 à 3. Ce rapport contient un relevé succinct des éléments de fait objectifs et des décisions judiciaires intervenues, et indique, le cas échéant, quels éléments font encore défaut et quelles conditions légales ne paraissent pas ou pas encore remplies.

Art. 34ter. <inséré par L 2003-04-22/43, art. 7; En vigueur : 01-01-2004> La commission statue par décision motivée.

Le requérant est entendu par la commission s'il en fait la demande par écrit ou si elle l'estime nécessaire. Il peut à cet effet se faire assister ou représenter par son avocat. Il peut également se faire assister par le délégué d'un organisme public ou d'une association agréée à cette fin par le Roi.

Le Ministre de la Justice ou son délégué peut rendre un avis écrit relatif au respect de la loi.

Art. 34quater. <inséré par L 2003-04-22/43, art. 8; En vigueur : 01-01-2004> Un recours en annulation devant le Conseil d'Etat contre une décision de la commission est ouvert au requérant et au Ministre de la Justice, conformément à l'article 14 des lois coordonnées sur le Conseil d'Etat.

Art. 34quinquies. <inséré par L 2003-04-22/43, art. 9; En vigueur : 01-01-2004> La décision de la commission est notifiée dans les huit jours de son prononcé, sous pli recommandé à la poste, au requérant et, par courrier ordinaire, à l'avocat du requérant et au Ministre de la Justice.

La notification faite au requérant mentionne le contenu de l'article 34quater.

Art. 34sexies. <inséré par L 2003-04-22/43, art. 10 ; En vigueur : 01-01-2004> Le Roi fixe les modalités de la procédure et du fonctionnement de la commission.

Art. 35. (Abrogé) <L 2003-03-26/68, art. 12, 019; En vigueur : 09-01-2004>
Art. 36. <L 2003-03-26/68, art. 7, 019; En vigueur : 09-01-2004> Sans préjudice de l'application des articles 31 à 3, § 1er, la commission peut octroyer une aide d'urgence lorsque tout retard dans l'octroi de l'aide pourrait causer au requérant un préjudice important, vu sa situation financière.

L'aide d'urgence est octroyée par cas et par requérant pour un dommage excédant 500 euros et est limitée à un montant de 15.000 euros.

La demande tendant à l'octroi d'une aide d'urgence peut être introduite dès que le requérant a déposé plainte ou s'est constitué partie civile.

Lorsqu'il s'agit des frais visés à l'article 32, § 1er, 2°, l'urgence est toujours présumée.
L'article 33, § 1er, n'est pas d'application lorsque la commission se prononce sur la demande de prise en charge de ces frais. Le montant réel des frais est pris en compte par la commission, sans application de la limite prévue à l'alinéa 2.

Art. 37. <L 2003-03-26/68, art. 8, 019; En vigueur : 09-01-2004> La commission peut octroyer un complément d'aide lorsque après l'octroi de l'aide, le dommage s'est manifestement aggravé, ceci sans préjudice de l'application des articles 31 à 33, § 1er.

Le complément d'aide est octroyé par cas et par requérant pour un dommage excédant 500 euros et est limité à un montant de 62.000 euros diminué de l'aide déjà octroyée et de l'éventuelle aide d'urgence.

A peine de forclusion, la demande tendant à l'octroi d'un complément d'aide est introduite dans les dix ans à compter du jour où l'aide a été versée.

Art. 37bis. <inséré par L 2003-03-26/68, art. 9; En vigueur : 09-01-2004> Les montants mentionnés aux articles 33, 36 et 37 peuvent être augmentés par arrêté royal délibéré en conseil des ministres.

Art. 38. <L 2003-03-26/68, art. 10, 019; En vigueur : 09-01-2004> L'aide octroyée par la commission est directement versée au requérant par le Ministre de la Justice, en tenant compte des moyens dont dispose le Fonds spécial pour l'aide aux victimes d'actes intentionnels de violence visé à l'article 29, alinéa 1er.

Art. 39. <L 2003-03-26/68, art. 11, 019; En vigueur : 09-01-2004> § 1er. L'Etat est subrogé de plein droit, à concurrence du montant de l'aide accordée, aux droits de la victime contre l'auteur ou le civilment responsable.

§ 2. L'Etat peut exiger le remboursement total ou partiel de l'aide accordée lorsque, postérieurement au paiement de celle-ci, la victime obtient à un titre quelconque une réparation de son préjudice.

La commission donne au Ministre des Finances un avis motivé préalablement à l'intentement
d'une action en remboursement.

§ 3. L'Etat peut exiger le remboursement total ou partiel de l'aide lorsque celle-ci a été accordée en tout ou en partie à la suite de fausses déclarations ou d'omissions du requérant.

L'arrêté royal du 31 mai 1933 concernant les déclarations à faire en matière de subventions, indemnités et allocations de toute nature, qui sont en tout ou en partie à charge de l'Etat, est applicable.

§ 4. L'Etat peut également exiger le remboursement total ou partiel de l'aide d'urgence visée à l'article 36, alinéa 4, dans la même mesure où une décision de justice coulée en force de chose jugée met tout ou partie de la responsabilité à charge de la victime.

Art. 40. (Abrogé) <L 2003-03-26/68, art. 12, 019; En vigueur : 09-01-2004>

Art. 41. Le Roi fixe la date de l'entrée en vigueur de chacune des dispositions de la présente section.

III.B 1 AUGUST 1985 - Law concerning fiscal and other measures

La traduction anglaise du texte original français provient de l’annexe de « Repairing the irreperable, state compensation to crime victims in the European Union ». Cette traduction n’intègre pas une importante modification apportée par une loi du 26 mars 2003.

As amended to 06-01-2001
Chapter 3
JUDICIAL SYSTEM AND SECURITY OF CITIZENS
Section 2
State Aid to victims of intentional acts of violence

28. The budget of the Ministry of Justice has provided for the establishment of a special Fund for the provision of financial assistant to the victims of intentional acts of violence. This Fund is maintained principally by the contributions required under Art. 29.

29. On every occasion that a judge imposes a major criminal sentence or penalty, a sum of 10 francs will also be levied on the offender by way of contribution to the Fund established by Art. 28. This sum is subject to increase by reference to the multiplier applicable to the increase of fines [for index-linking purposes]. The Value Added Tax Office is responsible for the collection of the sums mentioned in the first paragraph, according to the rules and regulations applicable to the recovery of criminal fines. The sums collected are paid quarterly into the Fund by this Office.

The priority for payments to be made by a convicted defendant is first, legal costs owed to the State, secondly the contribution required by the first
§ 1. A Commission is established to provide financial assistance to the victims of intentional acts of violence by determining applications for emergency assistance, principal assistance or additional assistance.

§ 2. The Commission for assistance to victims of intentional acts of violence is divided into chambers. The King will specify the number of chambers.

1 Please note. This is an unofficial translation, for which the Ministry of Justice takes no responsibility.

The Commission for assistance to victims of intentional acts of violence is presided over by a judge. It comprises as many vice-presidents minus one, judges, advocates or honorary advocates and level 1 civil servants or retired civil servants, as there are chambers.

The president, vice-presidents and each member have a deputy who is appointed according to the rules established for the president, vice-president and the other members.

The judges referred to in paragraphs 2 and 3 must demonstrate their knowledge of the French and Dutch languages, as required under the law of 15 June 1935 concerning the use of languages in legal matters.

One half of the advocates and civil servants belong to the French-speaking community, while the other half belongs to the Dutch-speaking community. At least one member or one deputy member must demonstrate sufficient knowledge of the German language. The extent of this knowledge will be established in the manner specified by the King.

The president, vice-presidents and other members of the Commission are appointed by the King. One half of the civil servants are appointed on the recommendation of the Minister of Finance, and the other on the recommendation of the Minister in charge of public health.

The mandate of the president, vice-presidents and the other members, and of their deputies, lasts for six years, provided that the holder of this mandate cannot be over the age of 70. Without prejudice to the age limit, the mandate is renewable.

The Commission is assisted by a secretary and as many assistant secretaries minus one and as many deputy secretaries appointed by the Minister of Justice, as there are chambers. One half belongs to the French-speaking community, while the other half belongs to the Dutch-speaking community.

§ 3. Each chamber is presided over by the president or vice-president of the Commission or their deputy.

§ 4. The costs of running the Commission and of its secretariat are borne by the budget of the Ministry of Justice.

§ 1. Anyone who has suffered serious harm to his body or health as a direct result of actions constituting an intentional act of violence committed in Belgium may apply for assistance on the following conditions:

(1) It does not appear possible to obtain effective and sufficient compensation in respect of the damage by any other means, such as the payment of civil damages by the offender, the payment of benefits in respect of the injury by the social security system or compensation for injuries resulting from a work accident or occupational sickness compensation scheme, or from private insurance;

(2) At the time when the act of violence was committed, the victim must
have been of Belgian nationality or have been authorised to enter, reside in or establish himself in the Kingdom;

(3) The victim must have constituted himself a partie civile in any criminal proceedings brought against the offender or have issued a direct summons or instituted proceedings before the civil court.

Any act committed abroad where the victim is one of the persons specified in Art. 42, § 2, on an official assignment is also considered similar to an intentional act of violence committed in Belgium.

§ 2. If the victim has died as a result of the intentional act of violence described in para. 1, those who following his death claim for expenses or damage specified under Art. 32, § 2, may likewise apply for assistance from the State, provided that they satisfy the conditions specified by § 1, paragraph 1 of the present article.

32. § 1. The damage for which assistance may be requested by the victim covers exclusively:
1. temporary and/or permanent disability
2. moral and/or aesthetic damage
3. physical and/or mental suffering
4. medical and hospital expenses, including the destruction of prostheses essential for the physical integrity of the victim
5. loss or diminution of earnings
6. costs for constituting a partie civile and/or costs for proceedings
7. material expenses up to a maximum of 50,000 francs. This sum may be modified by a Royal Decree deliberated upon in the Council of Ministers
8. damage resulting from the loss of one year’s schooling

§ 2. The assistance provided under Art. 31, § 2 includes:
1. medical and hospital expenses
2. funeral expenses up to the maximum sum determined by a Royal Decree deliberated upon in the Council of Ministers, as well as the moral wrong caused by the death of the victim
3. costs for constituting a partie civile and/or costs for proceedings
4. loss of maintenance for those whom the victim was responsible for at the time of his death
5. damage resulting from the loss of one year’s schooling

33. § 1. The amount of assistance paid by the State is determined by the principles of equity.

In order to calculate the amount of the assistance, the Commission established by Art. 30 shall consider the following matters:
1. The financial situation of the applicant, according to the rules laid down by the King.
2. The behaviour of the applicant, if he himself has contributed directly or indirectly to the infliction or aggravation of the damage.
3. The relationship between the applicant and the offender.

§ 2. The amount of assistance is limited, by case and by person injured, to the amount of damage in excess of 15,000 francs. The assistance is also limited to a sum of 2,500,000 francs.

The amounts set out in the first paragraph may be modified by a Royal Decree deliberated upon in the Council of Ministers.

34. § 1. An application for assistance is made by presenting a petition in
duplicate to the secretariat of the Commission or by sending it by recorded
delivery post. It must be signed by the applicant or his counsel.
The application must contain:
1. The day, month and year.
2. The surname, first names, occupation, residence and nationality of the
applicant and where appropriate, of the victim, and also if necessary the
surname, first names, residence and occupation of his legal representatives.
3. A brief description of the circumstances in which the intentional act of
violence was committed, including the date and location of its occurrence.
4. Details of the means at the disposal of the applicant for obtaining
compensation.
5. The date of the claim specified under Art. 36, paragraph 2, or the date on
which the victim, or his dependant, constituted himself a partie civile in any
criminal proceedings brought against the offender, and if appropriate, the
date of the decision relating to the applicant’s civil interests.
6. An assessment of the different elements of the loss or injury.
7. A statement of the assistance requested.
The application must be accompanied with the words ”I swear on my
honour that this statement is complete and truthful”.
The application must be accompanied with a copy of the judicial decision
in the criminal action or of the decision of the pre-trial investigation and
if appropriate, of the decision relating to the applicant’s civil interests,
referred to in § 3, along with evidence of the different elements of the
injury or loss.
§ 2. The assistance may be granted even if the perpetrator of the intentional
act of violence cannot be found or convicted, especially if the reason for this
is that he has not been identified.
Likewise, the assistance may be granted even if the injury sustained by
the applicant has not been the object of a judicial decision relating to the
applicant’s civil interests. In such a case the Commission itself assesses the
damage which must be considered in the granting of the assistance; this
assessment does not bind the courts.
However, the application may only be presented after a judicial decision
has been given on the criminal action or, if the offender cannot be found
or convicted, after the decision of the court carrying out the pre-trial
investigation. It may also be presented if the offender remains unidentified
after a period of one year starting from the date on which the applicant
constituted himself a partie civile in the criminal proceedings.
§ 3. To avoid foreclosure, the application for assistance must be made
within the period of three years starting from, depending on the case, the
day on which a decision was given on the criminal action or, as the case
may be, the day on which the decision was given by the court carrying
out the pre-trial investigation.
If the victim, after obtaining a decision given on the criminal action, obtains
a legal decision relating to his civil interests, the period of foreclosure
begins from the day when the decision relating to his civil interests
comes into force.
§ 4. The Commission may carry out or have carried out for it all appropriate
investigations. The investigations are exclusively intended to verify the
applicant’s financial circumstances and the offender’s solvency. The outcome
is exclusively intended to be used by the Commission during its examination of the request for assistance and remains covered by professional privilege. The Commission may in particular request a copy of the dossier of the criminal investigation, with the permission of the Public Prosecutor of the Court of Appeal or of the auditor general, and may request from all persons or authorities information on the professional, financial, social and fiscal situation of the offender and the victim, without any restriction which may arise from professional privilege in relation to civil servants. The Commission may request the police to investigate the solvency of the offender, with the permission of the Public Prosecutor of the Court of Appeal to which the claim is sent, or of the auditor general. It may also request the forensic service to carry out an expert evaluation with a view to ascertaining the duration and degree of disability incurred by the victim and, if required, may appoint other experts as well. It may appoint and hear witnesses.

§ 5. The Commission determines an application by giving a reasoned decision after having heard the applicant, who may be assisted or represented by his counsel, or assisted by a representative from a public body or an association approved for this purpose by the King and the Minister of Justice or his representative, or his counsel. The applicant and the Minister of Justice may appeal to the Conseil d’Etat, in accordance with Art. 14 of the co-ordinated laws on the Conseil d’Etat.

§ 6. Within one week of its pronouncement, the decision of the Commission is notified by recorded delivery post to the applicant, his counsel and to the Minister of Justice. The notification states that the decision may be appealed to the Conseil d’Etat within 60 days starting from the date of notification.

§ 7. The King makes the rules on the functioning of the Commission and on the procedure before it.

35. The assistance granted by the Commission is paid by the Minister of Justice directly to the applicant according to availability of funds.

36. If any delay in providing assistance could cause the applicant major harm, in case of emergency, the victim or his dependant has the right to present a request for the granting of emergency assistance. Emergency assistance may only be sought immediately after he or she has constituted a partie civile or lodged a complaint. Emergency assistance may only be requested once and its amount cannot exceed 300,000 francs. This amount may be modified by a Royal Decree deliberated upon in the Council of Ministers. Arts. 31, 32, 33 § 1 and 34 §§ 4-6 are applicable.

When the applicant has presented a claim for assistance, the Commission and the Conseil d’Etat decide on the request according to the special rules concerning time limits and procedure laid down by the King.

37. The victim or his dependants may request additional assistance if, after the granting of the principal assistance, the loss or injury has been aggravated to a considerable extent. The additional assistance cannot exceed the amount to which the assistance is limited by Art. 33 § 2 less the amount already paid by the Commission by way of principal assistance. To avoid foreclosure, the request for the granting of additional assistance must be presented within 10 years from the day on which the principal
assistance was paid.
(Paragraph 3 revoked)
Arts. 31, 32, 33 § 1, 34 §§ 1, 2, 4-6, and 35 are applicable.
When the applicant has presented a claim for additional assistance, the
Commission decides on the request according to the special rules on
procedure laid down by the King.
§ 1. The State is subrogated, to the extent of the emergency assistance,
principal assistance and additional assistance that has been paid, to any
claim which the victim may have against the offender.
It can exercise this right by constituting itself a partie civile in criminal
proceedings against the offender, even if this is done for the first time
on appeal.
§ 2. The State may demand the total or partial reimbursement of any
emergency assistance, principal assistance and additional assistance paid
if, subsequent to the award, the victim obtains compensation from any
other source.
§ 3. The State may also demand the total or partial reimbursement of any
emergency assistance, principal assistance and additional assistance paid
if the award was made on the basis of false statements or omissions by
the victim or his dependants.
The Royal Decree of 31 May 1933, concerning the declarations which must
be made in respect of grants, compensation and awards of all kinds which
are wholly or partially paid by the State, is applicable.
§ 2. The Commission for the assistance of victims of intentional acts of
violence delivers a reasoned opinion to the Minister of Finance prior to
the bringing of any action before the courts for reimbursement under
Art. 38 § 2.
§ 2. The provisions of this section are applicable to loss or injury caused by
crimes committed after its coming into force.
These provisions are also applicable to loss or injury caused by acts of
violence committed before its coming into force, provided that these acts
are not prescribed and that there is a presumed connection with acts of
violence committed after the specified date.
§ 2. The King determines the date for the coming into force of each of the
provisions of the present section.
Section 3
Award of special compensation in respect of an intentional act of violence
against members of the police force and rescue services and against private
individuals going to the rescue of the victim of an intentional act of violence.
§ 1. Without prejudice to the advantage offered by virtue of legislation
relating to accidents at work or to compensation schemes and in accordance
with the conditions and procedures determined by the King, special
compensation of 750,000 francs in respect of moral damage is payable
in time of peace to those listed in 2 § who have been forced to retire
permanently from service as a result of physical unfitness, or in the case of
their death, to their dependants.
This compensation is available when the injury has resulted from an
intentional act of violence or from the explosion of war material or boobytrapped
devices which he or she was handling in the performance of police,
protection, rescue or bomb disposal duties, or if the injury is sustained in
the course of rescuing people whose life was in danger.
"Bomb disposal duties" means the search for or neutralisation, transportation or destruction of explosive material or booby-trapped devices.
The amount fixed by paragraph 1 is index-linked to the consumer price index, according to the rules applicable to the salaries of employees of the Ministries.
§ 2. The special compensation is payable to -
1. personnel involved in police operational, administrative or logistical activities covered by Art. 116 of the law of 7 December 1998 relating to an integrated police force structured on two levels;
2. (...);
3. members of the services involved in public safety employed by the Ministry of Justice;
4. members of the armed forces and civilians employed in the Ministry of Defence;
5. (...);
6. members of civilian rescue organisations;
7. members of the fire services in local communities, urban areas, community federations and inter-community associations;
8. members of the prison services.
In the case of death, "dependants" mean the spouse, or failing that, other members of the family dependent on the victim.
Art. 4 para. 1 and Art. 5 of the law of 12 January 1970 relating to the granting of compensation in respect of aeronautical accidents occurring in times of peace, are applicable.
§ 3. Independently of the amount of compensation payable under § 1, an additional award equal to 10% of that amount may, in accordance with the conditions, and procedures determined by the King, be made to each child dependent on the victim.
Art. 6 of the law of 12 January 1970 relating to the granting of compensation in respect of aeronautical accidents occurring in times of peace, is applicable.
§ 4. The compensation provided for in § 1 is payable to Belgian nationals and to foreigners who have the right to enter, reside or establish themselves in Belgium and have suffered permanent total disability as a result of going voluntarily to the aid of a victim of an intentional act of violence or of an explosion of war material or of a booby-trapped device. In case of death, the compensation is available to the dependants referred to in § 2.
The compensation provided for in para. 1 is awarded by the Minister of Justice and is paid from the budget of his department.
§ 5. The payment of compensation under this section precludes any claim against the State for civil damages in respect of the same injury, but only to the limit of that compensation.
The State is subrogated, to the extent of any compensation paid, to any claim which the beneficiary may have against a third party responsible for the injury or civilian responsible and against the insurance companies or compensation funds.
The compensation payable under this article cannot be awarded in addition to the compensation payable under the law of 12 January 1970 relating to the granting of compensation in respect of aeronautical accidents occurring in time of peace.
The compensation is not payable if it is proved that the accident was intentionally provoked by the victim.

§ 6. This Article applies to injuries resulting from accidents or intentional acts of violence occurring after 1 July 1979. However, § 4 only applies to injuries resulting from accidents occurring in Belgium after the coming into force of the present law.
DANEMARK
Le texte original précède sa traduction extraite des annexes de « Repairing the irreperable, state compensation to crime victims in the European Union ».

I.A Lov om erstatning fra staten til ofre for forbrydelser, jfr. lovbekg. nr. 470 af 01.11.1985, som ændret ved

§ 3 i lov nr. 366 af 18.05.1994,
§ 16 i lov nr. 980 af 17. december 1997
§ 2 i lov nr. 463 af 07.06.2001 (Revision af regler om erstatning for personskade m.v. samt nedsættelse af afgiften af ansvarsforsikringer for motorkøretøjer m.v.)
§ 2 i lov nr. 35 af 21.01.2003 (Godtgørelse til efterladte ved dødsfald). Fra d. 22.01.2003

Nu lovbekg. nr. 688 af 28.06.2004


Kapitel 1: Personskade

§ 1. Staten yder erstatning og godtgørelse for personskade, der forvoldes ved overtrædelse af borgerlig straffelov, hvis overtrædelsen er begået i den danske stat. Det samme gælder personskade, der indtræder i forbindelse med hjælp til politiet under anholdelse eller i forbindelse med handlinger, der foretages med henblik på lovlig privat anholdelse eller forhindring af strafbare handlinger.

Stk. 2. Erstatning ydes endvidere for skade på tøj og andre sædvanlige personlige ejendele, herunder mindre kontantbeløb, som skadelidte havde på sig, da personskaden blev forvoldt.

Stk. 3. Erstatning kan i særlige tilfælde ydes for skader, der forvoldes ved handlinger begået uden for den danske stat, hvis skadelidte har bopæl i Danmark, har dansk indfødsret eller på gerningsstidspunktet gjorde tjeneste for en udsendt dansk udenrigsrepræsentation. Erstatning kan endvidere ydes, når sådanne handlinger er begået mod skadelidte med bopæl i Danmark under dennes erhvervsudøvelse uden for den danske stat.

§ 2. Afgår skadelidte ved døden, ydes der erstatning for rimelige begravelsesudgifter og erstatning til den, som ved dødsfaldet har mistet en forsørger.

Fra d. 01.07.2002 er § 2, stk. 1 affattet således, jfr. § 2 i lov nr. 463 af 07.06.2001

§ 2. Afgår skadelidte ved døden, ydes der erstatning m.v. efter erstatningsansvarslovens §§ 12-14 a og § 26 a.

§ 2 er ændret fra d. 22.01.2003 ved lov nr. 35 af 21.01.2003 (Godtgørelse til efterladte ved dødsfald).
Kapitel 2: Tingsskade

§ 3. Staten yder erstatning for tingsskade, der ved overtrædelse af borgerlig straffelov forvoldes i den danske stat af personer, der

1) er tvangsanbragt på institution under kriminalforsorgen,
2) er anholdt med henblik på fængsling eller er varetægtsfængslet,
3) efter straffelovens § 49, stk. 2, er overført til institution uden for kriminalforsorgen,
4) er optaget i døgninstitution for børn og unge efter lov om social service,
5) på grund af mental retardering er optaget i længerevarende botilbud til personer med betydelig nedsat fysisk eller psykisk funktionsevne, jf. § 92 i lov om social service, eller
6) er indlagt eller tilbageholdt mod deres vilje på de hospitaler m.v., der er nævnt i § 1 i lov om sindssyge personers hospitalsophold.

Stk. 2. Erstatning ydes for skade, der forvoldes på institutionens område eller under ophold uden for dette med tilladelse eller i forbindelse med udeblivelse eller undvigelse.

Stk. 3. Justitsministeren kan fastsætte regler om, at erstatning ydes for skader forvoldt af personer, der frivilligt har ophold på institutioner under kriminalforsorgen, hvis skaden er forvoldt på institutionens område eller i institutionens umiddelbare nærhed.

Stk. 4. Justitsministeren kan efter forhandling med vedkommende minister fastsætte regler om, at erstatning ydes for skade forvoldt af personer, der er anbragt i familiepleje.

§ 4. Justitsministeren kan fastsætte regler, hvorefter staten kan erstatte den i § 3, stk. 1, nævnte skade, der forvoldes af personer, som i Finland, Island, Norge eller Sverige er undveget fra institutioner svarende til dem, der er omtalt i § 3, stk. 1.

§ 5. Erstatning ydes ikke til offentlige myndigheder eller institutioner.

Kapitel 3: Fælles bestemmelser m.v.

§ 6. Erstatning ydes, selv om skadevolderen er

1) ukendt eller ikke kan findes,
2) under 15 år eller
3) utilregnelig.

§ 6 a. Ved afgørelser om erstatning efter denne lov finder dansk rets almindelige regler om skadevolderens erstatningsansvar, herunder om nedsættelse eller bortfald af erstatning på grund af skadelidtes eller afdødes medvirken til skaden eller accept af risikoen for skade, tilsvarende anvendelse.

§ 7. Erstatning ydes ikke, i det omfang skaden godtøjes af skadevolderen eller dækkes af forsikringsydelser eller andre ydelser, der har karakter af virkelig skadeserstatning.

§ 8. Erstatning efter § 3 kan nedsættes eller bortfalde, hvis skadelidte har undladt at træffe sædvanlige sikkerhedsforanstaltninger, herunder tegning af forsikring.

§ 9. Justitsministeren kan fastsætte regler om, at krav under et bestemt beløb ikke erstattes. Stk. 2. Justitsministeren kan efter forhandling med vedkommende minister fastsætte regler om, at der ydes erstatning efter § 3, stk. 1-3, for skader forvoldt i institutionens umiddelbare nærhed, selv om skaden er mindre end det beløb, der fastsættes efter stk. 1.


§ 10. Erstatning er betinget af, at lovovertrædelsen uden unødvigt ophold er anmeldt til politiet, og at skadelidte under en eventuel straffesag mod skadevolderen nedlægger påstand om erstatning.

Stk. 2. Bestemmelsen i stk. 1 kan fraviges, hvis forholdene taler for det.

Stk. 3. Politiet vejleder skadelidte om retten til at få erstatning efter denne lov.

§ 10, stk. 2 er ændret fra d. 01.01.2002, jfr. § 2 i lov nr. 463 af 07.06.2001

§ 11. Afgørelse om erstatning træffes af et nævn, der nedsættes af justitsministeren.


Stk. 3. Justitsministeren fastsætter nævnets forretningsorden og regler om indgivelse af ansøgning.

§ 11 a. Er skadelidtes krav på erstatning og godtgørelse fra skadevolderen afgjort ved dom, ydes erstatning efter denne lov med det beløb, som er fastsat ved dommen, jfr. dog §§ 7-10.

Stk. 2. Reglen i stk. 1 gælder ikke, for så vidt skadevolderen under sagen må anses for at have anerkendt kravet eller dets størelse.

Stk. 3. Talere særlige omstændigheder derfor, kan nævnet uanset reglen i stk. 1 tilkende skadelidte en højere erstatning eller godtgørelse end fastsat ved dommen.


§ 12. Justitsministeren kan efter forhandling med vedkommende minister fastsætte regler om, at afgørelse om erstatning efter § 3, stk. 1-3, for skader under et bestemt beløb forvoldt i institutionens umiddelbare nærhed kan træffes af institutionen.

Stk. 2. § 13 og § 14, stk. 1, 1. pkt., og stk. 3, finder tilsvarende anvendelse på ansøgninger, der behandles af institutionen.

Stk. 3. Institutionens afgørelse kan af skadelidte og skadevolderen påklages til nævnet.

§ 13. Nævnet kan ikke behandle en ansøgning, der er indgivet over 2 år efter, at lovovertrædelsen er begået, medmindre der foreligger særlige grunde.

Stk. 2. Nævnet kan forlange optaget retsligt forhør.

Stk. 3. Efterkommer ansøgeren ikke inden en fastsat frist en opfordring fra nævnet om at medvirke til sagens oplysning, kan sagen afgøres på det i øvrigt foreliggende grundlag.

§ 15. Udgifterne ved sagens behandling ved nævnet, herunder udgifter til de undersøgelser, der er omtalt i § 14, stk. 1, betales af staten.

Stk. 2. Nævnet kan i særlige tilfælde bestemme, at ansøgeren helt eller delvis skal have dækket udgifter, som han har afholdt i anledning af sagen.


§ 17. Staten indtræder, i det omfang der ydes erstatning, i skadelidtes krav mod skadevolderen.


Stk. 2. Tilbagebetaling kan endvidere kræves, i det omfang skaden senere godtgøres af skadevolderen eller dækkes af forsikringsydelser eller andre ydelser, der har karakter af virkelig skadeserstatning.

§ 18, stk. 2 er ændret fra d. 01.01.2002, jfr. § 2 i lov nr. 463 af 07.06.2001

Kapitel 4: Ikrafttrædelse


Stk. 2. Loven anvendes ikke på skader, der forvoldes ved overtrædelser begået før lovens ikrafttrædelse.

§ 20. Loven gælder ikke for Færøerne og Grønland, men kan ved kgl. anordning sættes i kraft for disse landsdele med de afvigelse, som de særlige færøske og grønlandske forhold tilsiger.

Lov nr. 233 af 6. juni 1985 indeholder følgende ikrafttrædelsesbestemmelse:

§ 2

Loven træder i kraft den 1. juli 1985 og finder anvendelse på skader, der forvoldes ved overtrædelser, der begås efter lovens ikrafttræden.

Justitsministeriet, den 1. november 1985

Erik Ninn-Hansen

/Elmer
Lov nr. 463 af 07.06.2001 indeholder denne ikrafttrædelsesbestemmelse


Stk. 2. Lovens §§ 1 og 2 finder anvendelse på erstatningsansvar for skader, der indtræder efter lovens ikrafttræden.

II.B Act on Compensation from the State to Victims of Crimes

(Act No. 227 of 26 May 1976 as amended by Act No. 366 of 18 May 1994 and as consolidated in Act No. 470 of 1 November 1985)

1. Please note. This is an unofficial translation provided by Erstatningsnaevnet

Chapter 1

Personal Injury

§ 1. The State awards damages and compensation for personal injury arising from a breach of the Criminal Code if the offence is committed in the Danish State. The same is the case for personal injury occurring in the course of assisting the police to apprehend a criminal or in connection with actions which are taken with the intention of private apprehension of suspects or the prevention of criminal acts.

2. In addition, compensation may be awarded for damage to clothing and other normal personal effects, including minor sums of money, which the injured party had with him or in his possession when the personal injury occurred.

3. Compensation may be awarded in certain circumstances for injuries which are caused by criminal acts perpetrated outside the Danish State, if the injured party is resident in Denmark, has Danish citizenship or, at the time when the criminal act was committed, was employed in a Danish foreign office mission. Compensation may furthermore be awarded when such acts are committed against a victim resident in Denmark who is injured in the course of his employment outside the Danish State.

§ 2. If the victim dies, damages and compensation shall be paid for reasonable funeral expenses and to any person who loses his or her breadwinner as a result of the death.

Chapter 2

Damage to Property

§ 3. The State pays compensation for damage to property when a criminal offence is committed in the Danish State by a person who:

1) has been committed to a penal institution;
2) has been detained with a view to imprisonment or on remand;
3) has been transferred to an institution outside the penal system, in accordance with Art. 49, part 2 of the Criminal Code;
4) is a child or young person who has been taken into residential care in accordance with the Social Welfare Act;
5) on account of mental handicap has been admitted to an institution
for those with serious physical and mental handicaps, in accordance with the Social Welfare Act, or
(6) has been admitted to or held involuntarily in a hospital coming with the categories specified in Art. 1 of the Act relating to the Hospitalisation of the Mentally III.

2. Compensation is awarded for damage which is caused in the grounds of the institution, outside the institution in connection with absenteeism with or without permission or escape from an institution.
3. The Minister of Justice may make regulations relating to the issue of whether compensation should be paid for damage caused by persons who are voluntarily resident in an institution, if the damage is committed in the grounds of the institution or in the immediate vicinity of the institution.
4. The Minister of Justice may, after consulting the appropriate Minister, make regulations which provide that compensation will be paid for damage caused by persons who are voluntarily resident in an institution, if the damage is committed in the grounds of the institution or in the immediate vicinity of the institution.

§ 4. The Minister of Justice may make regulations whereby the State may award compensation in respect of damage referred to in Art 3, part 1, which has been caused by persons who have absconded from institutions in Finland, Iceland, Norway or Sweden which are equivalent to those specified in Art. 3, part 1.

§ 5. Compensation is not paid to public authorities or institutions.

Chapter 3
General Regulations etc.

§ 6. Compensation is payable even if the perpetrator is -
(1) unknown or cannot be found;
(2) under the age of 15 years, or
(3) of unsound mind.

§ 6a. Decisions on compensation under this Act are governed by the general principles applied by Danish courts in relation to a person’s liability to pay damages, including the reduction or refusal of compensation on account of the injured person’s or deceased’s own contribution to the injury or damage, or his acceptance of the risk of injury or damage.

§ 7. Compensation shall not be awarded to the extent that the injury or loss is compensated by the perpetrator or is covered by payments under social welfare laws, sickness benefit, pension rights, private insurance or other financial payments payable to the victim in connection with the case.

2. Compensation will not be paid to cover a right of recourse against the perpetrator.

§ 8. Compensation under Art. 3 may be reduced or refused if the injured party has not taken normal security precautions, including the purchase of insurance.

§ 9. The Minister of Justice may make regulations providing that claims under a certain figure are not compensated.

2. The Minister of Justice may, after consulting the appropriate Minister, make regulations providing that compensation will be paid under Art. 3, parts 1-3 for injuries or damage caused in the immediate vicinity of an institution even though that damage is less than the amount prescribed under part 1.

§ 9a. Compensation for damage to property under Arts. 34 may not exceed DKK 50,000. This sum will be adjusted in accordance with the provisions
continued in Art. 15 of the Damages Liability Act.

§ 10. Compensation is awarded only if the criminal offence is reported without undue delay, and on condition that the victim submits a claim for damages in the course of any subsequent court proceedings against the perpetrator.

2. In special circumstances compensation may be awarded even though the conditions set out in part 1 are not fulfilled.

3. The police will advise the victim of his right to compensation under this Act.

§ 11. Decisions on the award of compensation are taken by a Board set up by the Minister of Justice.

2. The Board consists of a chairman, who must be a judge, and two other members, one of whom is nominated by the Minister of Social Affairs and the other nominated by the Bar Council. The members and their deputies are appointed for a period of four years.

3. The Minister of Justice sets the Board’s rules of procedure and may make regulations for lodging applications.

§ 11a. If the victim’s claim for damages from the perpetrator has been decided by the judgment of a court, the compensation awarded under this Act shall, subject to Arts. 7-10, be set at the same amount.

2. The rule stated in part 1 will not apply if, in the course of the court proceedings, the perpetrator is considered to have accepted the victim’s claim or the amount thereof.

3. If special circumstances dictate, the Board may ignore the rule in part 1 and award the victim higher compensation than that set in court.

§ 11b. Where a victim has submitted an application to the Board for compensation in accordance with this Act and his claim for damages from the perpetrator is under consideration by a court or has been decided by a judgment of a court (see Art. 11a, part 1), the Board, with the permission of the Minister of Justice, may enter as a civil party in the case or may appeal the judgment to a higher court under the same regulations as the victim. The time-limit for an appeal by the Board against a judgment is eight weeks from the day on which the Board was made aware of the judgment.

§ 12. The Minister of Justice may, after consulting the appropriate Minister, make regulations which give an institution the right to make decisions on compensation in accordance with Art. 3, parts 1-3, for injuries or damage under a certain amount which are caused in the immediate vicinity of the institution.

2. Art. 13 and Art. 14, part 1, point 1, and part 3 will apply equally to applications which are decided by an institution.

3. A decision by an institution may be appealed to the Board by either the victim or the perpetrator.

§ 13. The Board cannot consider an application which has been lodged more than two years after the criminal offence was committed, unless special circumstances apply.

§ 14. The Board may request the victim to participate in the investigation of the application by providing evidence relating to the case. This may include appearing before the Board in person. In the case of injury it also includes allowing himself to be examined by a doctor and, if necessary, when admitted to hospital agreeing to medical observation and treatment.
Furthermore, the Board may demand information from other persons who have knowledge of the incident if the knowledge is considered to be relevant. The Board may obtain hospital records or extracts therefrom.

2. The Board may demand the holding of legal interviews.

3. If the applicant does not comply with a request for information within the time set by the Board, the case may be decided on the basis of the available information.

§ 15. The cost of bringing a case to the Board is met by the State. This includes the cost of medical examinations in accordance with Art. 14, part 1.

2. The Board may in special cases decide that the applicant should have any legal costs incurred in connection with the case met in whole or in part.

§ 16. The Board has the final administrative decision on cases which are brought before it.

§ 17. To the extent that compensation has been awarded, the State becomes party to the victim’s claim against the perpetrator.

§ 18. If the applicant has given false evidence or failed to disclose evidence on matters of importance in relation to the case, the Board may demand that any payment made shall be refunded.

2. A refund may also be demanded if the applicant at a later date receives payment from another source in relation to the injury or damage.

Chapter 4
Entry into Force

§ 19. This Act comes into force on 1 October 1976.

2. This Act will not apply to injuries or damage arising from incidents which occurred before the Act comes into force.

§ 20. This Act does not apply to Greenland or the Faeroe Islands, but may by royal decree be extended to these territories with such exceptions as may be dictated by specific conditions relating to Greenland or the
ESPAGNE
V.A (INFRACTIONS DE DROIT COMMUN)

Une traduction anglaise de la loi suivante figure à l’annexe de « Repairing the irreperable, state compensation to crime victims in the European Union ». Elle n’est pas reproduite ici.

Ley 35/1995, de 11 de diciembre, de ayuda y asistencia a las víctimas de delitos violentos y contra la libertad sexual

(B.O.E. núm. 296, de 12 de diciembre de 1995)

Modificada por:

Ley 38/1998, de 27 de noviembre, por la que se modifica la composición de la Comisión Nacional de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual.
Artículo afectado: 11.

Ley 13/1996, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social.
Disposición afectada: Disposición Adicional Segunda.

EXPOSICIÓN DE MOTIVOS

I. La víctima del delito ha padecido un cierto abandono desde que el sistema penal sustituyó la venganza privada por una intervención pública e institucional, ecuánime y desapasionada, para resolver los conflictos generados por la infracción de la ley penal. Pero, desde una perspectiva más global, la pretensión punitiva del Estado debe acercarse al problema social y comunitario en que el delito consiste para prevenirlo y recuperar al infractor, desde luego, pero además, para reparar en lo posible el daño padecido por la víctima.

En muchas ocasiones, el abandono social de la víctima a su suerte tras el delito, su etiquetamiento, la falta de apoyo psicológico, la misma intervención en el proceso, las presiones a que se ve sometida, la necesidad de revivir el delito a través del juicio oral, los riesgos que genera su participación en el mismo, etc., producen efectos tan dolorosos para la víctima como los que directamente se derivan del delito.

En esta línea, desde hace ya bastantes años la ciencia penal pone su atención en la persona de la víctima, reclamando una intervención positiva del Estado dirigida a restaurar la situación en que se encontraba antes de padecer el delito o al menos a paliar los efectos que el delito ha producido sobre ella.

En el caso de los delitos violentos, las víctimas sufren, además, las consecuencias de una alteración grave e imprevista de su vida habitual, evaluable en términos económicos. En el supuesto de que la víctima haya sufrido lesiones corporales graves, la pérdida de ingresos y la necesidad de afrontar gastos extraordinarios acentúan los perjuicios del propio hecho.
delictivo. Si se ha producido la muerte, las personas dependientes del fallecido se ven abocadas a situaciones de dificultad económica, a menudo severa. Estas consecuencias económicas del delito golpean con especial dureza a las capas sociales más desfavorecidas y a las personas con mayores dificultades para insertarse plenamente en el tejido laboral y social.

II. La preocupación por la situación de las víctimas de los delitos registra ya importantes manifestaciones normativas tanto en Convenios y Recomendaciones de organismos internacionales como en la legislación comparada.

Debe destacarse el Convenio número 116, del Consejo de Europa, de 24 de noviembre de 1983, sobre la indemnización a las víctimas de delitos violentos.

Su entrada en vigor se produjo en 1988 y aunque no firmado aún por España, constituye un referente jurídico de primer orden en el tratamiento de esta materia, al lado de la Recomendación del Comité de Ministros del Consejo de Europa a los Estados miembros, de 28 de junio de 1985, sobre la posición de la víctima en el marco del derecho penal y del proceso penal.

En el ámbito de la legislación comparada, aunque iniciándose en primer lugar en el área anglosajona, se ha ido extendiendo la protección a las víctimas por los países de nuestro entorno geográfico, a raíz de la aprobación del citado Convenio del Consejo de Europa.

Por otra parte, en el ámbito interno, el fenómeno de la victimización ha encontrado eco en los programas de partidos políticos y en iniciativas parlamentarias desde hace una década.

III. La Ley regula, por una parte, las ayudas de contenido económico a las víctimas de delitos violentos y, por otra parte, la asistencia a las víctimas de todo tipo de delitos.

El concepto legal de ayudas públicas contemplado en esta Ley debe distinguirse de figuras afines y, señaladamente, de la indemnización. No cabe admitir que la prestación económica que el Estado asume sea una indemnización ya que éste no puede asumir sustitutoriamente las indemnizaciones debidas por el culpable del delito ni, desde otra perspectiva, es razonable incluir el daño moral provocado por el delito. La Ley, por el contrario, se construye sobre el concepto de ayudas públicas -plenamente recogido en nuestro Ordenamiento- referido directamente al principio de solidaridad en que se inspira.

La presente Ley contempla los delitos violentos y dolosos cometidos en España.

El concepto de dolo excluye de entrada los delitos de imprudencia cuya admisión haría inviable económicamente esta iniciativa legislativa. Por otra parte, tanto el Convenio del Consejo de Europa como el grueso de la legislación comparada aluden únicamente a los delitos intencionales, es decir, dolosos.

Los delitos susceptibles de generar ayudas públicas serán aquellos cuyo resultado sea la muerte, lesiones corporales graves o daños graves en la salud física o mental. Por lo que respecta a la gravedad de las lesiones o los daños en la salud, la Ley se remite a efectos de su valoración a la legislación de la Seguridad Social.

De esta forma se opta por acotar aquellos delitos violentos con resultado de máxima gravedad con el propósito de avanzar de forma rigurosa aunque selectiva, cubriendo inicialmente los
daños de carácter más grave pero afianzando la convicción social de que esta función debe ser paulatinamente ejercida por el Estado.

El concepto de beneficiario se ha construido atendiendo a considerar como víctimas tanto a quien sufre directamente las lesiones corporales o daños en su salud como a las personas que dependieran del fallecido en los supuestos con resultado de muerte.

La cuantificación de las ayudas es un aspecto central del sistema. Se parte de la fijación de cuantías máximas correspondientes a cada una de las clases de incapacidad contempladas por la legislación de la Seguridad Social. Sobre estos importes máximos la ayuda a percibir se establecerá aplicando coeficientes correctores en atención a la situación económica de la víctima, al número de personas que dependieran económicamente de ella y al grado de afectación o menoscabo sufrido. Igual criterio se sigue en el supuesto de muerte: fijación de una cuantía máxima de ayuda y aplicación sobre ella de coeficientes correctores.

La ayuda económica se declara incompatible con la percepción de las indemnizaciones de los perjuicios y daños causados por el delito que se establezcan mediante sentencia judicial. El círculo se cierra declarando la subrogación del Estado en los derechos que asistan a la víctima contra el autor del delito y hasta el total importe de la ayuda concedida.

La gestión de este sistema de ayudas se confía al Ministerio de Economía y Hacienda, con objeto de no crear una nueva estructura administrativa.

La revisión en vía administrativa de las resoluciones de dicho Departamento se encomienda a una Comisión Nacional de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual, creada al amparo de las previsiones del artículo 107.2 de la Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común. Se considera que un procedimiento de impugnación ante una Comisión integrada por representantes de distintos Departamentos y, eventualmente, por representantes de organizaciones o sectores sociales especialmente vinculados a este tema permitirá una actuación más ajustada que la vía clásica del recurso administrativo ante el órgano superior jerárquico.

La concesión de la ayuda se condiciona, como regla general, a que se haya producido la resolución judicial firme que ponga fin al proceso penal. Los plazos con los que trabaja la Justicia penal hacen que esta solución sea insatisfactoria en aquellos casos en los que la precaria situación de la víctima reclame una ayuda económica desde el momento en que se ha cometido el delito. La Ley contempla la concesión de ayudas provisionales, atendiendo a la precaria situación de la víctima del delito.

Un punto particularmente sensible es el de la confluencia de este nuevo sistema de ayudas con el régimen de resarcimientos vigente para las víctimas de bandas armadas y elementos terroristas.

Elementales razones de prudencia financiera impiden en estos momentos establecer un sistema de ayudas a las víctimas de los delitos violentos equiparable al de las víctimas de bandas armadas y elementos terroristas, tanto en la cuantía de las ayudas como en la cobertura de los daños materiales. Por otra parte, una confluencia de regímenes que supusiera minorar las cuantías percibidas por las víctimas de delitos terroristas sería sin duda inaceptable para la actual sensibilidad política y social.
Se ha optado por una solución intermedia basada en dos elementos. Por una parte, se deslegaliza por completo el régimen de resarcimientos por daños a las víctimas de bandas armadas y elementos terroristas. Por otra parte, se prevé la confluencia de ambos regímenes en sus aspectos procedimentales en el momento en que se apruebe el Reglamento de desarrollo de la presente Ley.

En cuanto a la asistencia a las víctimas, se contempla en la Ley como concepto diferenciado de las estrictas ayudas económicas a las víctimas de delitos violentos.

Con ello pretende generalizar la atención psicológica y social a las víctimas de delitos de todo tipo, a través de la red de Oficinas de asistencia a las víctimas, que canalizarán sus primeras necesidades atendiendo a las más perentorias que se produzcan como consecuencia del delito, generalizando las experiencias surgidas ya en varios puntos de la geografía española con resultado muy positivo.

**CAPÍTULO I**

**AYUDAS PÚBLICAS**

1. **Objeto.** Se establece un sistema de ayudas públicas en beneficio de las víctimas directas e indirectas de los delitos dolosos y violentos, cometidos en España, con el resultado de muerte, o de lesiones corporales graves, o de daños graves en la salud física o mental.

2. Se beneficiarán asimismo de las ayudas contempladas por esta Ley las víctimas de los delitos contra la libertad sexual aun cuando éstos se perpetraran sin violencia.

2. **Beneficiarios.**

   1. Podrán acceder a estas ayudas quienes, en el momento de perpetrarse el delito, sean españoles o nacionales de algún otro Estado miembro de la Unión Europea o quienes, no siéndolo, residan habitualmente en España o sean nacionales de otro Estado que reconozca ayudas análogas a los españoles en su territorio.

   2. Podrán acceder a estas ayudas, a título de víctimas directas, las personas que sufran lesiones corporales graves o daños graves en su salud física o mental como consecuencia directa del delito.

   3. Son beneficiarios a título de víctimas indirectas, en el caso de muerte, y con referencia siempre a la fecha de ésta, las personas que reúnan las condiciones que se indican a continuación:

   El cónyuge del fallecido, si no estuviera separado legalmente, o la persona que hubiera venido conviviendo con el fallecido de forma permanente con análoga relación de afectividad a la de cónyuge, con independencia de su orientación sexual, durante, al menos, los dos años anteriores al momento del fallecimiento, salvo que hubieran tenido descendencia en común, en cuyo caso bastará la mera convivencia.
Los hijos del fallecido, siempre que dependieran económicamente de él, con independencia de su filiación y edad, o de su condición de póstumos.

Los hijos que, no siéndolo del fallecido, lo fueran de las personas contempladas en el párrafo a) anterior, siempre que dependieran económicamente de aquél.

En defecto de las personas contempladas por los párrafos a), b) y c) anteriores, serán beneficiarios los padres de la persona fallecida si dependieran económicamente de ella.

4. De concurrir varios beneficiarios a título de víctimas indirectas, la distribución de la cantidad a que ascienda la ayuda se efectuará de la siguiente forma:

La cantidad se dividirá en dos mitades. Corresponderá una al cónyuge o a la persona que hubiera venido conviviendo con el fallecido en los términos del párrafo a) del apartado anterior. Corresponderá la otra mitad a los hijos contemplados por los párrafos b) y c) del apartado anterior, y se distribuirá entre todos ellos por partes iguales.

De resultar beneficiarios los padres del fallecido, la cantidad a que ascienda la ayuda se repartirá entre ellos por partes iguales.

5. Serán también beneficiarios a título de víctimas indirectas los padres del menor que fallezca a consecuencia directa del delito.

3. Supuestos especiales de denegación o limitación. 1. Se podrá denegar la ayuda pública o reducir su importe cuando su concesión total o parcial fuera contraria a la equidad o al orden público atendidas las siguientes circunstancias declaradas por sentencia:

El comportamiento del beneficiario si hubiera contribuido, directa o indirectamente, a la comisión del delito, o al agravamiento de sus perjuicios.

Las relaciones del beneficiario con el autor del delito, o su pertenencia a una organización dedicada a las acciones delictivas violentas.

2. Si el fallecido a consecuencia del delito estuviera incurso en alguna de las causas de denegación o limitación de las ayudas contempladas en el apartado anterior, podrán acceder a las mismas los beneficiarios a título de víctimas indirectas, si quedaran en situación de desamparo económico.

4. Concepto de lesiones y daños. 1. A los efectos de la presente Ley, son lesiones graves aquellas que menoscaben la integridad corporal o la salud física o mental y que incapaciten con carácter temporal o permanente a la persona que las hubiera sufrido.

No se considerará incapacidad permanente aquella que no suponga un grado de minusvalía de, al menos, el 33 %.

2. Las lesiones corporales o los daños a la salud física o mental habrán de tener entidad suficiente como para que, conforme a la legislación de la Seguridad Social tuviera lugar una declaración de invalidez permanente en cualquiera de sus grados o una situación de incapacidad temporal superior a seis meses.
3. Reglamentariamente se determinarán el procedimiento y el órgano competente para la calificación de las lesiones o daños a la salud.

5. Incompatibilidades. 1. La percepción de las ayudas reguladas en la presente Ley no será compatible con la percepción de las indemnizaciones por daños y perjuicios causados por el delito, que se establezcan mediante sentencia.

No obstante lo establecido en el párrafo anterior, procederá el eventual abono de toda o parte de la ayuda regulada en la presente Ley y normas de desarrollo cuando el culpable del delito haya sido declarado en situación de insolvencia parcial, sin que en ningún caso pueda percibirse por ambos conceptos importe mayor del fijado en la resolución judicial.

2. Asimismo, las ayudas contempladas en esta Ley serán incompatibles con las indemnizaciones o ayudas económicas a que el beneficiario de las mismas tuviera derecho a través de un sistema de seguro privado, así como, en el supuesto de incapacidad temporal de la víctima, con el subsidio que pudiera corresponder por tal incapacidad en un régimen público de Seguridad Social.

No obstante lo establecido en el párrafo anterior, procederá el eventual abono de toda o parte de la ayuda regulada en la presente Ley y normas de desarrollo, al beneficiario de un seguro privado cuando el importe de la indemnización a percibir en virtud del mismo fuera inferior a la fijada en la sentencia sin que la diferencia a pagar pueda superar el baremo fijado.

3. En los supuestos de lesiones o daños determinantes de la incapacidad permanente o muerte de la víctima, la percepción de las ayudas será compatible con la de cualquier pensión pública que el beneficiario tuviera derecho a percibir.

4. Las ayudas por incapacidad permanente serán compatibles con las de incapacidad temporal.

6. Criterios para determinar el importe de las ayudas. 1. El importe de las ayudas no podrá superar en ningún caso la indemnización fijada en la sentencia. Tal importe se determinará mediante la aplicación de las siguientes reglas, en cuanto no supere la cuantía citada:

De producirse situación de incapacidad temporal, la cantidad a percibir será la equivalente al duplo del salario mínimo interprofesional diario vigente, durante el tiempo en que el afectado se encuentre en tal situación después de transcurridos los seis primeros meses.

De producirse lesiones invalidantes, la cantidad a percibir como máximo se referirá al salario mínimo interprofesional mensual vigente en la fecha en que se consoliden las lesiones o daños a la salud y dependerá del grado de incapacitación de acuerdo con la siguiente escala:

- Incapacidad permanente parcial: cuarenta mensualidades.
- Incapacidad permanente total: sesenta mensualidades.
- Incapacidad permanente absoluta: noventa mensualidades.
- Gran invalidez: ciento treinta mensualidades.
En los casos de muerte, la ayuda máxima a percibir será de ciento veinte mensualidades del salario mínimo interprofesional vigente en la fecha en que se produzca el fallecimiento.

2. El importe de la ayuda se establecerá mediante la aplicación de coeficientes correctores sobre las cuantías máximas previstas en el apartado anterior, en la forma que reglamentariamente se determine y en atención a:

La situación económica de la víctima y del beneficiario.

El número de personas que dependieran económicamente de la víctima y del beneficiario.

El grado de afectación o menoscabo que sufriera la víctima dentro de los límites de aquella situación que le correspondiera de entre las previstas por el artículo 6.1.b) de esta Ley.

3. En el supuesto contemplado por el artículo 2.5 de esta Ley la ayuda consistirá únicamente en el resarcimiento de los gastos funerarios que hubieran satisfecho efectivamente los padres o tutores del menor fallecido, en la cuantía máxima que reglamentariamente se determine.

4. En los supuestos de delitos contra la libertad sexual que causaren a la víctima daños en su salud mental, el importe de la ayuda sufragará los gastos del tratamiento terapéutico libremente elegido por ella, en la cuantía máxima que reglamentariamente se determine.

Será procedente la concesión de esta ayuda aun cuando las lesiones o daños sufridos por la víctima no sean determinantes de incapacidad temporal.

En cualquier caso, la ayuda prevista por este apartado será compatible con la que correspondiera a la víctima si las lesiones o daños sufridos produjeran incapacidad temporal o lesiones invalidantes.

7. Prescripción de la acción. 1. La acción para solicitar las ayudas prescribe por el transcurso del plazo de un año, contado desde la fecha en que se produjo el hecho delictivo. El plazo de prescripción quedará suspendido desde que se inicie el proceso penal por dichos hechos, volviendo a correr una vez recaiga resolución judicial firme que ponga fin provisional o definitivamente al proceso y le haya sido notificada personalmente a la víctima.

2. En los supuestos en que a consecuencia directa de las lesiones corporales o daños en la salud se produjese el fallecimiento, se abrirá un nuevo plazo de igual duración para solicitar la ayuda o, en su caso, la diferencia que procediese entre la cuantía satisfecha por tales lesiones o daños y la que corresponda por el fallecimiento; lo mismo se observará cuando, como consecuencia directa de las lesiones o daños, se produjese una situación de mayor gravedad a la que corresponda una cantidad superior.

Reglamentariamente se determinará el procedimiento para comprobar el nexo causal en los supuestos contemplados por este apartado.

8. Competencias. 1. Las solicitudes de ayuda presentadas al amparo de la presente Ley serán tramitadas y resueltas por el Ministerio de Economía y Hacienda.

2. Sus resoluciones y actos de trámite que determinen la imposibilidad de continuar el procedimiento o produzcan indefensión, podrán ser impugnadas por los interesados ante la
Comisión Nacional de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual, creada por el artículo 11 de esta Ley.

Este procedimiento de impugnación tendrá carácter sustitutivo del recurso ordinario, en los términos del artículo 107.2 de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.

9. Procedimiento. 1. Las solicitudes de las ayudas, dirigidas al Ministerio de Economía y Hacienda, se podrán presentar por el interesado o por su representante en cualquiera de las formas previstas por el artículo 38.4 de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común y contendrán los extremos a que se refiere el artículo 70.1 de dicha Ley.

2. Las solicitudes de ayuda que se formulen deberán contener además, los siguientes datos:

Acreditación documental del fallecimiento, en su caso, y de la condición de beneficiario a título de víctima indirecta.

Descripción de las circunstancias en que se hubiera cometido el hecho que presente caracteres de delito doloso violento, con indicación de la fecha y el lugar de su comisión.

Acreditación de que los hechos fueron denunciados ante la autoridad pública.

Declaración sobre las indemnizaciones y ayudas percibidas por el interesado o de los medios de que dispone para obtener cualquier tipo de indemnización o ayuda por dichos hechos.

Copia de la resolución judicial firme que ponga fin al proceso penal, ya sea sentencia, auto de rebeldía o que declare el archivo por fallecimiento del culpable, o declare el sobreseimiento provisional de la causa o el sobreseimiento libre por darse los supuestos previstos por los artículos 641.2 ó 637.3 de la Ley de Enjuiciamiento Criminal, respectivamente.

3. El Ministerio de Economía y Hacienda podrá solicitar a las autoridades policiales, al Ministerio Fiscal o a los Juzgados o Tribunales la información que necesite para resolver sobre las solicitudes de ayuda. Podrá proceder, u ordenar que se proceda, a cualquier clase de investigación pertinente a sus propios fines.

4. El Ministerio de Economía y Hacienda podrá también recabar de cualquier persona física o jurídica, entidad o Administración pública, la aportación de informes sobre la situación profesional, financiera, social o fiscal del autor del hecho delictivo y de la víctima, siempre que tal información resulte necesaria para la tramitación y resolución de los expedientes de concesión de ayudas, o el ejercicio de las acciones de subrogación o repetición. Podrá igualmente ordenar las investigaciones periciales precisas con vistas a la determinación de la duración y gravedad de las lesiones o daños a la salud producidas a la víctima. La información así obtenida no podrá ser utilizada para otros fines que los de la instrucción del expediente de solicitud de ayuda, quedando prohibida su divulgación.

A fin de que el órgano concedente de la ayuda constate con carácter previo el cumplimiento de las obligaciones fiscales a que se refiere el apartado anterior, aquél solicitará al órgano competente de la Agencia Estatal de Administración Tributaria información sobre ello en relación con los beneficiarios de la correspondiente ayuda.
5. La resolución será adoptada tras oír las alegaciones del interesado en trámite de audiencia y conocer el informe del Servicio Jurídico del Estado, que intervendrá siempre en la tramitación de los expedientes.

10. Concesión de ayudas provisionales. 1. Podrán concederse ayudas provisionales con anterioridad a que recaiga resolución judicial firme que ponga fin al proceso penal, siempre que quede acreditada la precaria situación económica en que hubiese quedado la víctima o sus beneficiarios.

Reglamentariamente se determinarán los criterios en virtud de los cuales se considerará precaria la situación económica de la víctima del delito, a los efectos de poder acceder a la concesión de ayudas provisionales.

2. Podrá solicitarse la ayuda provisional una vez que la víctima haya denunciado los hechos ante las autoridades competentes o cuando se siga de oficio proceso penal por los mismos.

3. La solicitud de ayuda provisional deberá contener, además de los extremos a que se refiere el artículo 70.1 de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, los siguientes datos:

- La calificación de las lesiones o daños a la salud, realizada por el órgano y mediante el procedimiento que se determine reglamentariamente.
- Acreditación documental del fallecimiento en su caso y de la condición de beneficiario a título de víctima indirecta.
- Informe del Ministerio Fiscal que indique la existencia de indicios razonables para suponer que el fallecimiento, las lesiones o los daños se han producido por un hecho con caracteres de delito violento y doloso.

4. La ayuda provisional no podrá ser superior al 80 % del importe máximo de ayuda establecido por esta Ley para los supuestos de muerte, lesiones corporales graves o daños graves en la salud, según corresponda.

Su cuantía se establecerá mediante la aplicación de los coeficientes correctores a los que se refiere el artículo 6.2.

5. La ayuda provisional podrá ser satisfecha de una sola vez o mediante abonos periódicos, que se suspenderán de producirse alguno de los supuestos previstos por el artículo 14 de esta Ley.

11. Comisión Nacional de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual. 1. Se crea la Comisión Nacional de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual, que será competente para resolver los procedimientos de impugnación de las resoluciones del Ministerio de Economía y Hacienda en materia de las ayudas reguladas por esta Ley.

La Comisión Nacional no estará sometida a instrucciones jerárquicas y resolverá los procedimientos de impugnación de las resoluciones del Ministerio de Economía y Hacienda,
así como los recursos extraordinarios de revisión contra sus propios acuerdos con respeto a los principios, garantías y plazos que las leyes reconocen a los ciudadanos y a los interesados en todo procedimiento administrativo.

2. El Gobierno, a propuesta de los Ministros de Justicia, de Economía y Hacienda y del Interior, establecerá la composición y el régimen de funcionamiento de la Comisión Nacional. Estará presidida por un Magistrado nombrado a propuesta del Consejo General del Poder Judicial, e integrada por representantes de la Administración General del Estado y, en su caso, de las organizaciones vinculadas a la asistencia y defensa de las víctimas. En cualquier caso, corresponderá una de sus vocalías a un representante del Ministerio Fiscal, nombrado a propuesta del Fiscal General del Estado.

3. Los acuerdos de la Comisión Nacional, al resolver los procedimientos de impugnación previstos por la presente Ley, pondrán fin a la vía administrativa.

Artículo 12. Procedimiento de impugnación. 1. Los interesados podrán impugnar las resoluciones del Ministerio de Economía y Hacienda en materia de las ayudas reguladas por esta Ley ante la Comisión Nacional en el plazo de un mes desde su notificación personal a los interesados.

Transcurrido dicho plazo sin haberse impugnado la resolución, ésta será firme a todos los efectos, sin perjuicio, en su caso, de la procedencia del recurso extraordinario de revisión ante el Ministerio de Economía y Hacienda.

2. La impugnación podrá fundarse en cualquiera de los motivos de nulidad o anulabilidad previstos en los artículos 62 y 63 de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.

Los vicios y defectos que hagan anulable el acto no podrán ser alegados por los causantes de los mismos.

3. La impugnación podrá formularse ante el Ministerio de Economía y Hacienda o ante la Comisión Nacional.

De formularse ante el Ministerio de Economía y Hacienda, éste deberá remitirla a la Comisión Nacional en el plazo de diez días, con su informe y una copia completa y ordenada del expediente.

4. Transcurridos tres meses desde la formulación de la impugnación sin que se adopte acuerdo por la Comisión Nacional, se podrá entender desestimada la impugnación, salvo en el supuesto previsto por el artículo 43.3.b) de la Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, y quedará expedita la vía del recurso contencioso-administrativo.

Artículo 13. Acción de subrogación del Estado. El Estado se subrogará de pleno derecho, hasta el total importe de la ayuda provisional o definitiva satisfecha a la víctima o beneficiarios en los derechos que asistan a los mismos contra el obligado civilmente por el hecho delictivo. La repetición del importe de la ayuda contra el obligado civilmente por el hecho delictivo se realizará, en su caso, mediante el procedimiento administrativo de apremio previsto en el Reglamento General de Recaudación.
El Estado podrá mostrarse parte en el proceso penal o civil que se siga, sin perjuicio de la acción civil que ejercite el Ministerio Fiscal.

Artículo 14. Acción de repetición del Estado. El Estado podrá exigir el reembolso total o parcial de la ayuda concedida, por el procedimiento previsto en el Reglamento General de Recaudación en los siguientes casos:

Cuando por resolución judicial firme se declare la inexistencia de delito a que se refiere la presente Ley.

Cuando con posterioridad a su abono, la víctima o sus beneficiarios obtuvieran por cualquier concepto la reparación total o parcial del perjuicio sufrido en los tres años siguientes a la concesión de la ayuda, en los términos establecidos en el artículo 5 de esta Ley.

Cuando la ayuda se hubiera obtenido en base a la aportación de datos falsos o deliberadamente incompletos o a través de cualquier otra forma fraudulenta, así como la omisión deliberada de circunstancias que determinaran la denegación o reducción de la ayuda solicitada.

Cuando la indemnización reconocida en la sentencia sea inferior a la ayuda provisional.

CAPÍTULO II.
ASISTENCIA A LAS VÍCTIMAS

15. Deberes de información. 1. Los Jueces y Magistrados, miembros de la Carrera Fiscal, autoridades y funcionarios públicos que intervengan por razón de su cargo en la investigación de hechos que presenten caracteres de delitos dolosos violentos y contra la libertad sexual, informarán a las presuntas víctimas sobre la posibilidad y procedimiento para solicitar las ayudas reguladas en esta Ley.

2. Las autoridades policiales encargadas de la investigación de hechos que presenten caracteres de delito recogerán en los atestados que instruyan todos los datos precisos de identificación de las víctimas y de las lesiones que se les aprecien. Asimismo, tienen la obligación de informar a la víctima sobre el curso de sus investigaciones, salvo que con ello se ponga en peligro su resultado.

3. En todas las fases del procedimiento de investigación el interrogatorio de la víctima deberá hacerse con respeto a su situación personal, a sus derechos y a su dignidad.

4. La víctima de un hecho que presente caracteres de delito, en el mismo momento de realizar la denuncia o, en todo caso, en su primera comparecencia ante el órgano competente, deberá ser informada en términos claros de las posibilidades de obtener en el proceso penal la restitución y reparación del daño sufrido y de las posibilidades de lograr el beneficio de la justicia gratuita. Igualmente, deberá ser informada de la fecha y lugar de celebración del juicio correspondiente y le será notificada personalmente la resolución que recaiga, aunque no sea parte en el proceso.
5. El Ministerio Fiscal cuidará de proteger a la víctima de toda publicidad no deseada que revele datos sobre su vida privada o su dignidad, pudiendo solicitar la celebración del proceso penal a puerta cerrada, de conformidad con lo previsto por la legislación procesal.

16. Oficinas de asistencia a las víctimas. 1. El Ministerio del Interior procederá, de conformidad con las previsiones presupuestarias, a la implantación de Oficinas de asistencia a las víctimas en todas aquellas sedes de Juzgados y Tribunales o en todas aquellas Fiscalías en las que las necesidades lo exijan.

2. En relación con las actividades desarrolladas por estas Oficinas, el Ministerio del Interior podrá establecer convenios para la encomienda de gestión con las Comunidades Autónomas y con las Corporaciones locales.

DISPOSICIONES ADICIONALES

Primera. El Gobierno, a propuesta de los Ministros de Justicia, Interior y de Economía y Hacienda, podrá revisar las cuantías contempladas en la presente Ley.

Segunda. 1. La percepción de las ayudas contempladas en esta Ley no será compatible en ningún caso con los resarcimientos por daños a las víctimas de bandas armadas y elementos terroristas.

2. Derogado por Ley 13/1996, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social

3. Derogado por Ley 13/1996, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social

Tercera. Quedan excluidos del ámbito de aplicación de la presente Ley los daños y perjuicios contemplados por la Ley 52/1984, de 26 de diciembre, de protección de Medios de Transporte por Carretera que se hallen en territorio español realizando viajes de Carácter Internacional, cuya indemnización se resolverá mediante la aplicación de su legislación especial.

DISPOSICIÓN TRANSITORIA

Única. El Gobierno depositará el instrumento de ratificación del Convenio 116 del Consejo de Europa de 1983 en el plazo de seis meses, a partir de la entrada en vigor de la presente Ley.

DISPOSICIONES FINALES

Primera. El Gobierno, a propuesta de los Ministros de Justicia, Interior y de Economía y Hacienda, aprobará en el plazo máximo de seis meses las disposiciones necesarias para el desarrollo y ejecución de esta Ley.

Segunda. La presente Ley entrará en vigor el día siguiente al de su publicación en el Boletín Oficial del Estado.
COMENTARIOS

* El art. 11 de la presente Ley ha quedado redactado de acuerdo con lo dispuesto por el artículo único de la Ley 38/1998, de 27 de noviembre, por la que se modifica la composición de la Comisión Nacional de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual.

Artículo Único. Modificación de la Ley 35/1995, de 11 de diciembre, de Ayudas y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual.

El apartado 2 del artículo 11 de la Ley 35/1995 de 11 de diciembre, de Ayudas y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual, tendrá la siguiente redacción:

2. El Gobierno, a propuesta de los Ministros de Justicia, de Economía y Hacienda y del Interior, establecerá la composición y el régimen de funcionamiento de la Comisión Nacional. Estará presidida por un Magistrado nombrado a propuesta del Consejo General del Poder Judicial, e integrada por representantes de la Administración General del Estado y, en su caso, de las organizaciones vinculadas a la asistencia y defensa de las víctimas. En cualquier caso, corresponderá una de sus vocalías a un representante del Ministerio Fiscal, nombrado a propuesta del Fiscal General del Estado.

* Los numeros 2º y 3º de la Disposición Adicional Segunda de la presente Ley quedaron derogados por Ley 13/1996, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social

V.B (INFRACTIONS TERRORISTES)

**Ley 32/1999, de 8 octubre, de solidaridad con las víctimas del terrorismo, (B.O.E. 242/1999 DE 9-10-1999) en su redacción dada por la disposición adicional novena da la ley 14/2000, de 29 de diciembre**

EXPOSICIÓN DE MOTIVOS

Mediante la presente la sociedad española rinde tributo de honor a cuantos han sufrido la violencia terrorista. Los Grupos Parlamentarios del Congreso de los Diputados y del Senado -por unanimidad- quieren hacer de esta iniciativa una expresión de reconocimiento y solidaridad en orden a ofrecer a las víctimas del terrorismo la manifestación de profundo homenaje que, sin duda, merece su sacrificio.

Las víctimas del terrorismo han sido, con su contribución personal, el exponente de una sociedad decidida a no consentir que nada ni nadie subvierta los valores de la convivencia, de la tolerancia y de la libertad. Por eso las víctimas constituyen el más limpio paradigma de la voluntad colectiva de los ciudadanos en pro de un futuro en paz que se ha de construir desde el diálogo, el consenso y el respeto recíproco entre las diversas opciones políticas que ostentan la representación legítima de la ciudadanía.

La recuperación de la Democracia afirmó un proyecto de convivencia decidido a superar los viejos conflictos de nuestra Historia. Un proyecto asentado en el respeto a la Ley, a la voluntad popular y al libre y pacífico ejercicio de cualquier reivindicación política. Nada,
pues, justifica el uso de forma alguna de violencia ni cabe argumento para que unos pocos hayan quebrado la paz.

Sin embargo, hoy las expectativas de un mañana sin violencia tienen un horizonte más esperanzado que en otros momentos. Éste es, sin duda, un logro colectivo del conjunto de nuestra sociedad y del que sólo esa sociedad es su auténtico protagonista. Por eso mismo, en ese contexto, la referencia a las víctimas supondrá siempre el incontrovertible lugar de encuentro en el que hacer converger a todos los demócratas desde la pluralidad y desde la natural diferencia ideológica.

Durante las dos últimas décadas el Estado ha prestado una singular y constante atención hacia las víctimas del terrorismo. En los últimos veinte años la acción de todos los gobiernos democráticos se ha orientado a definir normativamente un amplio sistema singular de protección. Paralelamente la acción de los Tribunales ha ido depurando las responsabilidades derivadas de hechos que estremecen a cualquier sensibilidad aún cuando quedan pendientes todavía numerosos delitos por esclarecer. La actuación de la Justicia se ha vertebrado a través de sentencias en las que, junto a las penas correspondientes a espantosos y ciegos delitos, se reconocen y establecen indemnizaciones diversas a favor de las víctimas o de sus familias que, sin embargo, nunca han sido satisfechas hasta ahora. Por eso la presente Ley no pretende mejorar o perfeccionar las ayudas o prestaciones otorgadas al amparo de la legislación vigente, sino hacer efectivo -por razones de solidaridad- el derecho de los damnificados a ser resarcidos o indemnizados en concepto de responsabilidad civil, subrogándose el Estado frente a los obligados al pago de aquéllas. Ello, no obstante, la Ley extiende también su protección a todas las víctimas del terrorismo, tanto si las mismas tuvieron reconocido su derecho en virtud de sentencia firme como en aquellos otros supuestos en los que no concurriere tal circunstancia.

No se trata de sustituir el dolor padecido por las víctimas por el efecto de una mera compensación material porque ello resultaría, de suyo, inaceptable. El dolor de las víctimas es -y será para siempre- un testimonio que ha de servir para que la sociedad española no pierda nunca el sentido más auténtico de lo que significa convivir en paz. Para las víctimas sólo el destierro definitivo de la violencia puede llegar a ser su única posible compensación. Quienes en sí mismos han soportado el drama del terror nos piden a todos que seamos capaces de lograr que la intolerancia, la exclusión y el miedo no puedan sustituir nunca a la palabra y la razón.

Esta Ley es, pues, expresión del acuerdo del conjunto de los representantes legítimos de los españoles para contribuir a que la paz sea fruto de la conciliación y de la justicia y para que las víctimas del terrorismo reciban, una vez más, la manifestación de respeto, admiración y afecto que por siempre les ha de guardar y les guardará nuestro pueblo.

**Artículo 1. Objeto.**

Mediante la presente Ley el Estado rinde testimonio de honor y reconocimiento a quienes han sufrido actos terroristas y, en consideración a ello, asume el pago de las indemnizaciones que le son debidas por los autores y demás responsables de tales actos.
Artículo 2. Ámbito de aplicación.

1. Las víctimas de actos de terrorismo o de hechos perpetrados por persona o personas integradas en bandas o grupos armados o que actuaran con la finalidad de alterar gravemente la paz y seguridad ciudadana, tendrán derecho a ser resarcidas por el Estado, que asumirá con carácter extraordinario el abono de las correspondientes indemnizaciones, en concepto de responsabilidad civil y de acuerdo con las previsiones de la presente Ley.

2. Sólo serán indemnizables los daños físicos o psicofísicos sufridos por tales víctimas siempre que los actos o hechos causantes hayan acaecido entre el 1 de enero de 1968 y la fecha de entrada en vigor de esta Ley.

3. Las indemnizaciones otorgadas al amparo de esta disposición se concederán por una sola vez y no implican la asunción por el Estado de responsabilidad subsidiaria alguna.


Serán beneficiarios de las indemnizaciones previstas en el artículo anterior:

1. Las víctimas de actos de terrorismo o de hechos perpetrados por persona o personas integradas en bandas o grupos armados o que actuaran con la finalidad de alterar gravemente la paz y seguridad ciudadana

2. En el supuesto de fallecimiento de las víctimas:
   a. Las personas que hubiesen sido designadas derechohabientes en la correspondiente sentencia firme o sus herederos.
   b. Cuando no hubiera recaído sentencia, el cónyuge no separado legalmente o, en su caso, la persona que hubiera venido conviviendo con la víctima de forma permanente con análoga relación de afectividad a la del cónyuge, durante al menos los dos años anteriores al momento del fallecimiento, salvo que hubieran tenido descendencia en común, en cuyo caso, bastará la mera convivencia, y los herederos en línea recta descendente o ascendente hasta el segundo grado de parentesco. El orden de prelación y los principios de concurrencia de los distintos beneficiarios serán los establecidos en el Reglamento de Ayudas y Resarcimientos a las Víctimas de Delitos de Terrorismo, aprobado por Real Decreto 1211/1997, de 18 de julio.

Artículo 4. Distinciones honoríficas.

1. Con el fin de honrar a las víctimas del terrorismo se crea la Real Orden de Reconocimiento Civil a las Víctimas del Terrorismo.

2. El Gobierno, a propuesta del Ministro de la Presidencia y en el plazo máximo de tres meses a contar desde la entrada en vigor de la presente Ley, aprobará el Reglamento de la Real Orden de Reconocimiento Civil a las Víctimas del Terrorismo.

3. El Gobierno, previa solicitud de los interesados o de sus herederos, concederá las condecoraciones contempladas en este artículo en el grado de Gran Cruz, a título póstumo, a los fallecidos en actos terroristas y, en el grado de Encomienda, a los heridos y secuestrados en actos terroristas.
Artículo 5. Requisitos para el reconocimiento de las indemnizaciones.

1. Procederá el abono a los interesados de las indemnizaciones reguladas en la presente Ley:
2. Cuando, en virtud de sentencia firme, se les hubiere reconocido el derecho a ser indemificados en concepto de responsabilidad civil por los hechos y daños contemplados en el artículo segundo de esta Ley.
3. Cuando, sin mediar tal sentencia, se hubiesen llevado a cabo las oportunas diligencias judiciales o incoado los procesos penales para el enjuiciamiento de los delitos. En estos casos, la condición de víctima o derechohabiente, la entidad de los daños sufridos, la naturaleza de los actos o hechos causantes y los demás requisitos legalmente exigidos podrán acreditarse ante la Administración General del Estado por cualquier medio de prueba admisible en Derecho.
4. Las resoluciones administrativas por las que se hubiese reconocido a los interesados la condición de víctimas del terrorismo tendrán eficacia, en todo caso, para la tramitación y resolución de los correspondientes expedientes administrativos.

Artículo 6. Cuantificación de las indemnizaciones y compensaciones.

1. Las obligaciones asumidas por el Estado, en virtud de lo dispuesto en el artículo primero de esta Ley, se extienden al pago de las indemnizaciones o compensaciones establecidas por daños físicos o psicofísicos causantes de las siguientes contingencias:
   a) Fallecimiento.
   b) Gran Invalidez.
   c) Incapacidad permanente absoluta.
   d) Incapacidad permanente total.
   e) Incapacidad permanente parcial.
   f) Lesiones permanentes no invalidantes.
2. La cuantía de las indemnizaciones o compensaciones a que se refiere el párrafo anterior se determinarán de la siguiente manera:

   Cuando exista sentencia firme reconociendo una indemnización en concepto de responsabilidad civil, bien sea por fallecimiento o por daños físicos o psicofísicos, se abonará la cantidad fijada en la misma, actualizada según el índice del valor constante de la peseta. Si la cantidad así establecida fuese inferior a la que se determina para cada supuesto en el Anexo a la presente Ley, el Estado compensará la diferencia.

   Cuando no exista sentencia firme, o si ésta no reconociese o no permitiese reconocer una cantidad en concepto de responsabilidad civil por daños físicos o psicofísicos, se abonará la cuantía prevista en el Anexo de esta Ley.

3. Dentro de cada supuesto, las indemnizaciones o compensaciones serán de idéntica cuantía, independientemente del tiempo en que el acto o hecho causante del daño hubiera tenido lugar.
4. Las víctimas de secuestros serán indemnizadas en los términos que reglamentariamente se determinen, siendo la cuantía máxima que pueda corresponderles la prevista en el Anexo de la presente Ley para la incapacidad permanente parcial.
5. Las indemnizaciones otorgadas conforme a las disposiciones de esta Ley serán compatibles con las pensiones, ayudas, compensaciones o resarcimientos que se hubieran percibido, o pudieran reconocerse en el futuro, al amparo de las previsiones contenidas en la Legislación de Ayudas a las Víctimas del Terrorismo u otras disposiciones legales.

**Artículo 7. Otras ayudas.**

1. Las distintas autoridades educativas adoptarán, en el ejercicio de sus competencias respectivas, las medidas necesarias para asegurar la exención de todo tipo de tasas académicas en los centros oficiales de estudios de todos los niveles de enseñanza a las víctimas de actos terroristas así como a sus cónyuges y sus hijos.

2. Con independencia de las indemnizaciones o compensaciones reguladas en el artículo anterior, se concederá a las víctimas de los actos mencionados en el artículo segundo, ayudas específicas destinadas a financiar tratamientos médicos, prótesis e intervenciones quirúrgicas, siempre que se acredite la necesidad actual de los mismos y no hubieran sido cubiertos bien por un sistema público o privado de aseguramiento, bien por el régimen público de resarcimientos o ayudas a las víctimas de actos terroristas.

**Artículo 8. Transmisión de la acción civil al Estado.**

1. El Estado se subrogará en los derechos que asisten a los beneficiarios contra los obligados inicialmente al resarcimiento como autores de los delitos, de acuerdo con lo previsto en el presente artículo.

2. Con carácter previo a la percepción de las indemnizaciones establecidas en esta Ley, los beneficiarios deberán transmitir al Estado las acciones civiles de las que fuesen titulares.

3. Si no hubiere recaído sentencia firme, la víctima, o en su caso, los derechohabientes transmitirán al Estado su expectativa de derecho fundada en la futura fijación judicial de responsabilidad civil.

**Artículo 9. Efectos de las distintas situaciones procesales.**

1. Si la responsabilidad civil hubiera sido fijada mediante sentencia firme, la víctima o sus derechohabientes sólo percibirán las indemnizaciones previstas en esta Ley en la medida en que dicha responsabilidad no se hubiera hecho efectiva.

2. La pendencia o incoación de un procedimiento judicial sobre los hechos generadores de responsabilidad civil no será obstáculo para la tramitación y, en su caso, concesión de los resarcimientos que correspondan con arreglo a la presente Ley.

3. La fijación sobrevenida de una indemnización por responsabilidad civil, en virtud de sentencia judicial, tendrá los efectos previstos en los artículos 6.2.a) y 8.1 de la presente Ley. Si la indemnización establecida en la sentencia, en concepto de daños físicos o psicofísicos, fuese de superior cuantía a la que hubiere percibido el beneficiario, el Estado abonará al interesado la diferencia.

4. **Cuando sobrevena una sentencia judicial que otorgue una indemnización de acuerdo con criterios distintos a los seguidos en una resolución administrativa dictada al amparo de la presente Ley, y además de los previsto en el apartado anterior de este artículo, se observarán las reglas siguientes:**
A) Si la cuantía global de la indemnización fijada en la sentencia fuera igual o inferior a la establecida en la resolución, la Administración no desarrollará ninguna actividad ulterior y la situación derivada de dicha resolución no se verá alterada.

B) Si la cuantía global de la indemnización fijada en la sentencia fuera superior a la establecida en la resolución, la diferencia se distribuirá entre los beneficiarios a quien la sentencia hubiera reconocido cantidades mayores a las fijadas para ellos en la resolución administrativa. Dicha distribución se hará con arreglo a las proporciones que resulten del fallo indemnizatorio de la sentencia judicial.

C) En los supuestos de escritos en los puntos A) y B), los beneficiarios a quienes la sentencia judicial hubiera reconocido una indemnización superior a la que en definitiva perciban conservarán la acción civil por el importe correspondiente a la diferencia.

D) Lo dispuesto en este apartado se entenderá sin perjuicio de lo dispuesto en la disposición adicional novena. dos de la Ley 14/2000, de 29 de diciembre, de Medidas fiscales, administrativas y del orden social. (Ley 14/2000).

**Artículo 10. Tramitación de los expedientes y recursos.**

1. Correspondrá al Ministerio del Interior la tramitación y resolución de los procedimientos y el pago de las indemnizaciones que se establecen en esta Ley.
2. Las personas que se consideren beneficiarias podrán solicitar, en el plazo de seis meses contados a partir de la entrada en vigor del Reglamento de esta Ley, la concesión de las cantidades que pudieran corresponderles.
3. El plazo máximo para notificar la resolución de las solicitudes será de doce meses. En aquellos procedimientos en los que no recaiga resolución dentro del plazo señalado, se entenderán estimadas las solicitudes.
4. La resolución estimatoria o desestimatoria pondrá fin a la vía administrativa, pudiendo interponerse contra la misma recurso contencioso-administrativo.

**Artículo 11. Relación con los Tribunales.**

El Ministerio del Interior podrá recabar de los Tribunales de Justicia los antecedentes, datos o informes que resulten necesarios para la tramitación de los expedientes.

**Artículo 12. Comisión de Evaluación.**

Se creará en el Ministerio del Interior una Comisión de Evaluación que, bajo la presidencia del Secretario General Técnico del Departamento e integrada por representantes de los Ministerios de Justicia, de Economía y Hacienda, del Interior y de Trabajo y Asuntos Sociales, elaborará y propondrá las propuestas de resolución de los expedientes que se tramiten al amparo de la presente Ley.

1. Las cantidades percibidas como consecuencia de las indemnizaciones a que se refiere la presente Ley estarán exentas del Impuesto sobre la Renta de las Personas Físicas y de cualquier impuesto personal que pudiera recaer sobre las mismas.

2. En particular, las indemnizaciones contempladas en esta Ley se considerarán prestaciones públicas extraordinarias por actos de terrorismo, a los efectos de la exención prevista en el artículo 7.a) de la Ley 40/1998, de 9 de diciembre, del Impuesto sobre la Renta de las Personas Físicas y otras normas tributarias.

Disposición adicional única.

Las pensiones de viudedad y orfandad causadas por personas que hubieran tenido reconocidas pensiones de incapacidad permanente o de jubilación por incapacidad permanente, derivadas unas y otras de actos terroristas, tendrán también la consideración de pensiones extraordinarias derivadas de tales actos.

Disposición derogatoria única.

Quedan derogadas cuantas disposiciones de igual o inferior rango se opongan a lo establecido en la presente Ley.

Disposición final primera. Desarrollo reglamentario.

El Gobierno, en el plazo de tres meses a partir de la entrada en vigor de esta Ley, y a propuesta conjunta de los Ministros de Justicia, de Economía y Hacienda, del Interior y de Trabajo y Asuntos Sociales, desarrollará reglamentariamente lo dispuesto en la misma.

Disposición final segunda.- Crédito extraordinario y necesidades presupuestarias futuras.

1. El Gobierno elevará a las Cortes Generales, en el plazo más breve posible, un Proyecto de Ley de concesión de un crédito extraordinario para financiar los pagos previsibles a lo largo de 1999.

2. Las posteriores necesidades presupuestarias se consignarán en las Leyes de Presupuestos Generales del Estado.

Disposición final tercera.- Normas supletorias.

En lo no previsto en la presente Ley, será de aplicación la legislación sobre resarcimiento a las víctimas de delitos de terrorismo o de bandas armadas, las disposiciones sobre subvenciones y ayudas públicas y, en su caso, la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.

Disposición final cuarta.- Entrada en vigor.

La presente Ley entrará en vigor el mismo día de su publicación en el Boletín Oficial del Estado.

ANEXO
INDEMNIZACIONES POR DAÑOS FÍSICOS Y PSICOFÍSICOS

TABLA I
Indemnizaciones por fallecimiento e incapacidades

<table>
<thead>
<tr>
<th>SUPUESTOS</th>
<th>CUANTÍA - Pesetas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fallecimiento</td>
<td>23.000.000</td>
</tr>
<tr>
<td>Gran Invalidez</td>
<td>65.000.000</td>
</tr>
<tr>
<td>Incapacidad permanente absoluta</td>
<td>16.000.000</td>
</tr>
<tr>
<td>Incapacidad permanente total</td>
<td>8.000.000</td>
</tr>
<tr>
<td>Incapacidad permanente parcial</td>
<td>6.000.000</td>
</tr>
</tbody>
</table>

TABLA II
Indemnizaciones por lesiones permanentes no invalidantes

Las cuantías de estas indemnizaciones serán las que resulten de la aplicación del Bormeo de lesiones permanentes no invalidantes establecido por la Ley sobre Responsabilidad Civil y Seguro en la Circulación de Vehículos a Motor.
FINLANDE
Act on Compensation for Crime Damage

(935/1973)

General provisions

Section 1 (63/1984)

(1) Compensation shall be paid from State funds for injury or damage caused by a criminal offence, as provided in this Act.

(2) No compensation shall be paid under this Act for damage sustained by a corporation or a foundation, except in situations referred to in sections 5a and 8(3). (273/1992)

(3) This Act does not apply to traffic accidents, as referred to in the Traffic Insurance Act (279/1959).

Section 1a (63/1984)

Compensation for personal injury and property damage is due to the person sustaining it. Discretionary compensation may be paid to the same in accordance with section 8a.

Section 2 (63/1984)

Compensation shall be paid for injury or damage caused by an offence committed in Finland. However, no compensation shall be paid in the absence of a special reason,

(1) if the offence has been committed aboard a foreign vessel on Finnish territorial waters, aboard a foreign aircraft over Finnish territory, or outside of Finland so that only the consequence is apparent in Finland, except where the compensation is due under section 2a;

(2) if both the offender and the victim were staying in Finland temporarily and briefly at the time of the offence; or

(3) if the connection of the injury or damage to Finland is tenuous for a reason other than those referred to in subparagraph (1) or (2).

Section 2a

(1) If the offence has been committed outside of Finland, compensation shall be paid for personal injury only. It is a prerequisite for the payment of the compensation that the crime victim was a permanent resident of Finland at the time of the offence and that his/her stay abroad was because of work, study or a comparable reason. Moreover, it is a prerequisite for the payment of compensation for the loss of a provider that also the person entitled to the maintenance was a permanent resident of Finland at the time of the offence.

(2) Discretionary compensation may be paid for personal injury caused by an offence committed outside of Finland also in situations other than those referred to in paragraph (1), if the payment of the compensation is to be deemed justified, especially in view of the close connection of the offence to Finland, the closeness of the relationship between the offender and the victim, the nature of the injury, and the access of the victim to compensation from other sources.
(3) If the person sustaining the injury or damage moves his/her permanent residence to abroad after the commission of the offence referred to in paragraph (1) or (2), the compensation may be denied or its payment terminated.

Section 3 (973/1981)

(1) Sums paid to or evidently due to the applicant on the basis of the same injury or damage, in accordance to other legislation, shall be deducted from the compensation payable under this Act. (1110/1990)

(2) Compensation paid for disability, invalidity, medical costs or other costs on the basis of a voluntary insurance policy shall be deducted from compensation payable under this Act for the same injury or damage. Any insurance compensation shall be deducted in the full from the compensation payable for property damage (63/1984)

(3) Damages payable by the offender shall be deducted only to the amount that has actually been paid.

Section 4

(1) No compensation shall be paid, if the amount of the compensation would evidently be less than EUR 34.

(2) The provision in paragraph (1) does not apply to the compensation for personal injury caused by a person referred to in section 8(1) in an institution, a facility in which he/she has been placed or in their vicinity. (63/1984)

Section 4a (63/1984)

No interest shall be paid on the compensation.

Compensation for personal injury

Section 5 (63/1984)

(1) A person who has sustained personal injury shall be compensated for:

(1) medical costs and other costs arising from the injury, pain and suffering, invalidity and other permanent handicap; (1110/1990)

(2) loss of income and maintenance, in which event the compensation shall not exceed EUR 115 per day, deducted by the income or maintenance that may accrue, over the same period, to the person sustaining the injury or damage; and (194/1997)

(3) clothes and other everyday items, eyeglasses and dental prostheses that have been damaged in connection with the personal injury.

(2) In addition, anguish caused by an offence against personal liberty or an offence referred to in chapter 201 of the Penal Code shall be compensated for as personal injury.

Section 5a (194/1997)

An employer shall be compensated for the salary or comparable remuneration paid by the employer during the disability of a person who has sustained personal injury caused by a criminal offence. However, this compensation shall not exceed EUR 115 per day. No compensation shall be paid if the personal injury has been caused by an offence whose prosecution requires measures by the victim, and the victim has not reported the offence to the police, requested that charges be brought or brought charges himself/herself.

Section 6 (63/1984)

(1) If a person liable in maintenance has been killed, the person entitled to the
maintenance or child support shall be compensated by an amount that he/she would probably have received from the deceased as maintenance.

(2) If the amount of child support has been determined by a written agreement confirmed by the municipal social welfare board or by a court judgment, the compensation shall correspond to this amount in the absence of evidence to the contrary. If, at the death of the person liable in maintenance, the child has been receiving a support subsidy on the basis of section 6(4) of the Act on the Security of Child Maintenance, or if the child would have been entitled to a subsidy on this basis, the compensation shall correspond to the amount of the support subsidy laid down in section 8 of the Act in question.

(3) The amount of the compensation, its terms of payment and duration shall otherwise be governed, in so far as appropriate, by the provisions in the Act on Child Maintenance (704/1975) and the Marriage Act (234/1929).

(4) Reasonable compensation shall be paid for funeral expenses.

1 “Sex offences”

Section 6a (62/1999)

(1) The persons especially close to a person who has died shall be compensated for the anguish caused by the death, subject to the criteria laid down in chapter 5, section 4a of the Tort Liability Act (412/1974).

(2) Compensation paid to a person entitled to the same under this section shall not exceed EUR 3,364.

Section 7 (1110/1990)

The one-off compensation paid to a person for personal injury arising from one event, with deductions as provided in section 3, shall not exceed EUR 47,934.

Compensation for property damage

Section 8

(1) Compensation shall be paid in accordance with this Act for property damage caused by a person who has been institutionalised or otherwise deprived of liberty owing to a criminal offence, abuse of intoxicants, mental illness, mental handicap, intoxication or another similar reason, while in the institution, during a placement in a facility outside the institution, on furlough or after having escaped from the institution or from the custody of the authorities. The same provision applies to property damage caused by a child taken into care on the basis of the Child Welfare Act (683/1983).

(2) Compensation shall also be paid for property damage caused by a person who has been institutionalised in Iceland, Norway, Sweden or Denmark for a reason referred to in paragraph (1), while in Finland on furlough, after having escaped or for another similar reason. (63/1984)

(3) Moreover, compensation shall be paid in accordance with this Act for property damage caused by a person sentenced to community service or juvenile punishment to the provider of the service opportunity or to a third party while performing work or a task forming a part of the community service or juvenile punishment. In addition, the provider of the service opportunity shall be compensated for the payments made to a third party under chapter 3, section 1(3) of the Tort Liability Act for damage caused by a person sentenced to community service or juvenile punishment while performing work or a task
forming a part of the service or punishment. (1062/1996)
Section 8a (63/1984)
(1) In addition to what has been provided in section 8, property damage may be
compensated for on a discretionary basis, in full or in part, if the chances of
the person sustaining the damage to pursue a livelihood have diminished for
good because of the damage. Moreover, property damage may be compensated
for also if the damage has arisen from the helplessness of the victim due to
his/her age, illness, handicap or other similar reason, and the payment of
the compensation is in view of the circumstances of the victim to be deemed
justified.
(2) Subject to the conditions laid down in paragraph (1), compensation may be
paid for economic loss that is not linked to personal injury or property
damage.
(3) If the person sustaining the damage has without an acceptable reason failed
to take normal precautions or failed to insure the property, the compensation
referred to in paragraphs (1) and (2) shall not be paid, unless there is a
special reason for the same.
Section 9
Where the offender and the person sustaining the damage have lived
together in the same household at the time of the offence, compensation
shall be paid for property damage only if there is a special reason for the
same.
Section 9a (63/1984)
Where, in addition to a person referred to in section 8, also another person
has participated in the commission of the act causing property damage, the
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compensation payable under this Act shall be calculated by dividing the
damage equally among those causing it, unless there is a reason to divide it
into other proportions owing to the degree of guilt in the persons causing the
damage or to other circumstances.
Section 10 (1110/1990)
The one-off compensation paid to a person for property damage or other
damage referred to in section 8a arising from one event, with deductions as
provided in section 3, shall not exceed EUR 24,050.
Compensation for legal costs
Section 10a (1110/1990)
(1) If the matter has been considered in a court of law, the person entitled to
the compensation shall also be compensated, in so far as is deemed
reasonable, for the costs of the necessary measures undertaken for the
purpose of having the right to the compensation determined by the court.
(2) However, no compensation for legal costs shall be paid in so far as they are
compensated for by virtue of another Act or a voluntary insurance policy, or
in so far as the losing party has paid compensation for them.
General provisions on compensation
Section 11
If there has been a contribution to the injury or damage from the side of the
person sustaining it or if a circumstance external to the act giving rise to the
injury or damage has also been involved, the compensation may be adjusted
as is reasonable. However, there shall be no adjustment in cases referred to
in section 6.
Section 12
(1) If the person sustaining the injury or damage has not reported the offence to the police and if the police has also otherwise not become aware of the offence, compensation shall be paid only if there is a special reason for the same. However, the payment of the compensation shall not be prevented by the victim not requesting that charges be brought or by the victim withdrawing the request, unless otherwise follows from section 5a.
(916/1985)
(2) If the matter has been considered in a court of law, no compensation shall be paid to a person sustaining the injury or damage who has failed to undertake reasonable measures for the purpose of having the right to the compensation determined by the court.

Section 13
If, in a case referred to in section 5, the offender cannot be determined, the compensation may for a special reason be decreased by one fourth.

Procedural provisions
Section 14 (133/1987)
(1) Compensation shall be granted and paid by the State Treasury. When granting the compensation, the Treasury shall not be bound by the decision of the court in a matter pertaining to the compensation. (62/1999)
(2) In order to provide assistance to the Treasury, the Ministry of Justice shall appoint a Board to deal with questions of principle relating to the granting of compensation. More detailed provisions on the Board shall be issued by Decree.

Section 15 (931/1995)
Compensation shall be applied for in writing from the Treasury within ten years of the commission of the offence. For a special reason, the Treasury shall admit also later applications into consideration.

Section 16
(1) Appended to the application for compensation there shall be the records of the court proceedings in the case or, if the matter has not been considered by a court of law, the records of the pre-trial investigation or, if there are no such records, other reliable accounts of the event, as well as an account of the injury or damage and the necessary evidence. If the applicant has already received, or is evidently entitled to receive, compensation for the same injury or damage from elsewhere, he/she shall notify the Treasury of the same. Where necessary, the Treasury may demand that the applicant undergo a medical examination before the matter of compensation is decided. The costs of a medical examination demanded by the Treasury or of obtaining other evidence shall be borne by the State. (133/1987)
(2) Appended to an application by an employer for compensation there shall be accounts of:
(1) the disability of the person sustaining a personal injury;
(2) the offence by which the personal injury has been caused; and
(3) the salary paid during the period of disability,
unless the provision of such accounts is unnecessary owing to an application for compensation filed by the person sustaining the personal injury.
(916/1985)
(3) Notwithstanding any provisions or official instructions on secrecy, a court of law shall grant the Treasury access to documents in the possession of the court and needed for the clarification and decision of a matter of compensation. (62/1999)

Section 17

(1) If the right of the applicant to compensation referred to in section 3, other than damages from the offender, or the amount of such compensation, is disputed or unclear, the decision of the matter of compensation may be suspended until the right to the compensation has been resolved by a final decision.

(2) A matter of compensation cannot be decided before the right of the applicant to receive damages from the person responsible for the injury or damage has been decided in the first instance or the decision not to prosecute the offender has been made. If the offender has not been charged or a decision not to prosecute made within six months of the police becoming aware of the offence, the Treasury may nevertheless decide the matter of compensation. (133/1987)

(3) When the decision of a matter of compensation is delayed, the applicant shall be paid an advance compensation, if he/she is evidently entitled thereto. (1110/1990)

Section 18

Compensation for loss of income or maintenance or for the loss of a provider shall be paid in instalments, unless there is a special reason for paying it as a lump sum. Other compensation shall be paid as a lump sum, unless there is a special reason for the contrary.

State’s right of recovery

Section 19

(1) The right of the applicant to damages from the person responsible for the injury or damage shall revert to the State as of the date when the Treasury has decided on the payment of the compensation, at most to the amount of the compensation payable by the State. The right of the applicant to compensation from the opposing party for the costs referred to in section 10a shall likewise revert to the State. (1110/1990)

(2) A receivable based on the State’s right of recovery shall be collected in accordance with the procedure provided in the Act on the Enforcement of Fines (318/1963). The collection shall not be commenced before the court order by which the person responsible for the injury or damage has been rendered liable in damages has become final. In addition, the provisions of the Act on Payment Relief (529/1980) apply to full or partial relief from the recovery of the compensation by the State under this section.

(3) The Treasury shall represent the State in matters relating to the exercise of the right of recovery. (133/1987)

Section 20 [repealed by 973/1981]

Section 21 [repealed by 973/1981]

Miscellaneous provisions

Section 22

(1) The amount of instalment compensation paid for loss of income or maintenance or the loss of a provider may be altered or the payment of the
compensation terminated, if the amounts of the compensation referred to in section 3 change for a reason other than inflation or the need of the recipient for maintenance has essentially changed.

(2) Separate provisions apply to the binding of the compensation referred to in paragraph (1) to the cost-of-living index.

Section 23 (973/1981)

(1) If compensation has been paid without a due basis or to an excessive amount, the Treasury shall hear the recipient and oblige him/her to repay the compensation. The recovery may be waived, if it would be unreasonable or if the amount to be recovered is insignificant and if the granting or payment of the compensation has not been the result of deceit by the recipient or his/her representative. (133/1987)

(2) The decision on recovery shall be made within three years of the payment of the compensation. The decision may be made also later, if it is noted that the recipient or his/her representative has acted deceitfully in the matter.

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(3) A final decision of the Treasury on recovery is enforceable in the same manner as a final judgment of a court of law. (133/1987)

(4) Compensation paid without a due basis may be recovered also by deducting it from future instalments. However, any one instalment shall not be decreased by more than one sixth without the consent of the recipient.

Section 24

An applicant who, when the matter has been considered in a court of law, has been granted a trial free of charge may be compensated for his/her application costs under this Act, upon request and in so far as deemed reasonable. The same provision applies, if the matter has not been considered in a court of law, but the applicant meets the criteria for a trial free of charge.

Section 25

A contract for the assignment of a right under this Act to a third party or for raising a lien on it shall be void.

Section 26

(1) A decision of the Treasury under this Act shall be subject to appeal in the Insurance Court, said appeal to be lodged with the Court within 30 days of service of notice of the decision. A decision of the Treasury under section 17(3) or section 24 shall not be subject to appeal. (306/1999)

(2) A decision of the Insurance Court shall not be subject to appeal.

Section 27 (973/1981)

(1) If a final decision issued under this Act is based on erroneous or insufficient data or is obviously unlawful, the Insurance Court may, upon the proposition of the Treasury and after having heard the party in question, or upon the application of the party in question, to cancel the decision and reopen the matter for a new consideration either in the Insurance Court or the Treasury. After having made the proposition referred to above, the Treasury may suspend the payment of the compensation or pay instalments as stated in the proposition, until such time that the matter has been decided anew. (133/1987)

(2) Notwithstanding an earlier decision, also the Treasury may reopen a matter for a new consideration, if it concerns the granting of a denied compensation...
or the increase of a granted compensation. (133/1987)
(3) In addition, the provisions in chapter 31 of the Code of Judicial Procedure
apply to extraordinary appeal.
Section 27a (62/1999)
The amounts referred to above in section 5(1), 5a, 6a(2), 7 and 10 shall be
revised by Decree at three-year intervals, to take inflation into account.
Section 28
More detailed provisions on the implementation of this Act shall be issued by
Decree.
Section 29
This Act enters into force on 1 March 1974. It shall not apply to injury or
damage arising from offences committed before that date.
FRANCE
VII.A (INFRACTIONS DE DROIT COMMUN)

Une traduction anglaise de ce texte existe dans l’étude « Repairing the irreperable, state compensation to crime victims in the European Union ». Elle n’est pas reproduite ici.

**Code de procédure pénale, Livre IV, De quelques procédures particulières, Titre XIV, Du recours en indemnité ouvert à certaines victimes de dommages résultant d’une infraction**

Article 706-3

Toute personne ayant subi un préjudice résultant de faits volontaires ou non qui présentent le caractère matériel d'une infraction peut obtenir la réparation intégrale des dommages qui résultent des atteintes à la personne, lorsque sont réunies les conditions suivantes :

1° Ces atteintes n'entrent pas dans le champ d'application de l'article 53 de la loi de financement de la sécurité sociale pour 2001 (n° 2000-1257 du 23 décembre 2000) ni de l'article L. 126-1 du code des assurances ni du chapitre Ier de la loi n° 85-677 du 5 juillet 1985 tendant à l'amélioration de la situation des victimes d'accidents de la circulation et à l'accélération des procédures d'indemnisation et n'ont pas pour origine un acte de chasse ou de destruction des animaux nuisibles ;

2° Ces faits :

- soit ont entraîné la mort, une incapacité permanente ou une incapacité totale de travail personnel égale ou supérieure à un mois ;
- soit sont prévus et réprimés par les articles 222-22 à 222-30, 225-4-1 à 225-4-5 et 227-25 à 227-27 du code pénal ;

3° La personne lésée est de nationalité française. Dans le cas contraire, les faits ont été commis sur le territoire national et la personne lésée est :

- soit ressortissante d'un Etat membre de la Communauté économique européenne ;
- soit, sous réserve des traités et accords internationaux, en séjour régulier au jour des faits ou de la demande.

La réparation peut être refusée ou son montant réduit à raison de la faute de la victime.

Article 706-4

L'indemnité est allouée par une commission instituée dans le ressort de chaque tribunal de grande instance. Cette commission a le caractère d'une juridiction civile qui se prononce en premier ressort.

La commission est composée de deux magistrats du siège du tribunal de grande instance et d'une personne majeure, de nationalité française et jouissant de ses droits civiques, s'étant signalée par l'intérêt qu'elle porte aux problèmes des victimes. Elle est présidée par l'un des magistrats.

Les membres de la commission et leurs suppléants sont désignés pour une durée de trois ans par l'assemblée générale des magistrats du siège du tribunal.
Les fonctions du ministère public sont exercées par le procureur de la République ou l'un de ses substituts.

Un décret en Conseil d'État détermine les modalités d'application du présent article.

Article 706-5

A peine de forclusion, la demande d'indemnité doit être présentée dans le délai de trois ans à compter de la date de l'infraction. Lorsque des poursuites pénales sont exercées, ce délai est prorogé et n'expire qu'un an après la décision de la juridiction qui a statué définitivement sur l'action publique ou sur l'action civile engagée devant la juridiction répressive ; lorsque l'auteur d'une infraction mentionnée aux articles 706-3 et 706-14 est condamnée à verser des dommages-intérêts, le délai d'un an court à compter de l'avis donné par la juridiction en application de l'article 706-15. Toutefois, la commission relève le requérant de la forclusion lorsqu'il n'a pas été en mesure de faire valoir ses droits dans les délais requis ou lorsqu'il a subi une aggravation de son préjudice ou pour tout autre motif légitime.

Article 706-6

La commission ou son président peut procéder ou faire procéder à toutes auditions et investigations utiles, sans que puisse leur être opposé le secret professionnel. Ils peuvent notamment se faire communiquer copie des procès-verbaux constatant l'infraction ou de toutes les pièces de la procédure pénale, même en cours. Ils peuvent également requérir :

1° De toute personne ou administration, la communication de renseignements sur la situation professionnelle, financière, fiscale ou sociale des personnes ayant à répondre du dommage causé par l'infraction ou du requérant ;

2° De tout service de l'État, collectivité publique, organisme de sécurité sociale, organisme assurant la gestion des prestations sociales ou compagnies d'assurance susceptibles de réparer tout ou partie du préjudice, la communication des renseignements relatifs à l'exécution de leurs obligations éventuelles.

Les renseignements ainsi recueillis ne peuvent être utilisés à d'autres fins que l'instruction de la demande d'indemnité et leur divulgation est interdite.

Le président de la commission peut accorder une ou plusieurs provisions en tout état de la procédure ; il est statué dans le délai d'un mois à compter de la demande de provision.

Article 706-7

Lorsque des poursuites pénales ont été engagées, la décision de la commission peut intervenir avant qu'il ait été statué sur l'action publique.

La commission peut, pour l'application du dernier alinéa de l'article 706-3, surseoir à statuer jusqu'à décision définitive de la juridiction répressive. Dans tous les cas, elle doit surseoir à statuer à la demande de la victime.

Les débats ont lieu et la décision est rendue en chambre du conseil.

Article 706-8
Lorsque la juridiction statuant sur les intérêts civils a alloué des dommages-intérêts d'un montant supérieur à l'indemnité accordée par la commission, la victime peut demander un complément d'indemnité. Elle doit présenter sa demande dans le délai d'un an après que la décision statuant sur les intérêts civils est devenue définitive.

Article 706-9

La commission tient compte, dans le montant des sommes allouées à la victime au titre de la réparation de son préjudice :
- des prestations versées par les organismes, établissements et services gérant un régime obligatoire de sécurité sociale et par ceux qui sont mentionnés aux articles 1106-9, 1234-8 et 1234-20 du code rural ;
- des prestations énumérées au II de l'article 1er de l'ordonnance n° 59-76 du 7 janvier 1959 relative aux actions en réparation civile de l'Etat et de certaines autres personnes publiques ;
- des sommes versées en remboursement des frais de traitement médical et de rééducation ;
- des salaires et des accessoires du salaire maintenus par l'employeur pendant la période d'inactivité consécutive à l'événement qui a occasionné le dommage ;
- des indemnités journalières de maladie et des prestations d'invalidité versées par les groupements mutualistes régis par le code de la mutualité.

Elle tient compte également des indemnités de toute nature reçues ou à recevoir d'autres débiteurs au titre du même préjudice.

Les sommes allouées sont versées par le fonds de garantie des victimes des actes de terrorisme et d'autres infractions.

Article 706-10

Lorsque la victime, postérieurement au paiement de l'indemnité, obtient, du chef du même préjudice, une des prestations ou indemnités visées à l'article 706-9, le fonds peut demander à la commission qui l'avait accordée d'ordonner le remboursement total ou partiel de l'indemnité ou de la provision.

Article 706-11

Le fonds est subrogé dans les droits de la victime pour obtenir des personnes responsables du dommage causé par l'infraction ou tenues à un titre quelconque d'en assurer la réparation totale ou partielle le remboursement de l'indemnité ou de la provision versée par lui, dans la limite du montant des réparations à la charge desdites personnes.

Le fonds peut exercer ses droits par toutes voies utiles, y compris par voie de constitution de partie civile devant la juridiction répressive et ce, même pour la première fois, en cause d'appel. Lorsqu'il se constitue partie civile par lettre recommandée, le fonds peut demander le remboursement des sommes mises à sa charge sans limitation de plafond nonobstant les dispositions de l'article 420-1.

Pour l'application des dispositions de l'article 706-9 et du présent article, le fonds peut demander au procureur de la République de requérir de toute personne ou administration la communication de renseignements sur la situation professionnelle, financière, fiscale ou sociale des personnes ayant à répondre du dommage. Le secret professionnel ne peut être
opposé au procureur de la République. Les renseignements ainsi recueillis ne peuvent être utilisés à d'autres fins que celles prévues au présent article ; leur divulgation est interdite.

Article 706-12

Si la victime ou ses ayants droit se constituent partie civile devant la juridiction répressive ou engagent une action contre les personnes responsables du dommage, ils doivent indiquer, en tout état de la procédure, s'ils ont saisi la commission instituée par l'article 706-4 et si, le cas échéant, celle-ci leur a accordé une indemnité.
A défaut de cette indication, la nullité du jugement en ce qui concerne ses dispositions civiles pourra être demandée par toute personne intéressée pendant deux ans à compter de la date à partir de laquelle ledit jugement est devenu définitif.

Article 706-13

Abrogé

Article 706-14

Toute personne qui, victime d'un vol, d'une escroquerie, d'un abus de confiance, d'une extorsion de fonds ou d'une destruction, d'une dégradation ou d'une détérioration d'un bien lui appartenant, ne peut obtenir à un titre quelconque une réparation ou une indemnisation effective et suffisante de son préjudice, et se trouve de ce fait dans une situation matérielle ou psychologique grave, peut obtenir une indemnité dans les conditions prévues par les articles 706-3 (3° et dernier alinéa) à 706-12, lorsque ses ressources sont inférieures au plafond prévu par l'article 4 de la loi n° 91-647 du 10 juillet 1991 relative à l'aide juridictionnelle partielle, compte tenu, le cas échéant, de ses charges de famille.
L'indemnité est au maximum égale au triple du montant mensuel de ce plafond de ressources.
Ces dispositions sont aussi applicables aux personnes mentionnées à l'article 706-3 qui, victimes d'une atteinte à la personne prévue par cet article, ne peuvent à ce titre prétendre à la réparation intégrale de leur préjudice, les faits générateurs de celui-ci ayant entraîné une incapacité totale de travail inférieure à un mois.

Article 706-15

Lorsqu'une juridiction condamne l'auteur d'une infraction mentionnée aux articles 706-3 et 706-14 à verser des dommages-intérêts à la partie civile, elle informe cette dernière de la possibilité de saisir la commission d'indemnisation des victimes d'infraction.
VII.B (INFRACTIONS TERRORISTES)

Loi 86-1020 du 9 septembre 1986 relative à la lutte contre le terrorisme

Article 9 :


I - Les victimes d'actes de terrorisme commis sur le territoire national et les personnes de nationalité française ayant leur résidence habituelle en France, ou résidant habituellement hors de France et régulièrement immatriculées auprès des autorités consulaires, victimes à l'étranger d'un acte de terrorisme, sont indemnisées dans les conditions définies au présent article.

II. - La réparation intégrale des dommages corporels résultant des actes visés au I du présent article est assurée par l'intermédiaire d'un fonds de garantie.

Ce fonds, doté de la personnalité civile, est alimenté par un prélèvement sur les contrats d'assurance de biens dans des conditions définies par décret en Conseil d'Etat.

Il est subrogé dans les droits que possède la victime contre la personne responsable du dommage ainsi que contre les personnes tenues à un titre quelconque d'en assurer la réparation totale ou partielle, dans la limite du montant des prestation à la charge desdites personnes.

Un décret en Conseil d'Etat fixe ses conditions de constitution et ses règles de fonctionnement.

III. - Le fonds de garantie est tenu, dans un délai d'un mois à compter de la demande qui lui est faite, de verser une ou plusieurs provisions à la victime qui a subi une atteinte à sa personne ou, en cas de décès de la victime, à ses ayants droit, sans préjudice du droit pour ces victimes de saisir le juge des référés.

Le fonds de garantie est tenu de présenter à toute victime une offre d'indemnisation dans un délai de trois mois à compter du jour où il reçoit de celle-ci la justification de ses préjudices.

Cette disposition est également applicable en cas d'aggravation du dommage.

Les articles 18 à 21 de la loi n° 85-677 du 5 juillet 1985 tendant à l'amélioration de la situation des victimes d'accident de la circulation et à l'accélération des procédures d'indemnisation sont applicables à ces offres d'indemnisation. Les offres tardives ou manifestement insuffisantes peuvent ouvrir droit à des dommages-intérêts au profit de la victime.

IV. - En cas de litige, le juge civil, si les faits générateurs du dommage ont donné lieu à des poursuites pénales, n'est pas tenu de surseoir à statuer jusqu'à décision définitive de la juridiction répressive.

Les victimes des dommages disposent, dans le délai prévu à l'article 2270-1 du code civil, du droit d'action en justice contre le fonds institué au paragraphe II ci-dessus.

IV bis - Le fonds de garantie peut intervenir devant les juridictions de jugement en matière répressive même pour la première fois en cause d'appel, en cas de constitution de partie civile de la victime ou de ses ayants droit contre le ou les responsables des faits. Il intervient alors à titre principal et peut user de toutes les voies de recours ouvertes par la loi.
V - Les contrats d'assurance de biens ne peuvent exclure la garantie de l'assureur pour les dommages résultant d'actes de terrorisme ou d'attentats commis sur le territoire national. Toute clause contraire est réputée non écrite. Un décret en Conseil d'Etat définira les modalités d'application du présent paragraphe.
IRLANDE
**Scheme of Compensation for Personal Injuries Criminally Infl icted**

As amended with effect from 1st April 1986

**General**

1. The Criminal Injuries Compensation Tribunal established under paragraph 17 of the Scheme may pay ex gratia compensation in accordance with this Scheme in respect of personal injury where the injury is directly attributable to a crime of violence, or, as provided for in paragraph 4, to circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life. The injury must have been sustained within the State or aboard an Irish ship or aircraft on or after the 1st October, 1972. Arson and poisoning will be regarded as coming within the scope of the expression "crime of violence" and, in determining whether any act is a crime for the purposes of the Scheme, the Tribunal will not take account of any legal immunity which the person who inflicted the injury may have by reason of his mental health, his youth or otherwise. The word "injury", as used in the Scheme, includes a fatal injury.

2. The Tribunal will be entirely responsible for deciding in any particular case whether compensation is payable under the Scheme, and, if so, the amount. There will be no appeal against or review of a final decision of the Tribunal.

**Persons who may claim compensation under this Scheme**

3. The Tribunal will consider claims for compensation made by or on behalf of:

   (a) the person who sustained the injury (the victim);
   (b) any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred any expenses as a result of the victim’s injury;
   (c) where the victim has died as a result of the injury, any dependent of the victim or, if he has no dependent, any person who incurred expenses as a result of his death;
   (d) where the victim has died otherwise than as a result of the injury, any dependent of the victim.

4. The Tribunal will also consider claims in respect of injury received in the following circumstances:

   (a) because of, or in the course of, the victim’s coming to the assistance of a member of the Garda Síochána
      (i) because of an unlawful attack upon the member, or
      (ii) because the member was attempting to prevent a crime or to take a person into custody, or
      (iii) in the course of a riot, or a disturbance or threatened disturbance of the peace, or
   (iv) in the course of an attempt to rescue a person in custody, or
   (v) because the member was engaged in saving a human life;
   (b) because of, or in the course of, attempting to prevent a crime in a public place;
   (c) because of, or in the course of attempting to prevent, in a public place,
the escape of a person who had committed a crime, or the rescue of a person in custody;
(d) because of, or in the course of, attempting to save human life.
5. If injury is inflicted in the circumstances set out in the Scheme and any person would be entitled to claim compensation (whether statutory or non-statutory) otherwise than under the Scheme for the injury, he will not be prohibited from also claiming compensation under the Scheme but the Tribunal will decide the claim on the basis that no payment under the Scheme should result in compensation being duplicated and may accordingly decide either to make no award or to make a reduced award and may, moreover, decide that an award will be subject to conditions as to its repayment in whole or in part in the event of compensation being subsequently received from another source.

Nature and extent of compensation
6. Subject to the limitations and restrictions contained elsewhere in this Scheme, the compensation to be awarded by the Tribunal will be on the basis of damages awarded under the Civil Liability Acts except that compensation will not be payable
(a) by way of exemplary, vindictive or aggravated damages;
(b) in respect of the maintenance of any child born to any victim of a sexual offence;
(c) in respect of loss or diminution of expectation of life;
(d) where the victim has died, for the benefit of the victim’s estate, or
(e) in so far as injuries sustained on or after the 1st April, 1986 are concerned in respect of pain and suffering.
7. Where the victim has died otherwise than as a result of the injury the Tribunal may award compensation in respect of loss of earnings, expenses and liabilities incurred before the death but only to a dependent who would, in the opinion of the Tribunal, otherwise suffer hardship.
8. Compensation will be by way of a lump sum payment, rather than a periodical pension, but it will be open to the Tribunal to make an interim award and to postpone making a final award in a case in which a final medical assessment of the injury is delayed.

Limitation and restriction of compensation
9. No compensation will be payable unless the Tribunal is satisfied that the injury is such that compensation of not less than £50 should be awarded.
10. No compensation will be payable where the offender and the victim were living together as members of the same household at the time the injuries were inflicted.
11. No compensation will be payable to an applicant who has not, in the opinion of the Tribunal, given the Tribunal all reasonable assistance, in relation to any medical report that it may require, and otherwise.
12. No compensation will be payable in respect of injuries inflicted in a traffic offence except in a case where there has been, in the opinion of the Tribunal, a deliberate attempt to run down the victim.
13. No compensation will be payable where the Tribunal is satisfied that the victim was responsible, either because of provocation or otherwise, for the offence giving rise to his injuries and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially
responsible for the offence.

14. No compensation will be payable where the Tribunal is satisfied that the conduct of the victim, his character or his way of life make it inappropriate that he should be granted an award and the Tribunal may reduce the amount of an award where, in its opinion, it is appropriate to do so having regard to the conduct, character or way of life of the victim.

15. Compensation will be reduced by the value of the entitlement of the victim or claimant to social welfare benefits payable as a result of the injury and will be reduced, to the extent determined by the Tribunal, in respect of the entitlement of the victim to receive, under his conditions of employment, wages or salary while on sick leave.

16. The Tribunal will deduct from the amount of an award under this Scheme any sums paid to or for the benefit of the victim or his dependents by way of compensation or damages from the offender or any person on the offender’s behalf following the injury.

Finance and administration

17. The Scheme will be administered by the Criminal Injury Compensation Tribunal the members of which will be appointed by the Minister for Justice. It will consist of a chairman and six ordinary members. The Chairman and each member will be either a practicing barrister or a practicing solicitor. The members of the Tribunal will act on a part-time basis but they will be paid fees for work done on a basis to be determined by the Minister for the Public Service.

18. Compensation will be payable out of funds made available to the Tribunal out of moneys provided by the Oireachtas.

19. The Tribunal will submit annually to the Minister for Justice a full report on the operation of the Scheme together with their accounts. The report and accounts will be laid before both Houses of the Oireachtas. In addition, the Tribunal may, in connection with its annual report or otherwise, publish such information concerning the Scheme and decisions in individual cases as may, in its opinion, assist intending applicants for compensation.

Procedure etc.

20. The Tribunal will be free to draw up and publish any instructions it considers necessary regarding the procedure for administering the Scheme. However, these instructions will be consistent with the provisions of the Scheme and with the general intention that the administration of the Scheme and, in particular, proceedings before the Tribunal, should be informal.

21. Applications should be made as soon as possible but, except in circumstances determined by the Tribunal to justify exceptional treatment, not later than three months after the event giving rise to the injury. In the case of an injury arising out of an event which took place before the commencement of the Scheme, the application must be made not later than three months from the date of the commencement (subject, also, to the foregoing exception).

22. Applications should be made on the Tribunal’s application form. This will be obtainable from the Secretary to the Tribunal.

23. To qualify for compensation it will be necessary to indicate to the Tribunal that the offence giving rise to injury has been the subject of criminal proceedings or that it was reported to the Garda without delay. However, the
Tribunal will have discretion to dispense with this requirement in the case of injuries resulting from offences committed before the commencement of the Scheme, and in other cases where they are satisfied that all reasonable efforts were made by or on behalf of the claimant to notify the Garda Síochána of the offence and to cooperate with them.

24. The Tribunal’s staff will process applications in the first instance and may seek all relevant information as to the circumstances of the injury either from the applicant or otherwise.

25. A decision by the Tribunal on a claim may, in the first instance, be taken by a duly authorised officer of the Tribunal where the amount claimed does not exceed £250. Where the claim is for a greater sum than £250 or where the claimant is not satisfied with a decision by that officer, the decision will normally be taken by one member of the Tribunal. The Tribunal will have discretion to hear any claim at a hearing before three members of the Tribunal and a person who is dissatisfied with a decision given by one member may also have his claim so heard. In the latter case the member who gave the initial decision will not be one of the three members of the Tribunal present at the hearing. Apart from an appeal by an applicant against a decision of a duly authorised officer or against a decision of one member, there will be no appeal against a decision of the Tribunal.

26. The proceedings at the hearing of the Tribunal will be by way of a presentation of his case by the applicant who will be entitled to call, examine and cross examine witnesses. It will be for the claimant to establish his case. A member of the Tribunal’s staff may make submission to the Tribunal on the case and will also be entitled to call, examine and cross examine witnesses. All information before the Tribunal will be available to the applicant.

27. An applicant may be accompanied by his legal adviser or another person but the Tribunal will not pay the costs of legal representation.

28. The Tribunal may, at its discretion, pay the necessary and reasonable expenses of witnesses.

29. Hearings will be in private.

30. The standard of proof which the Tribunal will apply to a determination of any claim will be the balance of probabilities.

31. The Tribunal will be entitled to make any arrangements which it considers desirable for the administration of money it awards as compensation.
ITALIE
IX Italie (infractions terroristes, crime organisé)


Art. 1.

1. Le disposizioni della presente legge si applicano a tutte le vittime degli atti di terrorismo e delle stragi di tale matrice, compiuti sul territorio nazionale o extranazionale, se coinvolgenti cittadini italiani, nonché ai loro familiari superstiti.


Art. 2.


2. E' riconosciuto il diritto ad una maggiorazione della misura della pensione e ai relativi benefici sulla base dei criteri indicati dalla presente legge per coloro che sono stati collocati a riposo alla data di entrata in vigore della presente legge.

3. Sono fatti salvi i trattamenti pensionistici di maggior favore derivanti da iscrizioni assicurative obbligatorie di lavoratori dipendenti, autonomi o liberi professionisti.

Art. 3.

1. A tutti coloro che hanno subito un'invalidità permanente inferiore all'80 per cento della capacità lavorativa, causata da atti di terrorismo e dalle stragi di tale matrice, è riconosciuto un aumento figurativo di dieci anni di versamenti contributivi utili ad aumentare, per una pari durata, l'anzianità pensionistica maturata, la misura della pensione, nonché il trattamento di fine rapporto o altro trattamento equipollente. A tale fine è autorizzata la spesa di 5.807.000 euro per l'anno 2004 e di 2.790.000 euro a decorrere dall'anno 2005.

2. La pensione maturata ai sensi del comma 1 è esente dall'imposta sul reddito delle persone fisiche (IRPEF).

Art. 4.

1. Coloro che hanno subito un'invalidità permanente pari o superiore all'80 per cento della capacità lavorativa, causata da atti di terrorismo e dalle stragi di tale matrice, sono equiparati, ad ogni effetto di legge, ai grandi invalidi di guerra di cui all'articolo 14 del testo unico di cui

2. A tutti coloro che hanno subito un'invalidità permanente pari o superiore all'80 per cento della capacità lavorativa, causata da atti di terrorismo e dalle stragi di tale matrice, è riconosciuto il diritto immediato alla pensione diretta, calcolata in base all'ultima retribuzione percepita integralmente dall'avente diritto e rideterminata secondo le previsioni di cui all'articolo 2, comma 2. Per tale finalità è autorizzata la spesa di 156.000 euro a decorrere dall'anno 2004.

3. I criteri di cui al comma 2 si applicano per la determinazione della misura della pensione di reversibilità o indiretta in favore dei superstiti in caso di morte della vittima di atti di terrorismo e delle stragi di tale matrice; tali pensioni non sono decurtabili ad ogni effetto di legge.

4. Ai trattamenti pensionistici di cui ai commi 2 e 3 si applicano i benefici fiscali di cui all'articolo 2, commi 5 e 6, della legge 23 novembre 1998, n. 407, in materia di esenzione dall'IRPEF.

\textit{Art. 5.}

1. L'elargizione di cui al comma 1 dell'articolo 1 della legge 20 ottobre 1990, n. 302, e successive modificazioni, è corrisposta nella misura massima di 200.000 euro in proporzione alla percentuale di invalidità riportata, in ragione di 2.000 euro per ogni punto percentuale.

2. La disposizione di cui al comma 1 si applica anche alle elargizioni già erogate prima della data di entrata in vigore della presente legge, considerando nel computo anche la rivalutazione di cui all'articolo 6. A tale fine e' autorizzata la spesa di 12.070.000 euro per l'anno 2004.


5. L'elargizione di cui all'articolo 4, comma 1, e all'articolo 12, comma 3, della legge 20 ottobre 1990, n. 302, come sostituito dall'articolo 3, comma 2, lettera b), della legge 23
novembre 1998, n. 407, è corrisposta nella misura di 200.000 euro. Per le stesse finalità è autorizzata la spesa di 34.300.000 euro per l'anno 2004.

Art. 6.

1. Le percentuali di invalidità già riconosciute e indennizzate in base ai criteri e alle disposizioni della normativa vigente alla data di entrata in vigore della presente legge sono rivalutate tenendo conto dell'eventuale intercorso aggravamento fisico e del riconoscimento del danno biologico e morale. Per le stesse finalità è autorizzata la spesa di 300.000 euro per l'anno 2004.


Art. 7.

1. Ai pensionati vittime di atti di terrorismo e delle stragi di tale matrice e ai loro superstiti è assicurato l'adeguamento costante della misura delle relative pensioni al trattamento in godimento dei lavoratori in attività nelle corrispondenti posizioni economiche e con pari anzianità. A tale fine è autorizzata la spesa di 75.180 euro a decorrere dall'anno 2004.

Art. 8.

1. I documenti e gli atti delle procedure di liquidazione dei benefici previsti dalla presente legge sono esenti dall'imposta di bollo.

2. L'erogazione delle indennità è comunque esente da ogni imposta diretta o indiretta.

Art. 9.

1. Gli invalidi vittime di atti di terrorismo e delle stragi di tale matrice e i familiari, inclusi i familiari dei deceduti, limitatamente al coniuge e ai figli e, in mancanza dei predetti, ai genitori, sono esenti dalla partecipazione alla spesa per ogni tipo di prestazione sanitaria e farmaceutica.

Art. 10.


2. Ove non risulti essere stata effettuata la comunicazione del deposito della sentenza penale relativa ai fatti di cui all'articolo 1, comma 1, i soggetti danneggiati possono promuovere l'azione civile contro i diretti responsabili entro il termine di decadenza di un anno dalla data di entrata in vigore della presente legge, prescindendo dall'eventuale maturata prescrizione del diritto.

Art. 11.
1. Nelle ipotesi in cui in sede giudiziaria, amministrativa o contabile siano già state accertate con atti definitivi la dipendenza dell'invalidità e il suo grado ovvero della morte da atti di terrorismo e dalle stragi di tale matrice, ivi comprese le perizie giudiziarie penali, le consulenze tecniche o le certificazioni delle aziende sanitarie locali od ospedaliere e degli ospedali militari, e' instaurato ad istanza di parte, entro il termine di sei mesi dalla data di entrata in vigore della presente legge, un procedimento civile dinanzi al tribunale in composizione monocratica. Tale procedimento deve essere concluso con sentenza soggetta all'impugnazione di cui all'articolo 12, comma 2.

Art. 12.

1. Il tribunale in composizione monocratica competente in base alla residenza anagrafica della vittima o dei superstiti fissa una o al massimo due udienze, intervallate da un periodo di tempo non superiore a quarantacinque giorni, al termine del quale, esposte le richieste delle parti, prodotte ed esperite le prove e precisate le conclusioni, la causa è assegnata a sentenza e decisa nel termine di quattro mesi.

2. Le sentenze di cui al comma 1 sono ricorribili esclusivamente dinanzi alla Corte di cassazione per violazione di legge, ivi compresa la manifesta illogicità della motivazione.

Art. 13.

1. La competente amministrazione dello Stato, anche prima dell'inizio di azioni giudiziarie o amministrative, d'ufficio o su richiesta di parte, può offrire alla vittima di atti di terrorismo e delle stragi di tale matrice o agli eredi una somma a titolo di definitiva liquidazione, che, in caso di accettazione, è preclusiva di ogni altra azione, costituendo ad ogni effetto transazione.

2. La liquidazione di cui al comma 1 deve essere effettuata nel termine di quattro mesi dalla relativa deliberazione.

Art. 14.


Art. 15.

1. I benefici di cui alla presente legge si applicano agli eventi verificatisi sul territorio nazionale a decorrere dal 1° gennaio 1961. A tale fine è autorizzata la spesa di 1.500.000 euro per l'anno 2004.

2. Per gli eventi coinvolgenti cittadini italiani verificatisi all'estero, i benefici di cui alla presente legge si applicano a decorrere dal 1° gennaio 2003.

Art. 16.


3. Il Ministro dell’economia e delle finanze è autorizzato ad apportare, con propri decreti, le occorrenti variazioni di bilancio.
LUXEMBOURG
L’étude « Repairing the irreperable, state compensation to crime victims in the European Union » contient une traduction anglaise de la loi luxembourgeoise qui n’est pas reproduite ici.

**X.A Loi du 12 mars 1984 relative à l’indemnisation de certaines victimes de dommages corporels résultant d’une infraction et à la répression de l’insolvabilité frauduleuse.**

**Art. 1er.** Tout Luxembourgeois ou toute personne résidant régulièrement et habituellement au Grand-Duché ayant subi un préjudice résultant de faits volontaires qui présentent le caractère matériel d’une infraction a droit à une indemnité à charge de l’État lorsque sont réunis les conditions suivantes: 1° ces faits ont causé un dommage corporel et ont entraîné, soit la mort, soit une incapacité permanente, soit une incapacité totale de travail personnel pendant plus d’un mois; 2° le préjudice consiste en un trouble grave dans les conditions de vie résultant d’une perte ou d’une diminution de revenus, d’un accroissement de charges, d’une inaptitude à exercer une activité professionnelle ou d’une atteinte à l’intégrité physique ou mentale; 3° la personne lésée ne peut obtenir, à un titre quelconque, une réparation ou une indemnisation effective et suffisante. Toutefois, l’indemnité peut être refusée, ou son montant réduit, en raison du comportement de la personne lésée lors des faits ou de ses relations avec l’auteur des faits.

**Art. 2.** La demande en réparation est introduite auprès du ministre de la Justice qui statue dans les six mois. L’instruction de la demande se fait par une commission composée d’un magistrat, d’un fonctionnaire supérieur du ministère de la Justice et d’un membre de l’Ordre des avocats. La commission doit convoquer le demandeur et, s’il compare à, l’entendre en ses observations. Elle se prononce dans son avis sur le principe et le montant de l’indemnité à allouer. L’auteur responsable sera appelé en cause par les soins de la commission. L’instruction se fait et la décision est prise selon la procédure tracée par le règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l’État et des communes. Pendant le cours de l’instruction de la demande le ministre de la Justice peut allouer, en cas de nécessité, une provision au requérant.

**Art. 3.** A peine de forclusion, la demande d’indemnité doit être présentée dans le délai d’un an à compter de la date des faits. Lorsque des poursuites pénales sont exercées, ce délai est prorogé et n’expirera qu’un an après la décision de la juridiction qui a statué définitivement sur l’action publique. Toutefois, le ministre de la Justice relève le requérant de la forclusion lorsqu’il justifie de circonstances morales ou matérielles qui l’ont empêché de présenter sa demande en temps utile.

**Art. 4.** Il est ouvert aux intéressés qui n’acceptent pas les décisions du ministre visées aux articles 2 et 3, une action en fixation de la créance ou de la provision contre l’État représenté.
par le ministre de la Justice, devant les tribunaux d’arrondissement qui en connaissent en
dernier ressort.

Art. 5. L’action est à intenter, sous peine de déchéance, dans les trois mois à partir de la
réception de la décision du ministre de la Justice. Si le ministre a omis de statuer dans le délai
de six mois imparti par l’article 2, l’intéressé peut se pourvoir à partir de l’expiration dudit
délai.
Il est statué d’après la procédure applicable en matière commerciale.

Art. 6. Un recours en cassation est ouvert aux intéressés contre les décisions des tribunaux
d’arrondissement, dans les cas, les délais et suivant les formes prévues pour les pourvois en
cassation en matière civile.
En cas de cassation donnant lieu à un nouvel examen du fond, la cause est obligatoirement
renvoyée pour être instruite et jugée de nouveau devant une autre juridiction de même nature
que celle dont le jugement a été cassé.

Art. 7. Les minutes, expéditions, extraits et copies des décisions et en général tous les actes
de procédure auxquels donne lieu l’application de la présente loi, sont dispensés des
formalités du timbre et de l’enregistrement. Ils portent la mention expresse qu’ils sont faits en
exécution de la présente loi.

Art. 8. Toutes les actions ouvertes sur la base des dispositions qui précèdent sont portées, au
choix du demandeur, soit devant le tribunal d’arrondissement de Luxembourg, soit devant
celui de Diekirch.

Art. 9. La commission peut procéder ou faire procéder à toutes auditions et investigations
utiles.
Elle peut, notamment, se faire communiquer copie des procès-verbaux constatant les faits et
de toutes les pièces de la procédure pénale, même en cours.
Elle peut également requérir, de toute personne physique ou morale, administration ou
établissement public, la communication de renseignements sur la situation professionnelle,
financière ou sociale des personnes ayant à répondre du dommage causé par les faits.
Avec l’autorisation du ministre de la Justice elle peut requérir communication des
informations nécessaires de la part des administrations fiscales et des établissements bancaires
lorsque l’auteur responsable refuse de les communiquer et qu’il existe des présomptions qu’il
dispose de biens ou de ressources cachés.
Les renseignements ainsi recueillis ne peuvent être utilisés à d’autres fins que l’instruction de
la demande d’indemnité et leur divulgation est interdite.

Art. 10. Lorsque des poursuites pénales ont été engagées, la décision du ministre de la Justice
peut intervenir avant qu’il ait été statué sur l’action publique.
Le ministre peut surseoir à statuer jusqu’à décision définitive de la juridiction répressive dans
les cas visés au dernier alinéa de l’article 1er; il doit, dans les mêmes cas et conditions,
surseoir à statuer à la demande de la victime.

Art. 11. Les indemnités allouées par le ministre de la Justice à charge de l’Etat sont payées
comme frais de justice criminelle. Leurs montants ne peuvent dépasser les maxima fixés,
chaque année, par règlement grand-ducal.
Art. 12. Lorsque la victime, postérieurement au paiement de la provision ou de l’indemnité, obtient, à un titre quelconque, une réparation ou une indemnisation effective de son préjudice, le ministre de la Justice peut, sur avis émis par la commission prévue à l’article 2 et dans les conditions y fixées, ordonner le remboursement total ou partiel de l’indemnité ou de la provision.
Le ministre peut en décider de même au cas où une provision a été payée et qu’il s’avère ensuite qu’une indemnité n’était pas due sur la base de l’article 1er.
Il est ouvert à l’intéressé qui, dans un des cas visés par cet article, n’accepte pas la décision du ministre, un recours devant le tribunal d’arrondissement qui en connaît en dernier ressort. Le recours est à intenter, sous peine de déchéance, dans les trois mois de la réception de la décision du ministre de la Justice.
Lorsqu’aucun recours n’est exercé dans ce délai, il est procédé au recouvrement de la somme indûment touchée au moyen d’un rôle de restitution conformément à l’article 40 de la loi du 27 juillet 1936 sur la comptabilité de l’Etat et des actes modificatifs.

Art. 13. L’État est subrogé aux droits de la victime pour obtenir, des personnes responsables du dommage causé par les faits, le remboursement de l’indemnité versée par lui, dans la limite du montant des réparations mises à la charge desdites personnes. Il peut exercer ce recours par voie de constitution de partie civile devant la juridiction répressive, et ce même pour la première fois en cause d’appel. En cas de recouvrement et lorsqu’il y a concours des organismes de sécurité sociale, de l’État et éventuellement de la victime, la répartition des montants récupérés se fait pour chaque chef de préjudice dans l’ordre suivant:
1° les organismes de sécurité sociale,
2° l’État,
3° la victime.

Art. 14. Si la victime ou ses ayants droit se constituent partie civile devant la juridiction répressive ou engagent une action contre les personnes responsables du dommage, ils doivent indiquer, en tout état de la procédure, s’ils ont saisi le ministre de la justice d’une demande en indemnisation et si, le cas échéant, celui-ci leur a accordé une indemnité. À défaut de cette indication, la nullité du jugement en ce qui concerne ses dispositions civiles peut être demandée par voie d’action ou d’exception.

Art. 15. Si les faits visés à l’article 1er ont été commis à l’étranger, les dispositions de la présente loi sont applicables lorsque la personne lésée est de nationalité luxembourgeoise et pour autant qu’elle n’est pas en droit d’être indemnisée par l’État sur le territoire duquel le dommage a été causé. Dispositions pénales

Art. 16. 1) L’intitulé du chapitre IX du titre VII du livre II du code pénal est complété comme suit: « et de l’insolvabilité frauduleuse ».
2) Il est inséré après l’article 391 bis un article 391 ter qui aura la teneur suivante:
« Art. 391 ter. Sera puni d’un emprisonnement de six mois à trois ans et d’une amende de 20.000 à 500.000 francs ou d’une de ces peines seulement tout débiteur qui, même avant la décision judiciaire, aura organisé ou aggravé son insolvabilité, soit en augmentant le passif ou en diminuant l’actif de son patrimoine, soit en dissimulant certains de ses biens, en vue de se soustraire à l’exécution d’une condamnation pécuniaire prononcée par une juridiction répressive ou, en matière délictuelle, quasi délictuelle ou d’aliments, par une juridiction civile.
Sera puni des mêmes peines le dirigeant de droit ou de fait d’une personne morale, qui aura organisé ou aggravé l’insolvabilité de celle-ci dans les conditions définies dans l’alinéa précédent, lorsque cette personne morale sera tenue à des obligations pécuniaires résultant d’une condamnation prononcée en matière pénale, délictuelle ou quasi délictuelle. La prescription de l’action publique ne courra qu’à compter de la condamnation à l’exécution de laquelle le débiteur a voulu se soustraire ou, s’il lui est posterior, du dernier agissement ayant pour objet d’organiser ou d’aggraver l’insolvabilité du débiteur. Pour l’application du présent article, sont assimilées aux condamnations au paiement d’aliments les décisions judiciaires et les conventions judiciairement homologuées portant obligation de verser des prestations, subsides ou contributions aux charges du mariage ainsi que les stipulations d’aliments contenues dans les conventions préalables au divorce par consentement mutuel prévues par l’article 277 du Code civil.

Art. 17. Celui qui a obtenu ou tenté d’obtenir une indemnité au titre de la présente loi sur la base de renseignements qu’il savait inexact est passible des peines prévues à l’article 496 du code pénal, sans préjudice de la restitution des sommes obtenues.

Art. 18. Sont applicables aux articles 16 et 17 de la présente loi le livre 1er du code pénal et la loi du 18 juin 1879 modifiée par celle du 16 mai 1904 portant attribution aux cours et tribunaux de l’appréciation des circonstances atténuantes.

Dispositions finales et transitoires
Art. 19. Un règlement grand-ducal déterminera les conditions d’application de la présente loi qui entrera en vigueur à l’expiration des deux mois suivant la publication. La forclusion établie par l’article 3 ne peut pas être opposée en ce qui concerne les préjudices résultant de faits survenus depuis le 1er janvier 1981, à condition que la demande soit introduite auprès du ministre avant l’expiration d’un délai de six mois à compter de l’entrée en vigueur de la présente loi.


Article unique. La loi du 12 mars 1984 relative à l’indemnisation de certaines victimes de dommages corporels résultant d’une infraction et à la répression de l’insolvabilité frauduleuse est modifiée comme suit:
A. L’alinéa premier de l’article 1 est modifié comme suit:
Toute personne ayant subi au Grand-Duché un préjudice résultant de faits volontaires qui présentent le caractère matériel d’une infraction a droit à une indemnité à charge de l’Etat:
1) si elle réside régulièrement et habituellement au Grand-Duché; ou
2) si elle est ressortissant d’un Etat membre du Conseil de l’Europe; ou
3) si, au moment où elle a été la victime de l’infraction, elle se trouvait en situation régulière au Grand-Duché et avait la nationalité d’un Etat qui aurait accordé une indemnisation à un citoyen luxembourgeois si celui-ci avait été victime sur le territoire de cet Etat, dans des circonstances identiques et au même moment, des mêmes faits; et si les conditions suivantes sont réunies:
B. L’article 2 est modifié comme suit:
La demande en réparation est introduite auprès du Ministre de la Justice qui statue dans les six mois.
L’instruction de la demande se fait par une commission composée d’un magistrat, d’un fonctionnaire supérieur du Ministère de la Justice et d’un membre de l’Ordre des avocats. La commission doit convoquer le demandeur, et, s’il compareît, l’entendre en ses observations. Elle se prononce dans son avis sur le principe et le montant de l’indemnité à allouer qui est fixé en considération notamment de la gravité du trouble subi par le demandeur dans ses conditions de vie, sans préjudice aux dispositions de l’article 1, alinéa dernier.
L’instruction se fait et la décision est prise selon la procédure réglementaire à suivre par les administrations relevant de l’Etat et des communes.
Si l’identité de l’auteur responsable et son lieu de résidence sont connus, il est averti de la demande par les soins de la commission qui l’informe de son droit de présenter ses observations à la commission dans un délai de trois mois à partir de l’avertissement donné par lettre recommandée avec avis de réception.
Pendant le cours de l’instruction de la demande, le Ministre de la Justice peut allouer, en cas de nécessité, une provision au requérant.
C. L’article 15 est modifié comme suit:
Si les faits visés à l’article 1er ont été commis à l’étranger, les dispositions de la présente loi sont applicables pour autant que la personne lésée n’est pas en droit d’être indemnisée par un autre État et qu’elle justifie d’une résidence régulière et habituelle au Grand-Duché.
PAYS-BAS

Article 1
For the purposes of the provisions laid down by or pursuant to the Act, Fund shall be understood to mean: the Criminal Injuries Compensation Fund, as referred to in article 2;

Our Minister: Our Minister of Justice;
The Commission: The Commission as referred to in article 8, responsible for management of the Fund;
The victim: victim and/or surviving dependant by or on behalf of whom a request for compensation has been submitted to the Fund.

Article 2
1. There is a Criminal Injuries Compensation Fund. Compensation paid out of and expenses incurred by this Fund shall be borne by the Ministry of Justice, insofar as they cannot be provided for otherwise.
3. The Fund is a legal entity established in The Hague. The chairperson of the Commission, or his deputy, represents the Fund at law and otherwise.

Article 3
1. Compensation can be paid out of the Fund:
   a. to any person who has sustained serious physical or mental injuries as a result of maliciously inflicted violent crime committed in the Netherlands;
   b. to any person who has his domicile on the territory of one of the member states of the European Community and who has sustained serious physical or mental injuries as a result of maliciously inflicted violent crime committed on board of a Dutch vessel or aircraft outside the Netherlands;
   c. to surviving dependants of a person referred to under a or b if he has died as a result of the crime.
2. For the purposes of the aforementioned paragraph surviving dependant shall be understood to mean:
   a. the spouse not separated from bed and board, the surviving registered partner and the children to whom the deceased was related;
   b. other relatives by blood or affinity of the deceased, provided that the latter supported them in full or in part at the time of death or had the obligation to do so due to a court ruling;
   c. the person who, before the event on which the liability is based, lived with the deceased as part of a family, who would otherwise have received continued support and who cannot reasonably support himself.
   d. the person who lived as part of a family with the deceased and who was supported by the deceased by running a joint household on a long term basis, insofar as he suffers loss because the household needs to be supported otherwise after the death.
3. For the purposes of the first paragraph, maliciously inflicted violent crime shall be understood to mean: the punishable attempt to that purpose.

Article 4
1. The compensation shall be determined in accordance with the requirements of reasonableness and fairness. Compensation shall not exceed the amount of the loss caused by the injury or death, with the proviso that in cases of death only the costs incurred due to loss of earnings and burial or cremation of the deceased shall qualify. No compensation shall be paid when the financial circumstances of the victim are such that the costs incurred can be borne by him or the person whom he depends on without difficulty.
2. The maximum compensation shall be determined by order in council. These maximum amounts may vary depending on the nature of the loss.

Article 5
If the inflicted loss is partly the result of circumstances attributable to the victim or the surviving dependant, compensation may not be paid or only in part.

Article 6
1. No compensation shall be awarded if:
   Firstly: the loss is or can be compensated by means of civil-law procedures;
   Secondly: the loss is or can be compensated in any other way.
2. In cases in which the investigation of the question whether the loss may be compensated in another way, or in which the collection of the loss would lead to a serious delay of the procedure of the request or in which the victim would incur unreasonable costs, the loss incurred may nevertheless be taken into account when the compensation is paid.
3. With regard to the compensation paid to the victim the Fund assumes responsibility for loss incurred by the victim vis-à-vis third parties. The Fund shall only assume this responsibility with permission of Our Minister.

Article 7
1. Requests for compensation shall be submitted to the Fund within three years after the day on which the crime is committed. If the request is submitted by a surviving dependant the relevant term shall commence on the day of death. Requests submitted after the term has ended shall nevertheless be processed if it is evident that the request was submitted as soon could reasonably be expected.
2. If a request is submitted in time, an additional request may be submitted with regard to loss which was not known at the time of submittal of the original request.

Article 8
1. A Commission responsible for the management of the Fund shall decide whether or not compensation is awarded.
2. The Commission consists of a multiple-judge section and one or more single-judge sections. The multiple-judge section consists of five members, who are appointed and dismissed by Royal Decree. One of the members is appointed chairperson by Our Minister. Furthermore as many deputy members may be appointed as necessary by Royal Decree. The member of the single-judge section is nominated by the multiple-judge section from its own ranks and appointed by Our Minister. Deputy members do not hold a seat in a single-judge section.

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1 Requests relating to violent crimes committed before 1 January 1994 shall be submitted within six months.
3. Members and deputy members of the Commission shall be appointed for a five-year period, unless they voluntarily resign before the end of that term. They cannot serve more than two equal terms. Membership ends when the age of seventy is reached.

4. Requests of a simple nature received by the Commission are dealt with by the single-judge section. If, in the opinion of the section the request is not fit for consideration, the request is referred to the multiple-judge section. The single-judge section may also in other cases refer requests to the multiple-judge section. Referral may be made during any stage of the investigation. The processing of the request shall continue at the stage in which it arrives.

5. If in the opinion of the multiple-judge section a request can be further processed by the single-judge section, the multiple-judge section may refer the request to a single-judge section. The fourth and fifth full sentences of paragraph four apply.

6. The Commission has a secretary, who is appointed and dismissed by Our Minister after consultation with the Commission.

Article 9
1. The relevant authorities, colleagues and civil-servants shall provide the Commission, as soon as possible, with as much as possible information required by the Commission. The Commission may also seek information from other parties, when the Commission deems this necessary for the execution of its task.

2. The Commission may call witnesses and experts. The victim is allowed to be present at the interrogation of the witnesses and experts; he shall be notified of intended interrogations.

Article 10
Before commencing with the tasks of the Commission, members and deputy members of the Commission shall take the oath or make a solemn affirmation to the effect that they shall perform their tasks in good conscience and in accordance with the relevant rules and regulations. Our Minister shall provide further rules and regulations concerning the way in which the oath shall be taken and the solemn affirmation shall be made.

Article 11
Members and deputy members of the multiple-judge section shall receive reimbursement for travel and accommodation expenses and other reimbursement. Furthermore, reimbursement for travel and accommodation expenses as well as attendance fees is awarded to the witnesses and experts as referred to in article 9, paragraph 2, and to the victim if he appears in person at the request of the Commission. Further rules shall be laid down by order in council.

Article 12
The organization and working methods of the Commission and secretariat shall be further defined by order in council. If necessary one or more subcommissions may be established which can perform specifically defined tasks on behalf of the Commission.

Article 13
1. In anticipation of a decision the Commission may award interim compensation.

2. The decision to award compensation results in a claim on the Fund for the amount awarded by the decision. The secretary shall ensure that the decision is carried out as soon as possible.

Article 14
1. The victim may, within six weeks after the day on which the decision has been announced by the Commission submit a petition to the Court of Appeal in The Hague if:
   a. the request for compensation has been turned down, or
   b. the amount of the awarded compensation is such that the Commission, even though all relevant circumstances have been taken into consideration, has not made a reasonably decision.
2. The Court Clerk shall notify the secretary of the Commission of the request. The latter shall without undue delay make available to the Court all documents in his archive relating to the case.

Article 15
When a request is evidently inadmissible or unfounded, the Court may decide forthwith. In other cases the chairperson decides on which day and at what time the request shall be processed. He shall provide the victim with the opportunity to explain the request in person or to let an authorized person give an explanation.

Article 16
The request shall be processed in accordance with the regulations laid down in article 9 of this Act and articles 429g, 429i, (1) 429k (1) and 429l of the Code of Civil Procedure. Summons and notifications shall take place as described by article 429r of that Code.

Article 17
A three-judge section of the Court is entrusted with the processing of the request. All hearings may also be assigned to one of the members of that section.

Article 18
1. The reasons on which the decision of the Court is based shall be stated. It is not subject to any legal remedy. A copy of the decision shall be sent to the victim and the secretary of the Commission.
2. If the Court reverses the decision, it shall refer the case back to the Commission so that the latter may render a new decision.
3. The subsequent decision of the Court is subject to articles 13-18.

Article 19
1. Our Minister may lay down further rules with regard to the organization and administration of the Fund and the supervision thereof.
2. On request, the Netherlands Court of Audit shall be allowed to inspect the books and documents. Besides, the Netherlands Court of Audit shall be given all information it deems necessary in order to obtain good insight into the management of the Fund.

Article 20
The Commission shall report annually to Our Minister about its work and about the application of this Act. Our Minister shall send this report, with any comments he deems necessary, to the States General.

(article 21 has been repealed)

Article 22
By order in council further rules may be laid down for implementation of this Act.
Article 23
1. This Act shall come into force on a time to be determined by Us.
2. No compensation shall be paid as a result of any crime that took place before 1 January 1973. Unless on the basis of article 7 (1) a longer term applies, a request as referred to in that article, as a result of a crime that took place on or after 1 January 1973, but before the moment this act came into force, may be submitted at most two months after that moment.

Article 24
This Act may be cited as “Criminal Injuries Compensation Fund Act”.

Paragraph 1. General provisions

Article 1
In this Decree the following shall be understood to mean:
The Fund: the Criminal Injuries Compensation Fund;
Our Minister: Our Minister of Justice;
The Commission: The Commission responsible for management of the Fund;

Article 2
1. The maximum amounts of compensation payable by the Fund are:
a. If the compensation of the victim and/or his surviving dependant relates to financial loss: NLG50,000.001;
b. If the compensation of the victim relates to other loss than financial loss, NLG20,000.002.
2. Financial loss includes costs of burial or cremation if the victim has died as a result of a crime.

1 For requests relating to crimes committed before 1 January 1994 the maximum amount is: NLG25,000.00.
2 For requests relating to crimes committed before 1 January 1994 the maximum amount is: NLG10,000.00.

Paragraph 2. Organization and working methods of the Commission with respect to management of the Fund.

(article 3 has been repealed)

Article 4
1. The multi-judge section of the Commission shall appoint from its own ranks a vice-chairperson, each time for a term of two years.
2. The appointment of the vice-chairperson shall be reported to Our Minister.
3. In the event of vacancy or absence the chairperson is replaced by the vice-chairperson.
4. In the event of vacancy or absence of a member of a single-judge section he shall be replaced by a member of the Commission.

(article 5 has been repealed)

Article 6
1. The multi-judge section of the Commission shall call for at least three meetings per year; decisions shall be made by a majority of votes.
2. The decision whether to award compensation or not shall be taken by a single-judge section if:
a. the request is processed by that section and it has not referred the case to the multi-judge section.
b. the request has been referred to the single-judge section by the multi-judge section.
3. The single-judge section may in all cases decide whether interim compensation shall be awarded or not.
Article 7
The Commission shall provide guidelines for the work of the multi-judge section and single-judge sections as well as for the secretary.

Article 9
1. The secretary shall prepare the cases which are to be processed and decided by the Commission. He shall be assisted in his task by civil servants appointed by Our Minister.
2. The secretary shall be present at meetings of the multi-judge section of the Commission and, during deliberations, he shall have an advisory task.
3. The secretary is responsible for the implementation of the decisions.

Article 10
1. The secretary prepares the annual report about the work of the Commission to Our Minister and the application of the Criminal Injuries Compensation Fund Act.
2. The report shall *inter alia* provide information about the number of requests for compensation the Commission has received in the period covering the report, whether or not these have been granted, and if granted, what amount, as well as the particular circumstances on which the amount of the compensation was based.
3. Furthermore the report shall contain all comments which the Commission deems useful for furtherance of the correct implementation of the Act.

(article 11 has been repealed)

Article 12
Any person who is requested by the Commission to provide information, shall, insofar as he accedes to the request, receive travel and accommodation expenses, as well as compensation for time loss, as laid down by and pursuant to the Criminal (Fees) Act.

Paragraph 3. Final provisions

Article 13
This Decree shall come into force as of the day the Criminal Injuries Compensation (Provisional Scheme) Act shall come into force.

Article 14
This Decree may be cited as “Decree Criminal Injuries Compensation Fund”.
PORTUGAL
XII. A Decreto-Lei n.º 423/91 de 30 de Agosto (Alterado pelas Lei n.º 10/96 de 23.03, Lei n.º 136/99 de 28.08 e Decreto-Lei n.º 62-2004 de 22 de Março)

Artigo 1.º
Indemnização, por parte do Estado, às vítimas de crimes violentos
1 - As vítimas de lesões corporais graves resultantes directamente de actos intencionais de violência praticados em território português ou a bordo de navios ou aeronaves portuguesas, bem como, no caso de morte, as pessoas a quem a lei civil conceda um direito a alimentos, podem requerer a concessão de uma indemnização pelo Estado, ainda que não se tenham constituído ou não possam constituir-se assistentes no processo penal, verificados os seguintes requisitos:
   a) Da lesão ter resultado uma incapacidade permanente, uma incapacidade temporária e absoluta para o trabalho de pelo menos 30 dias ou a morte;
   b) Ter o prejuízo provocado uma perturbação considerável do nível de vida da vítima ou das pessoas com direito a alimentos;
   c) Não terem obtido efectiva reparação do dano em execução de sentença condenatória relativa a pedido deduzido nos termos dos artigos 71.º a 84.º do Código de Processo Penal ou, se for razoavelmente de prever que o delinquent e responsáveis civis não repararão o dano, sem que seja possível obter de outra fonte uma reparação efectiva e suficiente.
2 - O direito de indemnização mantém-se mesmo que não seja conhecida a identidade do autor dos actos intencionais de violência ou, por outra razão, ele não possa ser acusado ou condenado.
3 - Podem igualmente requerer uma indemnização as pessoas que auxiliaram voluntariamente a vítima ou colaboraram com as autoridades na prevenção da infracção, perseguição ou detenção do delinquent, verificados os requisitos constantes das alíneas a) a c) do n.º 1.
4 - A concessão da indemnização às pessoas referidas no número anterior não depende da concessão de indemnização às vítimas de lesão.
5 - Não haverá lugar à aplicação do disposto no presente diploma quando o dano for causado por um veículo terrestre a motor, bem como se forem aplicáveis as regras sobre acidentes de trabalho ou em serviço.

Artigo 2.º
Montante da indemnização
1 - A indemnização por parte do Estado é restrita ao dano patrimonial resultante da lesão e será fixada em termos de equidade, tendo como limites máximos, por cada lesado, o montante correspondente ao dobro da alçada da relação, para os casos de morte ou lesão corporal grave.
2 - Nos casos de morte ou lesão de várias pessoas em consequência do mesmo facto, a indemnização por parte do Estado tem como limite máximo o montante correspondente ao dobro da alçada da relação para cada uma delas, com o máximo total do sêxtuplo da alçada da relação.
3 - Se a indemnização for fixada sob a forma de renda anual, o limite máximo é de um quarto da alçada da relação por cada lesado, não podendo ultrapassar três quartos da alçada da
relação quando sejam vários os lesados em virtude do mesmo facto.
4 - Será tomada em consideração toda a importância recebida de outra fonte, nomeadamente do próprio deliquente ou da segurança social; todavia, com respeito a seguros privados de vida ou acidentes pessoais, só na medida em que a equidade o exija.
5 - Nos casos a que se refere o n.º 3 do artigo 1.º, haverá igualmente lugar a uma indemnização por danos de coisas de considerável valor, tendo como limite máximo o montante correspondente à alçada da relação.
(redacção do DL 64/2004 de 22.03)

Artigo 3.º
**Exclusão ou redução da indemnização**
A indemnização por parte do Estado poderá ser reduzida ou excluída tendo em conta a conduta da vítima ou do requerente antes, durante ou após a prática dos factos, as suas relações com o autor ou o seu meio, ou se se mostrar contrária ao sentimento de justiça ou à ordem pública.
(redacção da Lei n.º 136/99 de 28.08)

Artigo 4.º
**Caducidade e concessão de provisão**
1 - Sob pena de caducidade, o pedido de concessão da indemnização por parte do Estado deve ser apresentado no prazo de um ano a contar da data do facto.
2 - Se tiver sido instaurado processo criminal, o prazo referido no número anterior pode ser prorrogado e expira após decorrido um ano sobre a decisão que lhe pôs termo.
3 - Em qualquer caso, o Ministro da Justiça pode relevar o requerente do efeito da caducidade quando justificadas circunstâncias morais ou materiais tiverem impedido a apresentação do pedido em tempo útil.
4 - Em caso de urgência, pode ser requerida a concessão de uma provisão por conta da indemnização a fixar posteriormente, de montante não superior a um quarto do limite máximo.

Artigo 5.º
**Requerimento e documentos anexos**
1 - A concessão de indemnização por parte do Estado depende de requerimento das pessoas referidas no artigo 1.º ou do Ministério Público.
2 - O requerimento deve ser acompanhado de todos os elementos úteis justificativos, nomeadamente:
   a) Indicação do montante da indemnização pretendida;
   b) Cópia da declaração fiscal de rendimentos relativa ao ano anterior à prática dos factos;
   c) Indicação de qualquer importância já recebida, bem como das pessoas ou entidades públicas ou privadas susceptíveis de, no todo ou em parte, virem a efectuar prestações em relação com o dano.
3 - Se tiver sido deduzido pedido de indemnização no processo penal ou fora dele, nos casos em que a lei o admite, o requerimento deve informar se foi concedida qualquer indemnização e qual o seu montante.
4 - Em caso de falsidade da informação a que se refere o número anterior, o Estado tem direito ao reembolso da quantia eventualmente paga aos requerentes, devendo exercê-lo por meio de acção cível no prazo de um ano a contar da data em que tiver conhecimento da falsidade.
Artigo 6.º  
**Competência e instrução do pedido**  
1 - A concessão da indemnização é da competência do Ministro da Justiça.  
2 - A instrução do pedido compete a uma comissão constituída por um magistrado judicial designado pelo Conselho Superior da Magistratura, que preside, por um advogado ou advogado estagiário designado pela Ordem dos Advogados e por um funcionário superior do Ministério da Justiça, designado pelo Ministro.  
3 - Não podem constituir a comissão pessoas que tenham intervindo em qualquer processo instaurado pelo facto que der origem ao pedido de indemnização.

Artigo 7.º  
**Poderes da comissão**  
1 - A comissão a que se refere o artigo anterior procede a todas as diligências úteis para a instrução do pedido e, nomeadamente:  
a) Ouve os requerentes e os responsáveis pela indemnização;  
b) Requisita cópias de denúncias e participações relativas aos factos criminosos e de quaisquer peças de processo penal instaurado, ainda que pendente de decisão final;  
c) Requisita informações sobre a situação profissional, financeira ou social dos responsáveis pela reparação do dano a qualquer pessoa, singular ou colectiva, e a quaisquer serviços públicos.  
2 - Mediante autorização do Ministro da Justiça, a comissão pode ainda solicitar as informações que repute necessárias à administração fiscal ou a estabelecimentos de crédito, quando o responsável pela indemnização recuse fornecê-las e existam fundadas razões no sentido de que o mesmo dispõe de bens ou recursos que pretende ocultar.  
3 - Às informações solicitadas não é oponível o sigilo profissional ou bancário.  
4 - As informações obtidas dos números anteriores não podem ser utilizadas para fins diferentes da instrução do pedido, sendo proibida a sua divulgação.

Artigo 8.º  
**Prazos**  
1 - A instrução é concluída no prazo de três meses, salvo prorrogação autorizada pelo Ministro da Justiça, por motivos atendíveis e com base em proposta fundamentada da comissão.  
2 - Concluída a instrução, o processo é enviado ao Ministro da Justiça, acompanhado de parecer sobre a concessão da indemnização e respectivo montante.  
3 - Antes de concluída a instrução, pode a comissão sugerir ao Ministro da Justiça a concessão de uma provisão nos termos do n.º 4 do artigo 4.º

Artigo 9.º  
**Sub-rogação**  
O Estado fica sub-rogado nos direitos dos lesados contra o autor dos actos intencionais de violência e pessoas com responsabilidade meramente civil, dentro dos limites da indemnização prestada.

Artigo 10.º  
**Reembolso**  
1 - Quando a vítima, posteriormente ao pagamento da provisão ou da indemnização, obtiver, a qualquer título, uma reparação ou uma indemnização efectiva do dano sofrido, deve o Ministro da Justiça, mediante parecer da comissão referida no artigo 6.º, exigir o reembolso, total ou parcial, das importâncias recebidas, com ressalva do disposto no n.º 2 do artigo 2.º
2 - O disposto no número anterior aplica-se ao caso em que, tendo sido entregue a provisão, se averiguar ulteriormente que a indemnização não foi concedida por falta dos requisitos referidos no artigo 1.º
3 - Das decisões referidas nos números anteriores cabe recurso contencioso, nos termos gerais.

Artigo 11.º
**Informações falsas**
Quem obtiver ou tentar obter uma indemnização nos termos do presente diploma com base em informações que sabe serem falsas ou inexactas é punível com prisão até três anos ou multa, sem prejuízo do disposto no n.º 4 do artigo 5.º

Artigo 12.º
**Aplicação no espaço**
Se os factos referidos no artigo 1.º tiverem sido praticados no estrangeiro, aplicam-se as disposições do presente diploma quando a pessoa lesada for de nacionalidade portuguesa, desde que não tenha direito a indemnização pelo Estado em cujo território o dano foi produzido.

Artigo 13.º
**Encargos**
1 - Os encargos resultantes da execução do presente diploma serão considerados gastos de justiça e suportados através de uma verba especial inscrita anualmente no orçamento do Ministério da Justiça, capítulo «Gabinetes dos membros do Governo e serviços de apoio».
2 - Enquanto as correspondentes verbas não forem inscritas no Orçamento do Estado, serão as mesmas suportadas pelo Gabinete de Gestão Financeira do Ministério da Justiça.
3 - Em todas as sentenças de condenação em processo criminal, o tribunal condenará o arguido a pagar uma quantia equivalente a 1% da taxa de justiça aplicável, a qual será considerada receita própria do Cofre Geral dos Tribunais.

Artigo 14.º
**Aplicação no tempo**
A caducidade estabelecida no artigo 4.º não pode ser invocada relativamente a factos praticados após 1 de Janeiro de 1991, sob condição de o pedido de indemnização ser apresentado no prazo de seis meses a contar da data da entrada em vigor do presente diploma.

Artigo 15.º
**Isenção de preparos e custas e gratuitidade de documentos**
1 - Os processos para concessão de indemnização por parte do Estado são isentos de preparos e custas.
2 - Os documentos necessários à instrução do pedido são gratuitos e deles deve constar expressamente que são emitidos para execução do disposto no presente diploma.

Artigo 16.º
**Alteração ao artigo 508.º do Código Civil**
O artigo 508.º do Código Civil passa a ter a seguinte redacção:
Artigo 508.º
[...]
1 - ...
2 - Se a indemnização for fixada sob a forma de renda anual e não houver culpa do
responsável, o limite máximo é de um quarto da alçada da relação para cada lesado, não podendo ultrapassar três quartos da alçada da relação quando sejam vários os lesados em virtude do mesmo acidente.

3 - ...

Artigo 17.º
Alteração ao artigo 82.º do Código de Processo Penal
O artigo 82.º do Código de Processo Penal passa a ter a seguinte redacção:

Artigo 82.º

1 - ...

2 - Pode, no entanto, o tribunal, oficiosamente ou mediante requerimento, estabelecer uma indemnização provisória por conta da indemnização a fixar posteriormente, se dispuser de elementos bastantes, e conferir-lhe o efeito previsto no artigo seguinte.

3 - (O anterior n.º 2.)

Artigo 18.º
Regulamentação
O recrutamento do pessoal de apoio da comissão a que se refere o artigo 6.º, a remuneração dos seus membros e, bem assim, a sua instalação e funcionamento serão objecto de decreto regulamentar.

Artigo 19.º
Entrada em vigor
O presente diploma, com excepção do disposto no artigo anterior, entra em vigor na data da publicação do decreto regulamentar naquele referido.

XII.B Law of Protection of victims of violent crimes

D.L. N.º 423/91 of 30 October 1991
Decreto-Lei - Protecção às Vítimas de Crimes Violentos
Article 1
State compensation to victims of violent crimes
1- The victims of serious bodily injuries resulting directly from intentional acts of violence committed either in the Portuguese territory or in Portuguese boats, and in case of death, persons to whom civil law gives the right to alimony, may apply for the concession of compensation by the State, although they do not or cannot be parts in the criminal proceeding, according to the following requirements:

a) Resulting from the injury an absolute disability, a temporary disability resulting in absence from work for 30 days at least or death,

b) Having the losses caused a drop in the income level of the victim or the persons with the right to alimony;

c) Having got no effective reparation of the damage in the judgement execution related to the request made according to articles 71 to 84 of Penal Procedure Code, or if it is possible to foresee that
the criminal and the civilly responsible will not repair the damage without the possibility of getting an effective and sufficient reparation from another source.

2- The right to compensation remains although the identity of the offender of intentional acts of violence cannot be established or one cannot accuse or condemn him for any other reason.

3- Those who voluntarily helped the victim or co-operated with the authorities in the prevention of the violence, in bringing about the prosecution or detention of the criminal can also apply for compensation, observing the requirements of a-c of number 1.

4- The provision of compensation to the persons referred to previously does not depend on the provision of compensation to the victims of the injury.

5- The present law will not be applicable when the damage is caused either by a land or a motor vehicle or by accidents related to employment.

**Article 2**

*Amount of the compensation*

1- The amount of the compensation provided by the State includes only material losses caused by an injury and will be established in terms of equity, with the maximum amount per injured person being as stated in number 1 and 2 of article 508 of the Civil Code, in case of death or injury.

2- All amounts received from other sources, including the criminal proceedings or the social security will be considered.

**Article 3**

*Exclusion or reduction of the compensation*

The compensation provided by the State will be reduced or excluded according to the behavior of the victim or the applicant before, during or after the criminal incident, his relationship with the offender, the circumstances, or if it is against the general view of justice or public order.

**Article 4**

*Forfeiture and concession of the provision*

1- In the case of forfeiture, the request for compensation from the State should be presented within a year after the incident has occurred.

2- If a criminal proceeding is pending, the period just mentioned can be extended to end one year after its final decision.

3- In any case, the Minister of Justice can relieve the applicant from the effect of forfeiture, whenever the request is not made in time, for either moral or material reasons.

4- In case of urgency, a provision can be applied on account of the compensation that will be established, for an amount equal or less than a quarter of the maximum.

**Article 5**

*Application form and attached documents*

1- The concession of the compensation by the State depends on the applications of the persons mentioned in article 1 or of public prosecutors.

2- The application must include all the essential elements, such as:

a) Indication of the amount of the required compensation,

b) Copy of the income declaration related to the year preceding the incident,

c) Indication of any amount already received and of persons, public
or private entities capable of making payments, in all or partially, related to the damage.

3- If a request for compensation is made, either within the penal proceeding or out of it, in the cases foreseen by law, the application must state if any compensation has been provided and if so, how much.

4- In the case of false declaration in the matter mentioned in the previous number, the State has the right to be reimbursed with the amount eventually paid to the applicants, and should exercise this right by a law suit within a year after the knowledge of this falsity.

Article 6

Competency and handling of the proceeding

1- The Minister of Justice is competent to provide compensation.

2- The handling of the request is done by a commission comprising of a judge, appointed by the High Council of Judges, who is President, by a lawyer or a lawyer in stage, appointed by the Bar Association, and by a high civil servant of the Ministry of Justice, appointed by the Minister.

3- Persons having interest in any proceeding concerning the causes of the request for compensation, cannot be members of the commission.

Article 7

Powers of the Commission

1- The commission mentioned in the previous article has access to all the essential acts in order to be able to handle the request, namely:
   a) Listens to the applicants and those responsible for the compensation;
   b) Requests copies of accusations and notifications related to criminal incidents as well as any parts of a penal proceeding, although a final decision has not been made,
   c) Requests information about the professional, financial and social situation of the person responsible for the reparation of the damage from any single or public entity or from public services.

2- With the authorisation of the Minister of Justice, the commission can also ask for the necessary information from the fiscal authorities and from banks, whenever the person responsible for the compensation refuses to provide it and when there are strong reasons to believe that he/she intends to conceal his goods or revenues.

3- The requested information is not subject to professional or banking secrecy.

4- The mentioned information cannot be used for any other purposes and it is forbidden to divulge it.

Article 8

Time limits

1- The handling of applications must be completed in three months, unless an extension is authorised by the Minister of Justice, for specific reasons based on a reasonable proposal of the commission.

2- When the application has been dealt with, the file is sent to the Minister of Justice, with the commission’s opinion on the concession of the compensation and its amount.

3- Before the end of the application process, the commission can suggest to the Minister of Justice, the concession of a provision, according to number 4 of article 4.

Article 9
Subrogation
The Government is subrogee to the rights of the injured party against the offender of intentional acts of violence and other persons responsible, only in civil terms, within the limits of the provided compensation.

Article 10
Reimbursement
1- Whenever the victim, after the payment of the provision or the compensation, gets, a reparation or an effective compensation of the damage, the Minister of Justice, with the opinion of the commission mentioned in article 6, must claim the reimbursement, total or partial, of the received amounts, as stated in number 2 of article 2.
2- The rule stated in the previous number is applicable in the case when, after the decision, the compensation was not provided because of the absence of the requirements mentioned in article 1.
3- It is possible to appeal against the decisions mentioned in the previous numbers, in general terms.

Article 11
False information
According to the present law, those who get or try to get compensation knowing it is based on false or inexact information can be punished with a prison sentence of three years or be fined, without prejudice to the rule stated in number 4 of article 5.

Article 12
The territorial scope of application
If the incidents mentioned in article 1 have occurred abroad, and the injured person is a Portuguese citizen, dispositions of the present law are applied, if he has not the right to receive compensation from the Government of the territory where the damage took place.

Article 13
Costs
1- The costs of the execution of the present law will be regarded as justice costs and supported by a special item inscribed every year in the budget of the Ministry of Justice, in a chapter named "Government member offices and support services".
2- If the corresponding items are not inscribed in the Budget, they will be supported by the Financial Management Office of the Ministry of Justice.
3- In all the criminal condemnations in a criminal proceeding, the court will condemn the accused to pay an amount equivalent to one percent of the applicable justice tax, which will be regarded as a receipt of the General Fund of Courts.

Article 14
Application in time
The forfeiture established in article 4 cannot be invoked concerning incidents that took place after 1 January 1991, unless the request for compensation is presented within six months since the implementation of the present law.

Article 15
Cost of the proceedings and free documents
1- The proceedings for the concession of the compensation by the Government are free.
2- Documents needed for the handling of the request are free. It must be stated that they are done for the execution of the present law.

(...) 

Article 18

Regulations

Recruitment of support for the staff for the Commission referred to in art. 6 the remuneration of its members and its establishment and functioning, will be dealt with by regulations.

Article 19

Date of entry into force

This Act, with exception of the previous Article comes into effect on the date of the publication of the regulations referred to (in that Article).2

ROYAUME-UNIS
THE CRIMINAL INJURIES COMPENSATION SCHEME 2001
The Secretary of State, in exercise of the powers conferred on him by sections 1 to 6 and
12 of the Criminal Injuries Compensation Act 1995 (c.53), hereby makes the attached
Criminal Injuries Compensation Scheme, a draft thereof having been approved by both
Houses of Parliament:
Home Office Jack Straw
1 April 2001 One of Her Majesty’s Principal Secretaries of State
TSI (Issue Number One 4/01)

Criminal Injuries Compensation Authority
Tay House, 300 Bath Street
GLASGOW G2 4LN
Freephone number: 0800 358 3601
Fax: 0141 331 2287
www.cica.gov.uk

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THE CRIMINAL INJURIES COMPENSATION SCHEME (2001)

This Scheme is made by the Secretary of State under the Criminal Injuries Compensation Act 1995. Applications received on or after 1 April 2001 for the payment of compensation to, or in respect of, persons who have sustained criminal injury will be considered under this Scheme (subject to paragraphs 83-86 below).

Administration of the Scheme

Claims officers in the Criminal Injuries Compensation Authority (“the Authority”) will determine claims for compensation in accordance with this Scheme. Appeals against decisions taken on reviews under this Scheme will be determined by adjudicators. Persons appointed as adjudicators are appointed as members of the Criminal Injuries Compensation Appeals Panel (“the Panel”). The Secretary of State will appoint one of the adjudicators as Chairman of the Panel. The Secretary of State will also appoint persons as staff of the Panel to administer the provisions of this Scheme relating to the appeal system.

Claims officers will be responsible for deciding, in accordance with this Scheme, what awards (if any) should be made in individual cases, and how they should be paid. Their decisions will be open to review and thereafter to appeal to the Panel, in accordance with this Scheme. No decision, whether by a claims officer or the Panel, will be open to appeal to the Secretary of State.

The general working of this Scheme will be kept under review by the Secretary of State. The Accounting Officers for the Authority and the Panel must each submit reports to the Secretary of State and the Scottish Ministers as soon as possible after the end of each financial year, dealing with the operation of this Scheme and the discharge of functions under it. The Accounting Officers must each keep proper accounts and proper records in relation to those accounts, and must each prepare a statement of accounts in each financial year in a form directed by the Secretary of State. These statements of accounts must be submitted to the Secretary of State and the Scottish Ministers as soon as possible after the end of each financial year.
5. The Panel will advise the Secretary of State on matters on which he seeks its advice, as well as on such other matters and at such times as it considers appropriate. Any advice given by the Panel will be referred to by the Accounting Officer for the Panel in his annual report made under the preceding paragraph.

Eligibility to apply for compensation

6. Compensation may be paid in accordance with this Scheme:
(a) to an applicant who has sustained a criminal injury on or after 1 August 1964;
(b) where the victim of a criminal injury sustained on or after 1 August 1964 has since died, to an applicant who is a qualifying claimant for the purposes of paragraph 38 (compensation in fatal cases).

For the purposes of this Scheme, “applicant” means any person for whose benefit an application for compensation is made, even where it is made on his behalf by another person.

7. No compensation will be paid under this Scheme in the following circumstances:
(a) where the applicant has previously lodged any claim for compensation in respect of the same criminal injury under this or any other scheme for the compensation of the victims of violent crime in operation in Great Britain; or (b) where the criminal injury was sustained before 1 October 1979 and the victim and the assailant were living together at the time as members of the same family.

8. For the purposes of this Scheme, “criminal injury” means one or more personal injuries as described in the following paragraph, being an injury sustained in Great Britain (see Note 1) and directly attributable to:
(a) a crime of violence (including arson, fire-raising or an act of poisoning); or
(b) an offence of trespass on a railway; or
(c) the apprehension or attempted apprehension of an offender or a suspected offender, the prevention or attempted prevention of an offence, or the giving of help to any constable who is engaged in any such activity.

9. For the purposes of this Scheme, personal injury includes physical injury (including fatal injury), mental injury (that is temporary mental anxiety, medically verified, or a disabling mental illness confirmed by psychiatric diagnosis) and disease (that is a medically recognised illness or condition). Mental injury or disease may either result directly from the physical injury or from a sexual offence or may occur without any physical injury. Compensation will not be payable for mental injury or disease without physical injury, or in respect of a sexual offence, unless the applicant: (a) was put in reasonable fear of immediate physical harm to his own person; or (b) had a close relationship of love and affection with another person at the time when that person sustained physical and/or mental injury (including fatal injury) directly attributable to conduct within paragraph 8(a), (b) or (c), and (i) that relationship still subsists (unless the victim has since died), and (ii) the applicant either witnessed and was present on the occasion when the other person sustained the injury, or was closely involved in its immediate aftermath; or (c) in a claim arising out of a sexual offence, was the non-consenting victim of that offence (which does not include a victim who consented in fact but was deemed in law not to have consented); or (d) being a person employed in the business of a railway, either witnessed and was present on the occasion when another person sustained physical (including fatal) injury directly attributable to an offence of trespass on a railway, or was closely involved in its immediate aftermath. Paragraph 12 below does not apply where mental anxiety or mental illness is sustained as described in this sub-paragraph.
10. It is not necessary for the assailant to have been convicted of a criminal offence in connection with the injury. Moreover, even where the injury is attributable to conduct within paragraph 8 in respect of which the assailant cannot be convicted of an offence by reason of age, insanity or diplomatic immunity, the conduct may nevertheless be treated as constituting a criminal act.

11. A personal injury is not a criminal injury for the purposes of this Scheme where the injury is attributable to the use of a vehicle, except where the vehicle was used so as deliberately to inflict, or attempt to inflict, injury on any person.

12. Where an injury is sustained accidentally by a person who is engaged in:
   (a) any of the law-enforcement activities described in paragraph 8(c), or
   (b) any other activity directed to containing, limiting or remediying the consequences of a crime, compensation will not be payable unless the person injured was, at the time he sustained the injury, taking an exceptional risk which was justified in all the circumstances.

Eligibility to receive compensation

13. A claims officer may withhold or reduce an award where he considers that:
   (a) the applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Authority to be appropriate for the purpose, of the circumstances giving rise to the injury; or
   (b) the applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice; or
   (c) the applicant has failed to give all reasonable assistance to the Authority or other body or person in connection with the application; or
   (d) the conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made; or
   (e) the applicant's character as shown by his criminal convictions (excluding convictions spent under the Rehabilitation of Offenders Act 1974 at the date of application or death) or by evidence available to the claims officer makes it inappropriate that a full award or any award at all be made.

14. In considering the issue of conduct under paragraph 13(d) above, a claims officer may withhold or reduce an award where he considers that excessive consumption of alcohol or use of illicit drugs by the applicant contributed to the circumstances which gave rise to the injury in such a way as to make it inappropriate that a full award, or any award at all, be made.

15. Where the victim has died since sustaining the injury (whether or not in consequence of it), paragraphs 13 and 14 will apply in relation both to the deceased and to any applicant for compensation under paragraphs 37-44 (fatal awards).

16. A claims officer will make an award only where he is satisfied:
   (a) that there is no likelihood that an assailant would benefit if an award were made; or
   (b) where the applicant is under 18 years of age when the application is determined, that it would not be against his interest for an award to be made.

17. Where a case is not ruled out under paragraph 7(b) (injury sustained before 1 October 1979) but at the time when the injury was sustained, the victim and any assailant (whether or not that assailant actually inflicted the injury) were living in the same household as members of the same family, an award will be withheld unless:
   (a) the assailant has been prosecuted in connection with the offence, except where a claims officer considers
that there are practical, technical or other good reasons why a prosecution has not been brought; and
(b) in the case of violence between adults in the family, a claims officer is satisfied that the applicant and the
assailant stopped living in the same household before the application was made and are unlikely to share the
same household again.
For the purposes of this paragraph, a man and woman living together as husband and wife will be
treated as members of the same family.

Consideration of applications

18. An application for compensation under this Scheme in respect of a criminal injury (“injury” hereafter in this
Scheme) must be made in writing on a form obtainable from the Authority. It should be made as soon as possible after the incident giving rise to the injury and must be received by the Authority within two years of the date of the incident.
A claims officer may waive this time limit where he considers that, by reason of the particular circumstances of the case, it is reasonable and in the interests of justice to do so.

19. It will be for the applicant to make out his case including, where appropriate:
(a) making out his case for a waiver of the time limit in the preceding paragraph; and
(b) satisfying the claims officer dealing with his application (including an officer reviewing a decision under
paragraph 60) that an award should not be reconsidered, withheld or reduced under any provision of this
Scheme.
Where an applicant is represented, the costs of representation will not be met by the Authority.

20. A claims officer may make such directions and arrangements for the conduct of an application,
including the imposition of conditions, as he considers appropriate in all the circumstances. The standard of proof to be applied by a claims officer in all matters before him will be the balance of probabilities.

21. Where a claims officer considers that an examination of the injury is required before a decision can be reached, the Authority will make arrangements for such an examination by a duly qualified medical practitioner. Reasonable expenses incurred by the applicant in that connection will be met by the Authority.

22. A Guide to the operation of this Scheme will be published by the Authority. In addition to explaining the procedures for dealing with applications, the Guide will set out, where appropriate, the criteria by which decisions will normally be reached.

Types and limits of compensation

23. Subject to the other provisions of this Scheme, the compensation payable under an award will be:
(a) a standard amount of compensation determined by reference to the nature of the injury in accordance with
paragraphs 26-29;
(b) where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence
of the injury (other than injury leading to his death), an additional amount in respect of such loss of earnings,
calculated in accordance with paragraphs 30-34;
(c) where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence
of the injury (other than injury leading to his death) or, if not normally employed, is incapacitated to a similar extent, an additional amount in respect of any special expenses, calculated in accordance with paragraphs 35-36;
(d) where the victim has died in consequence of the injury, the amount or amounts calculated in accordance with paragraphs 37-43;
(e) where the victim has died otherwise than in consequence of the injury, a supplementary amount calculated in accordance with paragraph 44.

24. The maximum award that may be made (before any reduction under paragraphs 13 - 15 above) in respect of the same injury will not exceed £500,000. For these purposes, where the victim has died in consequence of the injury, any application made by the victim before his death and any application made by any qualifying claimant or claimants after his death will be regarded as being in respect of the same injury.

25. The injury, or any exacerbation of a pre-existing condition, must be sufficiently serious to qualify for compensation equal at least to the minimum award under this Scheme in accordance with paragraph 26, but lesser compensation may be paid if an award is reduced under paragraphs 13, 14, or 15 of the Scheme.

**Standard amount of compensation**

26. The standard amount of compensation will be the amount shown in respect of the relevant description of injury in the Tariff, which sets out:
(a) a scale of fixed levels of compensation;
(b) the level and corresponding amount of compensation for each description of injury; and
(c) qualifying notes.
Level 1 represents the minimum award under this Scheme, and Level 25 represents the maximum award for any single description of injury. Where the injury has the effect of accelerating or exacerbating a pre-existing condition, the compensation awarded will reflect only the degree of acceleration or exacerbation.

27. Minor multiple injuries will be compensated in accordance with Note 12 to the Tariff. The standard amount of compensation for more serious but separate multiple injuries will, unless expressly provided for otherwise in the Tariff, be calculated as:
(a) the Tariff amount for the highest-rated description of injury; plus
(b) 30 per cent of the Tariff amount for the second highest-rated description of injury; plus, where there are three or more injuries,
(c) 15 per cent of the Tariff amount for the third highest-rated description of injury.

28. Where the Authority considers that any description of injury for which no provision is made in the Tariff is sufficiently serious to qualify for at least the minimum award under this Scheme, it will, following consultation with the Panel, refer the injury to the Secretary of State. In doing so the Authority will recommend to the Secretary of State both the inclusion of that description of injury in the Tariff and also the amount of compensation for which it should qualify. Any such consultation with the Panel or reference to the Secretary of State must not refer to the circumstances of any individual application for compensation under this Scheme other than the relevant medical reports.

29 Where an application for compensation is made in respect of an injury for which no provision is made in the Tariff and the Authority decides to refer the injury to the Secretary of State under the preceding paragraph, an interim award may be made of up to half the amount of compensation for which it is recommended that such description of injury should qualify if subsequently included in the Tariff. No part of such an interim award will be recoverable if the injury is not subsequently included in the Tariff or, if included, qualifies for less compensation than the interim award paid.

**Compensation for loss of earnings**
30. Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his death), no compensation in respect of loss of earnings or earning capacity will be payable for the first 28 weeks of loss. The period of loss for which compensation may be payable will begin after 28 weeks incapacity for work and continue for such period as a claims officer may determine.

31. For a period of loss ending before or continuing to the time the claim is assessed, the net loss of earnings or earning capacity will be calculated on the basis of:
   (a) the applicant’s emoluments (being any profit or gain accruing from an office or employment) at the time of the injury and what those emoluments would have been during the period of loss; and
   (b) any emoluments which have become payable to the applicant in respect of the whole or part of the period of loss, whether or not as a result of the injury; and
   (c) any changes in the applicant’s pension rights; and
   (d) in accordance with paragraphs 45-47 (reductions to take account of other payments), any social security benefits, insurance payments and pension which have become payable to the applicant during the period of loss; and
   (e) any other pension which has become payable to the applicant during the period of loss, whether or not as a result of the injury.

32. Where, at the time the claim is assessed, a claims officer considers that the applicant is likely to suffer continuing loss of earnings and/or earning capacity, an annual rate of net loss (the multiplicand) or, where appropriate, more than one such rate will be calculated on the basis of:
   (a) the current rate of net loss calculated in accordance with the preceding paragraph; and
   (b) such future rate or rates of net loss (including changes in the applicant’s pension rights) as the claims officer may determine; and
   (c) the claims officer’s assessment of the applicant’s future earning capacity; and
   (d) in accordance with paragraphs 45-47 (reductions to take account of other payments), any social security benefits, insurance payments and pension which will become payable to the applicant in future; and
   (e) any other pension which will become payable to the applicant in future, whether or not as a result of the injury.

The compensation payable in respect of each period of continuing loss will be a lump sum, which is the product of that multiplicand and an appropriate multiplier. When the loss does not start until a future date, the lump sum will be discounted to provide for the present value of the money. The claims officer will assess an appropriate multiplier, discount factor, or life expectancy by reference to the tables in Note 3, and may make such adjustments as he considers appropriate to take account of any factors and contingencies which appear to him to be relevant. The tables in Note 3 set out the multipliers and (where applicable) discounts and life expectancies to be applied.

(a) Table A is to be applied to various periods of future loss to allow for the accelerated receipt of compensation;
(b) Table B sets out the discount factor, by which the lump sum is to be multiplied, when the loss does not start until various periods in the future;
(c) Table C is a life expectancy table, and in the absence of other factors affecting life expectancy, the table sets out the age to be applied when assessing a multiplier based on pecuniary loss for life.

33. Where a claims officer considers that the approach in the preceding paragraph is impracticable, the compensation payable in respect of continuing loss of earnings and/or earning capacity will be such other lump sum as he may determine.
34. Any rate of net loss of earnings or earning capacity (before any reduction in accordance with this Scheme) which is to be taken into account in calculating any compensation payable under paragraphs 30-33 must not exceed one and a half times the gross average industrial earnings at the time of assessment according to the latest figures published by the Office for National Statistics.

Compensation for special expenses

35. Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his death), or, if not normally employed, is incapacitated to a similar extent, additional compensation may be payable in respect of any special expenses incurred by the applicant from the date of the injury for:

(a) loss of or damage to property or equipment belonging to the applicant on which he relied as a physical aid, where the loss or damage was a direct consequence of the injury;

(b) costs (other than by way of loss of earnings or earning capacity) associated with National Health Service treatment for the injury;

(c) the cost of private health treatment for the injury, but only where a claims officer considers that, in all the circumstances, both the private treatment and its cost are reasonable;

(d) the reasonable cost, to the extent that it falls to the applicant, of

(i) special equipment, and/or

(ii) adaptations to the applicant’s accommodation, and/or

(iii) care, whether in a residential establishment or at home, which are not provided or available free of charge from the National Health Service, local authorities or any other agency, provided that a claims officer considers such expense to be necessary as a direct consequence of the injury; and

(iv) the cost of the Court of Protection or of the curator bonis.

In the case of (d)(iii), the expense of unpaid care provided at home by a relative or friend of the victim will be compensated by having regard to the level of care required, the cost of a carer, assessing the carer’s loss of earnings or earning capacity and/or additional personal and living expenses, as calculated on such basis as a claims officer considers appropriate in all the circumstances. Where the foregoing method of assessment is considered by the claims officer not to be relevant in all the circumstances, the compensation payable will be such sum as he may determine having regard to the level of care provided.

36. Where, at the time the claim is assessed, a claims officer is satisfied that the need for any of the special expenses mentioned in the preceding paragraph is likely to continue, he will determine the annual cost and select an appropriate multiplier in accordance with paragraph 32 (future loss of earnings), taking account of any other factors and contingencies which appear to him to be relevant.

Compensation in fatal cases

37. Where the victim has died in consequence of the injury, no compensation other than funeral expenses will be payable for the benefit of his estate. Such expenses will, subject to the application of paragraphs 13 and 14 in relation to the actions, conduct and character of the deceased, be payable up to an amount considered reasonable by a claims officer, even where the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme.

38. Where the victim has died since sustaining the injury, compensation may be payable, subject to paragraphs 13-15 (actions, conduct and character), to any claimant (a “qualifying claimant”) who at the time of the deceased’s death was:

(a) the partner of the deceased, being only, for these purposes:

(i) a person who was living together with the deceased as husband and wife or as a same sex partner in the same household immediately before the date of death and who, unless formally married to him, had been so living throughout the two years before that date, or

(ii) a spouse or former spouse of the deceased who was financially supported by him immediately before
the date of death; or
(b) a natural parent of the deceased, or a person who was not the natural parent, provided that he was accepted
by the deceased as a parent of his family; or
(c) a natural child of the deceased, or a person who was not the natural child, provided that he was accepted by
the deceased as a child of his family or was dependent on him.
Where the victim has died in consequence of the injury, compensation may be payable to a qualifying claimant under paragraphs 39-42 (standard amount of compensation, dependency, and loss of parent). Where the victim has died otherwise than in consequence of the injury, and before title to the award has been vested in the victim (see paragraph 50), no standard amount or other compensation will be payable to the estate or to a qualifying claimant other than under paragraph 44 (supplementary compensation).

39. A person who was criminally responsible for the death of a victim may not be a qualifying claimant. In cases where there is only one qualifying claimant, the standard amount of compensation will be Level 13 of the Tariff, save that where a claims officer is aware of the existence of one or more other persons who would in the event of their making a claim become a qualifying claimant, the standard amount of compensation will be level 10 of the tariff. Where there is more than one qualifying claimant, the standard amount of compensation for each claimant will be Level 10 of the Tariff. A former spouse of the deceased is not a qualifying claimant for the purposes of this paragraph.

40. Additional compensation calculated in accordance with the following paragraph may be payable to a qualifying claimant where a claims officer is satisfied that the claimant was financially or physically dependent on the deceased. A financial dependency will not be established where the deceased’s only normal income was from:
(a) United Kingdom social security benefits; or
(b) social security benefits or similar payments from the funds of other countries.

41. The amount of compensation payable in respect of dependency will be calculated on a basis similar to paragraphs 31-34 (loss of earnings) and paragraph 35 (d) (iii) (cost of care). The period of loss will begin from the date of the deceased’s death and continue for such period as a claims officer may determine, with no account being taken, where the qualifying claimant was formally married to the deceased, of remarriage or prospects of remarriage. In assessing the dependency, the claims officer will take account of the qualifying claimant’s income and emoluments (being any profit or gain accruing from an office or employment), if any. Where the deceased had been living in the same household as the qualifying claimant before his death, the claims officer will, in calculating the multiplicand, make such proportional reduction as he considers appropriate to take account of the deceased’s own personal and living expenses.

42. Where a qualifying claimant was under 18 years of age at the time of the deceased’s death and was dependent on him for parental services, the following additional compensation may also be payable:
(a) a payment for loss of that parent’s services at an annual rate of Level 5 of the Tariff; and
(b) such other payments as a claims officer considers reasonable to meet other resultant losses.

Each of these payments will be multiplied by an appropriate multiplier selected by a claims officer in accordance with paragraph 32 (future loss of earnings), taking account of the period remaining before the qualifying claimant reaches age 18 and of any other factors and contingencies which appear to the claims officer to be relevant.

43. Application may be made under paragraphs 37-42 (compensation in fatal cases) even where an award had been made to the victim in respect of the same injury before his death. Any such application will be subject to the conditions set out in paragraphs 56-57 for the re-opening of cases, and any compensation payable to the qualifying claimant or claimants, except payments made under paragraphs 37 and 39 (funeral expenses and standard amount of compensation), will be reduced by the amount paid to the victim. The amounts payable to the victim and the qualifying claimant or claimants will not in total exceed £500,000.
44. Where a victim who would have qualified for additional compensation under paragraph 23(b) (loss of earnings) and/or paragraph 23(c) (special expenses) has died, otherwise than in consequence of the injury, before such compensation was awarded, supplementary compensation under this paragraph may be payable to a qualifying claimant who was financially dependent on the deceased within the terms of paragraph 40 (dependency), whether or not a relevant application was made by the victim before his death. Payment may be made in accordance with paragraph 31 in respect of the victim’s loss of earnings (except for the first 28 weeks of the victim’s loss of earnings and/or earning capacity) and in accordance with paragraph 35 in respect of any special expenses incurred by the victim before his death. The amounts payable to the victim and the qualifying claimant or claimants will not in total exceed £500,000.

Effect on awards of other payments

45. All awards payable under this Scheme, except those payable under paragraphs 26, 27, 39 and 42(a) (Tariff-based amounts of compensation), will be subject to a reduction to take account of social security benefits (or other state benefits) or insurance payments made by way of compensation for the same contingency. The reduction will be applied to those categories or periods of loss or need for which additional or supplementary compensation is payable, including compensation calculated on the basis of a multiplicand or annual cost. The amount of the reduction will be the full value of any relevant payment which the applicant has received, or to which he has or may have any present or future entitlement, by way of:

(a) United Kingdom social security benefits (or other state benefits);
(b) social security benefits or similar payments from the funds of other countries;
(c) payments under insurance arrangements, including, where a claim is made under paragraphs 35(c) and (d) and 36 (special expenses), insurance personally effected, paid for and maintained by the personal income of the victim or, in the case of a person under 18 years of age, by his parent. Insurance so personally effected will otherwise be disregarded.

In assessing the value of any such benefits and payments, account may be taken of any income tax liability likely to reduce their value.

46. Where, in the opinion of a claims officer, an applicant may be or may become eligible for any of the benefits and payments mentioned in the preceding paragraph, an award may be withheld until the applicant has taken such steps as the claims officer considers reasonable to claim them.

47. Where the victim is alive, any compensation payable under paragraphs 30-34 (loss of earnings) will be reduced to take account of any pension accruing as a result of the injury. Where the victim has died in consequence of the injury, any compensation payable under paragraphs 40-41 (dependency) will similarly be reduced to take account of any pension payable, as a result of the victim’s death, for the benefit of the applicant. Where such pensions are taxable, one half of their value will be deducted, but they will otherwise be deducted in full (where, for example, a lump sum payment not subject to income tax is made). For the purposes of this paragraph, “pension” means any payment payable as a result of the injury or death in pursuance of pension or any other rights connected with the victim’s employment, and includes any gratuity of that kind and similar benefits payable under insurance policies paid for by the victim’s employers. Pension rights accruing solely as a result of payments by the victim or a dependant will be disregarded.

48. An award payable under this Scheme will be reduced by the full value of any payment in respect of the same injury which the applicant has received by way of:

(a) any criminal injury compensation award made under or pursuant to arrangements in force at the relevant time in Northern Ireland;
(b) any compensation award or similar payment from the funds of other countries;
(c) any award where:
   (i) a civil court has made an order for the payment of damages;
   (ii) a claim for damages and/or compensation has been settled on terms providing for the payment of money;
(iii) payment of compensation has been ordered by a criminal court in respect of personal injuries. In the case of (a) or (b), the reduction will also include the full value of any payment to which the applicant has any present or future entitlement.

49. Where a person in whose favour an award under this Scheme is made subsequently receives any other payment in respect of the same injury in any of the circumstances mentioned in the preceding paragraph, but the award made under this Scheme was not reduced accordingly, he will be required to repay the Authority in full up to the amount of the other payment.

Determination of applications and payment of awards

50. An application for compensation under this Scheme will be determined by a claims officer, and written notification of the decision will be sent to the applicant or his representative. The claims officer may make such directions and arrangements, including the imposition of conditions, in connection with the acceptance, settlement or trust, payment, repayment and/or administration of an award as he considers appropriate in all the circumstances. Any such directions and arrangements, including any settlement or trust may be made having regard to the interests of the applicant (whether or not a minor or a person under an incapacity) as well as to considerations of public policy (including the desirability of providing for the return of any parts of an award which may prove to be surplus to the purposes for which they were awarded) on terms which do not exhaust the beneficial interest in the award and which provide, either expressly or by operation of law, for the balance of any trust fund to revert to the Authority. Subject to any such arrangements, including the special procedures in paragraph 52 (purchase of annuities), and to paragraphs 53-55 (reconsideration of decisions), title to an award offered will be vested in the applicant when the Authority has received notification in writing that he accepts the award.

51. Compensation will normally be paid as a single lump sum, but one or more interim payments may be made where a claims officer considers this appropriate. Once an award has been paid to an applicant or his representative, the following paragraph does not apply.

52. Where prior agreement is reached between the Authority and the applicant or his representative, an award may consist in whole or in part of an annuity or annuities, purchased for the benefit of the applicant or to be held on trust for his benefit. Once that agreement is reached, the Authority will take the instructions of the applicant or his representative as to which annuity or annuities should be purchased. Any expenses incurred will be met from the award.

Reconsideration of decisions

53. A decision made by a claims officer (other than a decision made in accordance with a direction by adjudicators on determining an appeal under paragraph 77) may be reconsidered at any time before actual payment of a final award where there is new evidence or a change in circumstances. In particular, the fact that an interim payment has been made does not preclude a claims officer from reconsidering issues of eligibility for an award.

54. Where an applicant has already been sent written notification of the decision on his application, he will be sent written notice that the decision is to be reconsidered, and any representations which he sends to the Authority within 30 days of the date of such notice will be taken into account in reconsidering the decision. Whether or not any such representations are made, the applicant will be sent written notification of the outcome of the reconsideration, and where the original decision is not confirmed, such notification will include the revised decision.

55. Where a decision to make an award has been made by a claims officer in accordance with a direction by adjudicators on determining an appeal under paragraph 77, but before the award has been paid the claims officer
considers that there is new evidence or a change in circumstances which justifies reconsidering whether the award should be withheld or the amount of compensation reduced, the Authority will refer the case to the Panel for rehearing under paragraph 82.

Re-opening of cases

56. A decision made by a claims officer and accepted by the applicant, or a direction by adjudicators, will normally be regarded as final, except where an appeal is reheard under paragraphs 79-82. A claims officer may, however, subsequently re-open a case where there has been such a material change in the victim’s medical condition that injustice would occur if the original assessment of compensation were allowed to stand, or where he has since died in consequence of the injury.

57. A case will not be re-opened more than two years after the date of the final decision unless the claims officer is satisfied, on the basis of evidence presented in support of the application to re-open the case, that the renewed application can be considered without a need for further extensive enquiries.

Review of decisions

58. An applicant may seek a review of any decision under this Scheme by a claims officer:
(a) not to waive the time limit in paragraph 18 (application for compensation) or paragraph 59 (application for review); or
(b) not to re-open a case under paragraphs 56-57; or
(c) to withhold an award, including such decision made on reconsideration of an award under paragraphs 53-54; or
(d) to make an award, including a decision to make a reduced award whether or not on reconsideration of an award under paragraphs 53-54; or
(e) to seek repayment of an award under paragraph 49.
An applicant may not, however, seek the review of any such decision where the decision was itself made on a review under paragraph 60 and either the applicant did not appeal against it or the appeal was not referred for determination on an oral hearing, or where the decision was made in accordance with a direction by adjudicators on determining an appeal under paragraph 77.

59. An application for the review of a decision by a claims officer must be made in writing to the Authority and must be supported by reasons together with any relevant additional information. It must be received by the Authority within 90 days of the date of the decision to be reviewed, but this time limit may, in exceptional circumstances, be waived where a claims officer more senior than the one who made the original decision considers that:
(a) any extension requested by the applicant and received within the 90 days is based on good reasons; and
(b) it would be in the interests of justice to do so.

60. All applications for review will be considered by a claims officer more senior than any claims officer who has previously dealt with the case. The officer conducting the review will reach his decision in accordance with the provisions of this Scheme applying to the original application, and he will not be bound by any earlier decision either as to the eligibility of the applicant for an award or as to the amount of an award. The applicant will be sent written notification of the outcome of the review, giving reasons for the review decision, and the Authority will, unless it receives notice of an appeal, ensure that a determination of the original application is made in accordance with the review decision.

Appeals against review decisions

61. An applicant who is dissatisfied with a decision taken on a review under paragraph 60 may appeal against the
decision by giving written notice of appeal to the Panel on a form obtainable from the Authority. Such notice of appeal must be supported by reasons for the appeal together with any relevant additional material which the appellant wishes to submit, and must be received by the Panel within 90 days of the date of the review decision. The Panel will send to the Authority a copy of the notice of appeal and supporting reasons which it receives and of any other material submitted by the appellant.

Where the applicant is represented for the purposes of the appeal, the costs of representation will not be met by the Authority or the Panel.

62. A member of the staff of the Panel may, in exceptional circumstances, waive the time limit in the preceding paragraph where he considers that:
(a) any extension requested by the appellant and received within the 90 days is based on good reasons; and
(b) it would be in the interests of justice to do so.

Where, on considering a request to waive the time limit, a member of the staff of the Panel does not waive it, he will refer the request to the Chairman of the Panel or to another adjudicator nominated by the Chairman to decide requests for waiver, and a decision by the adjudicator concerned not to waive the time limit will be final. Written notification of the outcome of the waiver request will be sent to the appellant and to the Authority, giving reasons for the decision where the time limit is not waived.

63. Where the Panel receives notice of an appeal against a review decision relating to a decision mentioned in paragraph 58 (a) or (b), the appeal will be dealt with in accordance with paragraphs 66-68 (appeals concerning time limits and reopening of cases). Where the Panel receives notice of an appeal against a review decision relating to a decision mentioned in paragraph 58(c), (d) or (e), the appeal will be dealt with in accordance with paragraphs 69-71 (appeals concerning awards) and may under those provisions be referred for an oral hearing in accordance with paragraphs 72-78. The Panel may publish information in connection with individual appeals, but such information must not identify any appellant or other person appearing at an oral hearing or referred to during an appeal, or enable identification to be made of any such person without that person's consent.

64. The standard of proof to be applied by the Panel in all matters before it will be the balance of probabilities. It will be for the appellant to make out his case including, where appropriate:
(a) making out his case for a waiver of the time limit in paragraph 61 (time limit for appeals); and
(b) satisfying the adjudicator or adjudicators responsible for determining his appeal that an award should not be reconsidered, withheld or reduced under any provision of this Scheme. Subject to paragraph 78 (determination of appeal in appellant’s absence), the adjudicator or adjudicators concerned must ensure, before determining an appeal, that the appellant has had an opportunity to submit representations on any evidence or other material submitted by or on behalf of the Authority.

65. The Panel may make such arrangements for the inspection of the injury as it considers appropriate. Reasonable expenses incurred by the appellant in that connection will be met by the Panel.

Appeals concerning time limits and re-opening of cases

66. The Chairman of the Panel or another adjudicator nominated by him will determine any appeal against a decision taken on a review:
(a) not to waive the time limit in paragraph 18 (application for compensation) or paragraph 59 (application for review); or
(b) not to re-open a case under paragraphs 56-57.

Where the appeal concerns a decision not to re-open a case and the application for re-opening was made more than two years after the date of the final decision, the adjudicator must be satisfied that the renewed application can be considered without a need for further extensive enquiries by the Authority.
67. In determining an appeal under the preceding paragraph, the adjudicator will allow the appeal where he considers it appropriate to do so. Where he dismisses the appeal, his decision will be final. Written notification of the outcome of the appeal, giving reasons for the decision, will be sent to the appellant and to the Authority.

68. Where the adjudicator allows an appeal in accordance with the preceding paragraph, he will direct the Authority:
(a) in a case where the appeal was against a decision not to waive the time limit in paragraph 18, to arrange for the application for compensation to be dealt with under this Scheme as if the time limit had been waived by a claims officer;
(b) in a case where the appeal was against a decision not to waive the time limit in paragraph 59, to conduct a review under paragraph 60;
(c) in a case where the appeal was against a decision not to re-open a case, to re-open the case under paragraphs 56-57.

Appeals concerning awards

69. A member of the staff of the Panel may refer for an oral hearing in accordance with paragraphs 72-78 any appeal against a decision taken on a review:
(a) to withhold an award, including such decision made on reconsideration of an award under paragraphs 53-54; or
(b) to make an award, including a decision to make a reduced award whether or not on reconsideration of an award under paragraphs 53-54; or
(c) to seek repayment of an award under paragraph 49.
A request for an oral hearing in such cases may also be made by the Authority.

70. Where a member of the staff of the Panel does not refer an appeal for an oral hearing under the preceding paragraph, he will refer it to an adjudicator. The adjudicator will refer the appeal for determination on an oral hearing in accordance with paragraphs 72-78 where, on the evidence available to him, he considers:
(a) in a case where the review decision was to withhold an award on the ground that the injury was not sufficiently serious to qualify for an award equal to at least the minimum award payable under this Scheme, that an award in accordance with this Scheme could have been made; or
(b) in any other case, that there is a dispute as to the material facts or conclusions upon which the review decision was based and that a different decision in accordance with this Scheme could have been made.
He may also refer the appeal for determination on an oral hearing in accordance with paragraphs 72-78 where he considers that the appeal cannot be determined on the basis of the material before him or that for any other reason an oral hearing would be desirable.

71. Where an appeal is not referred under paragraphs 69 or 70 for an oral hearing, the adjudicator’s dismissal of the appeal will be final and the decision taken on the review will stand. Written notification of the dismissal of the appeal, giving reasons for the decision, will be sent to the appellant and to the Authority.

Oral hearing of appeals
72. Where an appeal is referred for determination on an oral hearing, the hearing will take place before at least two adjudicators. Where the referral was made by an adjudicator under paragraph 70, that adjudicator will not take part in the hearing. On application by the appellant, pending determination, the Chairman or an adjudicator nominated by him may direct that an interim payment be made. Subject to the provisions of this Scheme, the procedure to be followed for any particular appeal will be a matter for the adjudicators hearing the appeal.

73. Written notice of the date proposed for the oral hearing will normally be sent to the appellant and the Authority at least 21 days beforehand. Any documents to be submitted to the adjudicators for the purposes of the hearing by the appellant, or by or on behalf of the Authority, will be made available at the hearing, if not before, to the Authority or the appellant respectively.

74. It will be open to the appellant to bring a friend or legal adviser to assist in presenting his case at the hearing, but the costs of representation will not be met by the Authority or the Panel. The adjudicators may, however, direct the Panel to meet reasonable expenses incurred by the appellant and any person who attends to give evidence at the hearing.

75. The procedure at hearings will be as informal as is consistent with the proper determination of appeals. The adjudicators will not be bound by any rules of evidence which may prevent a court from admitting any document or other matter or statement in evidence. The appellant, the claims officer presenting the appeal and the adjudicators.

76. Hearings will take place in private. The Panel may, however, subject to the consent of the appellant, give permission for the hearing to be attended by observers such as representatives of the press, radio and television. Any such permission will be subject to written undertakings being given:
(a) that the identity of the appellant and of any other persons appearing at the hearing or referred to during the appeal will be kept confidential and will not be disclosed in any account of the proceedings which is broadcast or in any way published without that person’s consent; and
(b) that no material will be disclosed or in any other way published from which those identities could be discovered without the consent of the subject.

77. Where the adjudicators adjourn the hearing, they may direct that an interim payment be made. Where the only issue remaining is the determination of the amount of compensation, the adjudicators may remit the application for final determination by one of themselves in the absence of the appellant, but subject to the right of the appellant to have a further oral hearing if not satisfied with that determination, in which the adjudicator who made that determination will not take part. On determining the appeal, the adjudicators will, where necessary, make such direction as they think fit as to the decision to be made by a claims officer on the application for compensation, but any such direction must be in accordance with the relevant provisions of this Scheme. Where they are of the opinion that the appeal was frivolous or vexatious, the adjudicators may reduce the amount of compensation to be awarded by such amount as they consider appropriate. The appellant and the Authority will be informed of the adjudicators’ determination of the appeal and the reasons for it, normally at the end of the hearing, but otherwise by written notification as soon as is practicable thereafter.

78. Adjudicators may determine an appeal on the available evidence in the absence of an appellant when they are satisfied that
(a) he has so requested, or agreed; or
(b) he has failed to attend a hearing and has given no reasonable excuse for his non-attendance; or
(c) he is at the time of the hearing detained in custody or in hospital and is likely to remain so for a period of at least 6 months; or
(d) he is not living in Great Britain and it would not be against the interests of justice to do so.

Rehearing of appeals
79. Where an appeal is determined in the appellant’s absence, he may apply to the Panel in writing for his appeal to be reheard, giving the reasons for his non-attendance or otherwise why it should be reheard. Any such application must be received by the Panel within 30 days of the date of notification to the appellant of the outcome of the hearing which he did not attend. The Panel will send a copy of the application to the Authority.

80. A member of the staff of the Panel may waive the time limit in the preceding paragraph where he considers that it would be in the interests of justice to do so. Where he does not waive the time limit, he will refer the application to the Chairman of the Panel or to another adjudicator nominated by the Chairman to decide such applications, and a decision by the adjudicator concerned not to waive the time limit will be final. Written notification of the waiver decision will be sent to the appellant and to the Authority, giving reasons for the decision where the time limit is not waived.

81. Where a member of the staff of the Panel considers that there are good reasons for an appeal determined in the appellant’s absence to be reheard, he will refer it for a rehearing. Where he does not refer it for a rehearing, he will refer the application to the Chairman of the Panel or to another adjudicator nominated by the Chairman to decide such applications, and a decision by the adjudicator concerned not to rehear the appeal will be final. Written notification of the decision on the application for a rehearing will be sent to the appellant and to the Authority, giving reasons for the decision where the application is refused.

82. Where an appeal is to be reheard, any adjudicator or adjudicators who determined the appeal originally will not take part in the rehearing, and paragraphs 64 (onus on appellant), 65 (inspection of injury), and 72-78 (oral hearings) will apply.

Implementation and transitional provisions

83. The provisions of this Scheme come into force on 1 April 2001. All applications for compensation received by the Authority on or after 1 April 2001 will be dealt with under the terms of this Scheme, except that in relation to applications in respect of injuries incurred before that date paragraph 38 of this Scheme shall not apply, but only insofar as it applies to a same sex partner.

84. Applications for compensation received by the Authority or by the Criminal Injuries Compensation Board ("the Board") before 1 April 2001 will continue to be dealt with according to:
(a) the provisions of the Scheme which came into operation on 1 April 1996 ("the 1996 Scheme"); or
(b) the provisions of the non-statutory Scheme which came into operation on 1 February 1990 ("the old Scheme"). This includes provisions of the earlier non-statutory schemes referred to therein, insofar as they continue to have effect immediately before 1 April 2001 by virtue of the 1996 Scheme or the provisions of any non-statutory Scheme.
The following paragraphs of this Scheme will apply in addition to or in substitution for provisions of the 1996 Scheme as specified below -
(c) Paragraph 35 (d) (iv) will apply additionally to applications otherwise falling to be considered under the
1996 Scheme.
(d) Paragraphs 50, 61-62, 72, 77, and 78-82 of this Scheme will each apply in substitution for the same numbered paragraph of the 1996 Scheme.

85. From 1 April 2001 applications required by paragraph 84 to be dealt with according to the provisions of the old Scheme will continue to be so dealt with by the Authority, and :
(a) any decision authorised under the old Scheme to be made by a single member of the Board may be made by a single legally qualified member of the Panel appointed for the purposes of this Scheme;
(b) any decision authorised under the old Scheme to be made by at least two members of the Board may be made by at least two legally qualified members of the Panel; and
(c) any decision authorised under the old Scheme to be made by the Chairman of the Board may be made by the Chairman of the Panel or by another legally qualified adjudicator nominated by the Chairman to make such decisions.
In this paragraph legally qualified member means a member who is, or has been, qualified to practise as a solicitor, or as a barrister in England and Wales, or as an advocate in Scotland.

86. Cases which are reopened under paragraph 56 of this Scheme or any corresponding provision of any earlier scheme will be dealt with according to the terms of the scheme under which the initial application was decided.
SUEDE
Inledande bestämmelser

1 § Denna lag gäller ersättning av statsmedel för skada till följd av brott (brottsskadeersättning).


Förutsättningar för brottsskadeersättning

2 § Brottsskadeersättning betalas för personskada. Som personskada ersätts även skada på kläder, glasögon och liknande föremål som den skadade bar på sig vid skadetillfället.

I fall då någon har allvarligt kränkt någon annan genom brott som innefattar ett angrepp mot dennes person, frihet eller frid betalas brottsskadeersättning för den skada som kränkningen innebär. (Lag 2001:733).

3 § Brottsskadeersättning utgår för sakska i fall då brottet har begåtts av någon som var
1. intagen i kriminalvårdsanstalt,
2. intagen för vård i ett hem som avses i 12 § lagen (1990:52) med särskilda bestämmelser om vård av unga,
3. intagen för vård i ett hem som avses i 22 § lagen (1988:870) om vård av missbrukare i vissa fall,
4. häktad enligt beslut som hade verkställts, eller
5. underkastad motsvarande frihetsberövande i Danmark, Finland, Island eller Norge.


Bestämmande av brottskadeersättning


Brottsskadeersättning med anledning av kränkning bestäms enligt 5 kap. 6 § första stycket skadeståndslagen.

Brottsskadeersättning med anledning av sakskada bestäms enligt 5 kap. 7 § skadeståndslagen.

I fråga om brottskadeersättning tillämpas också 6 kap. 3 § skadeståndslagen. Rätten till brottskadeersättning faller dock inte bort, om en ansökan om ersättning före dödsfallet gjorts hos Brottsoffermyndigheten. (Lag 2001:733).

6 § Vid bestämmande av brottskadeersättning avräknas skadestånd som har betalts eller bör kunna bli betalt till den skadelidande på grund av skadan.

7 § Vid bestämmande av brottskadeersättning med anledning av personskada avräknas, förutom skadestånd, annan ersättning som den skadelidande har rätt till på grund av skadan och som inte har avräknats redan med stöd av 5 kap. 3 § skadeståndslagen (1972:207).
Avräkning sker dock ej i den mån ersättningen motsvarar ett sparande på den skadelidandes sida.

Vid bestämmande av brottskadeersättning med anledning av kränkning eller med anledning av sakskada eller ren förmögenhetsskada avräknas, förutom skadestånd, annan ersättning som den skadelidande har rätt till på grund av skadan. (Lag 2001:733).

8 § Vid bestämmande av brottskadeersättning för skada på egendom, som ej var försäkrad mot skaderisken och som den skadelidande måste antagas ha underlåtit att försäkra på grund av omfattningen av sina tillgångar och riskspridningen i sin verksamhet, avräknas försäkringsersättning som skulle ha utgått om försäkring hade funnits.

Vid bestämmande av brottskadeersättning för skada på egendom, som enligt vedertaget bruk borde ha hållits försäkrad mot skaderisken men som den skadelidande har försummat att försäkra, avräknas i skälig omfattning försäkringsersättning som skulle ha utgått om försäkring hade funnits.

9 § I fråga om jämkningsav brottskadeersättning på grund av medverkan genom vållande på den skadelidandes sida tillämpas 6 kap. 1 § skadeståndslagen (1972:207).


10 § Vid personskada, vid kränkning och vid sakskada eller ren förmögenhetsskada avräknas ett självriskbelopp. Beloppet fastställs av regeringen eller myndighet som regeringen bestämmer och beräknas med ledning av de lägsta självriskbelopp som tillämpas här i landet vid konsumentförsäkring som innefattar skydd mot skada till följd av brott.

Första stycket gäller ej i fråga om skada till följd av brott av någon som avses i 3 §, om brottet har begåtts på eller i närheten av anstalt eller annan plats där han var omhändertagen.
eller fick vård. Första stycket gäller ej heller, om det i övrigt finns särskilda skäl att inte avräkna något självriskbelopp. (Lag 2001:733).

11 § Brottsskadeersättning med anledning av personskada som fastställs i form av engångsbelopp betalas med högst tjugo gånger det prisbasbelopp enligt lagen (1962:381) om allmän försäkring som gäller då ersättningen bestäms. Ersättning som fastställs i form av livränta betalas för varje år med högst tre gånger det prisbasbelopp som gäller då ersättningen bestäms.

Brottsskadeersättning med anledning av kränkning eller med anledning av sakskada och ren förmögenhetsskada betalas med högst tio gånger det prisbasbelopp som gäller då ersättningen bestäms.

Om den sammanlagda brottsskadeersättningen efter avräkning av självriskbelopp enligt 10 § första stycket understiger tio kronor, utbetalas ingen ersättning. (Lag 2001:733).

Prövningen av ärende om brottsskadeersättning

12 § Ärende om brottsskadeersättning prövas av Brottsoffermyndigheten. Regeringen kan dock föreskriva att annan myndighet skall pröva ärende om ersättning för skada vållad av någon som avses i 3 § 1 eller 2, om ansökan gäller ersättning med högst 500 kronor. Ett beslut av en sådan myndighet överklagas hos Brottsoffermyndigheten.


13 § Hos Brottsoffermyndigheten finns en nämnd som skall avgöra ärenden om brottsskadeersättning som är av principiell betydelse eller annars av större vikt. Nämnden får avgöra även andra ärenden om brottsskadeersättning.

Ordföranden och vice ordförandena i nämnden skall vara eller ha varit ordinarie domare.


13 b § Muntliga förhandlingar enligt 13 a § skall vara offentliga.

Om det kan antas att det vid en förhandling kommer att lämnas någon uppgift för vilken hos Brottsoffermyndigheten gäller sekretess som avses i sekretesslagen (1980:100), får ordföranden vid förhandlingen besluta att förhandlingen skall hållas inom stängda dörrar.

Om sökanden är under femton år eller lider av en psykisk störning, får ordföranden vid förhandlingen besluta att förhandlingen skall hållas inom stängda dörrar. Lag (1999:253).

14 § Om allmänt åtal har väckts, skall ansökan om brottskadeersättning göras inom två år från det att dom eller slutligt beslut har vunnit laga kraft. Har allmänt åtal inte väckts men förundersökning inletts, skall ansökan göras inom två år från det att förundersökningen lagts ned eller avslutats. I övriga fall skall ansökan göras inom två år från det att brottet begicks.

Om det finns synnerliga skäl kan en ansökan prövas även om den har kommit in för sent. Ansökan prövas endast om brottet har anmänts till åklagare eller polismyndighet eller om sökanden visar giltig anledning till att någon sådan anmälan inte har gjorts.


14 a § Finner Brottsoffermyndigheten att ett beslut i ett ärende om brottskadeersättning är oriktigt på grund av nya omständigheter eller av någon annan anledning, skall myndigheten ändra beslutet, om det kan ske utan att det blir till nackdel för sökanden. Lag (1999:253).

14 b § Har ett beslut i ett ärende om brottskadeersättning fattats av generaldirektören eller någon annan tjänsteman vid Brottsoffermyndigheten skall ärendet omprövas av nämnden, om sökanden begär det.

15 § Kostnader för biträde eller utredning i ärenden om brottskadeersättning kan ersättas av allmänna medel, om det finns särskilda skäl med hänsyn till sökandens ekonomiska förhållanden och övriga omständigheter.


Övriga bestämmelser

16 § Anspråk på brottskadeersättning får inte överlåtas innan ersättningen är tillgänglig för lyftning.


17 § Utgår brottskadeersättning, inträder staten intill det utgivna beloppet i den skadelidandes rätt till skadestånd till den del detta ej har avräknats vid bestämmande av ersättningen. Detsamma gäller beträffande annan förmån på grund av skadan som hade bort avräknas vid ersättningens bestämmande men som då inte var känd.

Övergångsbestämmelser

1988:255
Denna lag träder i kraft den 1 juli 1988. De nya bestämmelserna tillämpas även i fråga om skada som inträffat dessförinnan.

1999:253
1. Denna lag träder i kraft den 1 juli 1999.
2. Den äldre lydelsen av 9 § skall tillämpas när det gäller skadefall som har inträffat före ikraftträdandet.

2002:346


XIV.B Criminal Injuries Compensation Act (SFS 1978:413)

(including amendments effective as of 1 July 1999 (1999:253)

In accordance with the decision of the Riksdag (Swedish Parliament) the following is enacted:

Introductory provisions

Section 1. This Act relates to compensation from public funds for loss, injury or damage resulting from criminal offences (criminal injuries compensation).

The Act is applicable if the offence has been committed in Sweden. In the case of personal injury, the Act is also applicable if an offence has been committed outside Sweden against someone domiciled in Sweden. However, the Act does not apply in cases where the offence and the claimant have so little to connect them with Sweden that it is unreasonable that compensation for the loss, injury or damage be paid out of Swedish public funds

Conditions for the payment of criminal injuries compensation

Section 2. Criminal injuries compensation is paid for personal injury. Damage to clothes, spectacles and similar items borne by the injured person at the time of injury is also compensated as personal injury.

The provisions of this Act concerning compensation for personal injury also apply in relation to suffering caused by one person to another by an offence interfering with personal liberty or by other criminal molestation. (1988:255)

Section 3. Criminal injuries compensation is paid for damage to property where the offence has been committed by someone who was

1. an inmate of a penal institution,
2. an inmate for care in a home under Section 12 of the Care of Young Persons (Special Provisions) Act (1990:52),
3. an inmate for care in a home under Section 22 of the Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents (Special Provisions) Act (1988:870),

Please note. This is an unofficial translation for which the Ministry of Justice takes no responsibility.

4. remained in custody under a decision which has been enforced, or
5. subject to corresponding deprivation of liberty in Denmark, Finland, Iceland or Norway.

If special reasons exist, the first paragraph of this Section can also apply to pure economic loss. (1990:59)
Section 4. Criminal injuries compensation is paid for property damage and pure economic loss in cases other than those provided for in Section 3 to the extent that the claimant’s ability to support himself is seriously jeopardized as a result of the damage or injury or where payment of compensation otherwise appears to be of vital importance. (1988:225)

Assessment of criminal injuries compensation

Section 5. Criminal injuries compensation for personal injury is assessed in accordance with the provisions of Chapter 5, Sections 1 to 5 of the Tort Liability Act (1972:207).

A life annuity is granted only in cases where the compensation is of significant importance for the future care or support of the claimant. Such an annuity is index-related in accordance with the provisions of the Act regarding Adjustment of Life Annuities awarded in Tort (1973:213).

Criminal injuries compensation for damage to property is assessed in accordance with the provisions of Chapter 5, Section 7 of the Tort Liability Act (1972:207).

Section 6. Damages which have been paid to or are capable of recovery by the claimant as a result of the loss, damage or injury are deducted when assessing the amount of criminal injuries compensation to be paid.

Section 7. When assessing criminal injuries compensation for personal injury, not only are damages to be deducted, but also any other compensation payable to the claimant as the result of his injury such as has not already been deducted under Chapter 5, Section 3 of the Tort Liability Act (1972:207). A deduction shall not, however, be made for compensation which is paid out of funds accumulated by or on behalf of the claimant.

When assessing criminal injuries compensation for damage to property or pure economic loss, not only are damages to be deducted but also any other compensation to which the claimant is entitled as a result of the damage or loss.

Section 8. When assessing criminal injuries compensation for damage to property which was not insured against the risk of damage and which it must be assumed the claimant omitted to insure because of the extent of his possessions and the spread of risks involved in his business activities, a deduction shall be made for the insurance indemnity which would have been paid had insurance existed.

When assessing criminal injuries compensation for damage to property, which according to normal practice, ought to have been insured against the risk of damage but which the claimant has neglected to insure, a reasonable deduction shall be made from the compensation in respect of the insurance indemnity which would have been paid, had insurance existed.

Section 9. When adjusting criminal injuries compensation in cases of contributory negligence on the part of the claimant, the provisions of Chapter 6, Section 1 of the Tort Liability Act (1972:207) shall apply. Criminal injuries compensation can also be reduced or withheld in cases other than those stipulated in the first paragraph, if it would be reasonable to do so as having regard to the fact that the claimant or, if the injury proved fatal, the deceased intentionally or by carelessness increased the risk of injury by his conduct in connection with the offence or in some other similar manner. Compensation can also be reduced or withheld for damage to property or pure economic loss if it would be reasonable to do so as having
regard to the fact that the claimant intentionally or by carelessness increased the risk of loss by omitting to observe normal precautions. (1999:253)

Section 10. A deductible is deducted in the case of personal injury, property damage or pure economic loss. The amount of the deductible is determined by the Government, or by an authority appointed by the Government, with reference to the lowest deductible applicable in Sweden to private consumer insurance which includes cover for loss, injury or damage resulting from a criminal offence.

The first paragraph does not apply in cases of loss, injury or damage resulting from an offence committed by a person referred to in Section 3, if the offence took place in or in the vicinity of the penal institution or place where the person concerned was committed or was under care. Nor does the first paragraph apply if there are other special reasons not to deduct any deductible. (1984:935)

Section 11. Criminal injuries compensation for personal injury granted in the form of a lump sum shall not exceed twenty times the base amount determined under the National Insurance Act (1962:381) applicable at the time when the compensation is assessed. Compensation which is granted in the form of a life annuity shall not for, any one year, exceed three times the base amount applicable at the time when the compensation is assessed.

Criminal injuries compensation paid for damage to property and for pure economic loss shall not exceed ten times the base amount which is applicable at the time when the compensation is assessed.

If the aggregate criminal injuries compensation, after deduction of a sum as a deductible under Section 10 first paragraph, is less than SEK 10, compensation is not payable. (1979:1103)

Examination of claims for criminal injuries compensation

Section 12. Claims for criminal injuries compensation are examined by the Crime Victim Compensation and Support Authority (Brottsoffermyndigheten). However, the Government can stipulate that another authority examines a claim for compensation in connection with an offence committed by a person or persons referred to in Section 3, paragraph 1 or 2 where the claim is for a maximum amount of SEK 500. Appeals against decisions of such an authority can be made to the Crime Victim Compensation and Support Authority.

No appeal is permitted against decisions of the Crime Victim Compensation and Support Authority. (1994:424)

Section 13. The Crime Victim Compensation and Support Authority shall have a Board to determine matters concerning criminal injuries compensation which are important in principle or otherwise of major importance. The Board may also determine other matters than criminal injuries compensation.

The chairperson and vice-chairpersons of the Board shall be or have been ordinary judges.

The Board is appointed by the Government. (1999:253)

Section 13 a. The Crime Victim Compensation and Support Authority shall hold an oral hearing, if requested by the applicant and it is not manifestly unnecessary. (1999:253)

Section 13 b. Oral hearings in accordance with Section 13 a shall be
public.
If it may be assumed that information will be provided at a hearing which is subject to secrecy at the Crime Victim Compensation and Support Authority in accordance with the Secrecy Act (1980:100), the chairperson at the hearing may decide that the hearing shall be held behind closed doors (in camera).
If the applicant is under the age of fifteen or suffers from a mental disturbance, the chairperson at the hearing may decide that the hearing shall be held behind closed doors (in camera). (1999:253)

**Section 14.** Claims for criminal injuries compensation shall be made within two years from the time when a judgment or final decision has entered into final legal force. If a public prosecution has not been instituted but a preliminary investigation has been conducted, the application shall be made within two years from when the preliminary investigation was discontinued or concluded. In other cases the application shall be made within two years from when the offence was committed.
An application may be considered even if it has been submitted too late if there are extraordinary reasons to do so.
Claims are considered only where the offence has been notified to the public prosecutor or the police or where the applicant can show good reason why such notification has not been made.
As regards time limits of a claim for criminal injuries compensation, that prescribed by Section 3 of the Act on Limitation (1981:130) on time limitations regarding claims for damages emanating from an offence shall apply. (1999:253)

**Section 14 a.** If the Crime Victim Compensation and Support Authority considers that a decision in a matter concerning criminal injuries compensation is incorrect on the grounds of new circumstances or for some other reason, the Authority shall alter the decision, provided that this can be done without disadvantaging the applicant. (1999:253)

**Section 14 b.** If a decision in a matter concerning criminal injuries compensation has been made by the Director-General or some other officer at the Crime Victim Compensation and Support Authority, the matter shall be immediately reconsidered by the Board, upon request by the applicant.
However, the matter need not be reconsidered by the Board if it is manifest that the decision should be amended in accordance with the applicant’s request. (1999:253)

**Section 15.** If special reasons exist having regard to an applicant’s financial circumstances or other circumstances, the cost of inquiry into or assistance with the criminal injuries compensation matter can be borne by public funds.
An applicant who has attended an oral hearing may be granted compensation from public funds by the Crime Victim Compensation and Support Authority for expenses of travel and accommodation, provided the Authority considers that it is reasonable to compensate the applicant for attending. The Authority may decide to grant an advance payment of such compensation. The Government may issue detailed regulations concerning compensation and advance payments. (1999:253)

*Other provisions*
Section 16. Claims for criminal injuries compensation are non-transferable until such time as the compensation becomes due for payment. Claims for criminal injuries compensation made in respect of personal injury may not be attached in payment of the claimant’s debts. Attachment of a life annuity may, however, be made in accordance with the provisions of Chapter 7 of the Code on Execution. Issues concerning the prohibition of attachment after the payment of compensation are subject to Chapter 5, Section 7, second paragraph, of the Code on Execution. (1981:819)

Section 17. If criminal injuries compensation is paid under the provisions of this Act, the State acquires a right of subrogation up to the amount paid after deductions have been made when assessing the compensation. The same applies with regard to other benefits granted as a result of the loss, injury or damage, which should have been deducted when the compensation was assessed but were unknown at that time.

SOUS-TITRE II - REGIMES D’INDEMNISATION DES NOUVEAUX ETATS MEMBRES
State Compensation of Victims of Crime Act

Chapter 1

General Provisions

§ 1. Purpose of Act

(1) The purpose of this Act is to regulate the procedure for alleviation of material consequences of serious crimes of violence.

(2) This Act provides for the persons who are entitled to state compensation and the conditions of and procedure for application for, grant and payment of compensation.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 2. Crime of violence

(1) For the purposes of this Act, ‘crime of violence’ means an intentional 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;

(12.06.2002 entered into force 01.09.2002 - RT I 2002, 56, 350)

3) sustains an impairment of health for at least six months.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(2) An act which causes the consequence specified in subsection (1) of this section under the following circumstances is also considered to be a crime of violence:

1) a criminal offence committed directly against the life and health of the injured person due to negligence if the offender is mistaken in the circumstances precluding unlawfulness of the act;

2) action taken by the injured person or a third person to prevent a criminal offence, apprehend a criminal offender or assist a victim of crime.
Acts specified in subsections (1) and (2) of this section are also deemed to be crimes of violence if:

1) the offender is incapable of guilt;

(12.06.2002 entered into force 01.09.2002 - RT I 2002, 56, 350)

2) the offender has not been identified or apprehended or if the offender cannot be convicted for other reasons and it is probable that a crime of violence has been committed.

§ 3. Recipient of compensation

(1) Estonian citizens, aliens residing in the Republic of Estonia on the basis of a permanent or temporary residence permit and refugees staying in Estonia who have suffered injuries specified in subsection 2 (1) of this Act as a result of a crime of violence (hereinafter victims) are entitled to compensation.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(2) If the victim dies as a result of a crime of violence, his or her dependant is entitled to compensation. For the purposes of this Act, ‘dependant’ means a person:

1) specified in section 20 of the State Pension Insurance Act;

(05.12.2001 entered into force 01.01.2002 - RT I 2001, 100, 648)

2) who is conceived by the time the criminal offence is committed but who is born after the death of the victim.

§ 4. Territorial applicability of Act

(1) Compensation is paid to victims of crimes of violence committed in the territory under the jurisdiction of the Republic of Estonia and to their dependants.

(2) Compensation is paid to the victim of a crime of violence committed abroad if the victim is an Estonian citizen and was staying abroad for reasons related to studies, employment or service duties or for other good reason and if the victim is not entitled to a similar compensation under the law of the country where the criminal offence was committed. If the victim dies, compensation is paid to a dependant who was permanently residing in the Republic of Estonia at the time when the crime of violence was committed.

§ 4¹. Application of Administrative Procedure Act

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

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)
Amount of Compensation

§ 5. Bases for determining amount of compensation

(1) The amount of compensation is 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 medical treatment of the victim;

3) the victim’s funeral expenses;

4) damage arising from the death of the victim;

5) damage caused to spectacles, dentures, contact lenses and other appliances substituting for bodily functions and to clothes in the cases specified in subsection (2) of this section.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(2) Damage specified in clause (1) 5) of this section shall be taken into account when determining the amount of compensation if the total amount of such damage exceeds 50 per cent of the applicant’s income during the month preceding the crime of violence. The applicant’s monthly income is the taxable income specified in §§ 13-17 and income specified in clauses 19 (3) 1)-3) of the Income Tax Act (RT I 1999, 101, 903; 2001, 11, 49; 16, 69; 50, 283; 59, 359; 79, 480; 91, 544; 2002, 23, 131; 41, 253; 44, 284; 47, 297; 62, 377; 111, 662).

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(3) All amounts which the victim or the dependant (hereinafter applicant for compensation) has received or is entitled to receive as compensation for the damage resulting from the crime of violence from a source other than the person liable for the damage caused by the criminal offence shall be deducted from the damage which is the basis for determining the amount of compensation. When the amount of compensation payable by the person liable for the damage caused by a criminal offence is determined, such part of the compensation which the person liable for the damage has paid to the applicant for compensation prior to the grant of compensation on the basis of this Act shall be taken into account.

(4) The amount of compensation is 50 per cent of the material damage specified in subsection (1) of this section.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(5) The amount of compensation is calculated pursuant to the procedure established by the Government of the Republic.

§ 6. Damage arising from incapacity for work
(1) ‘Damage arising from incapacity for work’ means such part of income subject to social tax which is not received due to temporary or permanent incapacity for work caused as a result of a crime of violence.

(2) Damage arising from incapacity for work shall be compensated for based on the average income per calendar day as calculated on the basis of § 55 of the Health Insurance Act (RT I 2002, 62, 377).


(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 Riigikogu, President of the Republic, members of the Government of the Republic and public servants;

3) members of 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).

(4) For a person specified in clauses (3) 1) and 2) of this section who did not receive any income subject to social tax during the six months preceding the commission of a 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 the 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 a crime of violence.

(6) Compensation shall be paid to persons who are not working or are unemployed at the time of becoming a victim of a crime of violence only if permanent incapacity for work was caused as a result of the crime. Compensation shall be calculated on the basis of average income per calendar day which is calculated by dividing minimum monthly wages established by the Government of the Republic by thirty.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 7. Expenses for medical treatment of victim

(1) A victim shall be compensated for essential expenses related to his or her medical treatment and acquisition of appliances substituting for bodily functions, alleviation of post-traumatic complications and teaching him or her a new specialty suitable for his or her state of health and for essential travel expenses related to the circumstances specified above.
(2) If a victim dies, his or her dependant is entitled to compensation for the expenses specified in subsection (1) of this section if the dependant has incurred these expenses.

§ 8. Funeral expenses

(1) Justified expenses incurred for the funeral of the victim of a crime of violence shall be included in compensation payable to a dependant.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(2) Received state funeral benefit shall be deducted from funeral expenses.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 9. Damage arising from death of victim

Compensation shall be paid to the dependant of a victim who dies as a result of a crime of violence based on the victim’s previous income, which is calculated on the basis of § 6 of this Act, as follows:

1) to one dependant, 25 per cent;

2) to two or more dependants, a total of 50 per cent.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

Chapter 3

Procedure for Compensation

§ 10. Maximum amount of compensation

Compensation payable to one victim and all dependants on the basis of this Act shall not exceed the amount of 50 000 kroons.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 11. Circumstances precluding payment of compensation

(1) Compensation shall not be paid if:

1) the victim participated in the commission of the crime;

2) the victim caused or facilitated the commission of the crime or occurrence of damage by his or her intentional or reckless behaviour;

3) 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 any other way;
4) the victim is convicted of the commission of a crime of violence or on the basis of subsection 265 (1) or 266 (1) of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 105, 612) and his or her sentence has not expired;

(12.06.2002 entered into force 01.09.2002 - RT I 2002, 56, 350)

5) 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) 2)-5) 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.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(4) Payment of compensation may be refused if the applicant for compensation has refused to co-operate with law enforcement authorities in order to ascertain facts relating to the criminal offence, identify or apprehend the criminal offender or establish the damages.

§ 12. Manner of compensation for damage

(1) In the case of damage arising from incapacity for work and loss of income 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, until the victim acquires a new specialty by way of re-training, or until the victim’s death;

2) until the dependant complies with the conditions prescribed in subsection 13 (3) or (5) of the State Pension Insurance Act;

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)


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

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(3) Generally, dependants are granted joint compensation. A dependant’s portion may be separated from the joint compensation on the basis of his or her written application.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) The victim’s medical treatment expenses or funeral expenses are compensated for by a single payment.
(5) On the basis of a reasoned request from the applicant for compensation, compensation specified in subsection (1) of this section may be paid in instalments or as a single payment.

Chapter 4

Grant of Compensation

§ 13. Grant of compensation

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

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 14. Application 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 date of death of the victim, except in the cases provided for in subsection (2) of this section.

(2) A later application 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 an impairment of health 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 improvement of the state of health.

(3) An application shall set out information on the applicant for compensation, information on the criminal offence and damage caused and on compensation for damage from other sources.

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

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

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

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

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

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

(2) If a person fails to submit the required information or documents together with an 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, shall designate a term of three months for elimination of the deficiencies and shall 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.

(3) The procedure for review of applications shall be established by a regulation of the Minister of Social Affairs.

§ 16. Postponement of making of decision

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

1) the right of the applicant for compensation to receive compensation from the person liable for damage caused by a criminal offence is unclear, or

2) it is obvious that the person liable for damage caused by a criminal offence agrees to compensating for the damage caused by the criminal offence and is able to do so.

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

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


(4) If the making of a decision concerning payment of the compensation is postponed on the grounds specified in subsections (1) and (2) of this section, the director of the Pension Board shall decide the grant of compensation or refusal to grant compensation within ten days as of the date on which he or she learns that the circumstance which caused the postponement of the decision has ceased to exist.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 17. Compensation paid in advance

(1) If the making of a decision concerning payment of compensation is postponed in the cases provided in subsections 16 (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 right of the applicant to receive compensation is obvious and the applicant is in a difficult economic situation.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(2) An advance payment shall not exceed the amount of 10 000 kroons.

(3) If an advance payment exceeds the amount of compensation granted, the overpaid amount shall be recovered in accordance with § 21 of this Act.

(4) If grant of compensation is refused, an advance payment may be recovered only if the payment was made as a result of expression of bad faith by the applicant.

§ 18. Communication of decision

A decision of the director of the Pension Board concerning the grant of compensation or refusal 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.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 19. Contestation of decisions in administrative court

If an applicant for compensation does not agree with a decision of the director of the Pension Board, he or she has the right of recourse to the administrative court of his or her residence within thirty days as of communication of the decision.
§ 19. Entry of data in register


(2) 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.

§ 20. Change in 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 compensation or terminating the payment of compensation within fifteen days as of the occurrence thereof. A submitted notice shall be reviewed within ten days as of the receipt thereof.

(2) In the case of changes in the amount of state benefits and other payments, the Pension Board shall make the recalculations on its own initiative within ten days as of the date of entry into force of the amendment.

(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 periodically paid compensation.

(6) In the case of periodically paid compensation, 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.

§ 21. Recovery of overpaid amounts
Overpaid amounts of compensation shall be recovered from the recipient of compensation pursuant to the procedure prescribed in civil law.

§ 22. Claim for payment against compensation, cession of claim and set-off

No claim for payment shall be made against compensation or a claim for compensation specified in this Act, no claim shall be ceded or set off.

§ 23. Exemption from income tax

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

§ 24. Right to file civil action

(1) Application for compensation and grant of compensation on the basis of this Act shall not restrict the right of a recipient of compensation to claim compensation for damage caused by a crime of violence pursuant to general principles.

(2) If a recipient of compensation files an action for compensation for damage caused by a crime of violence with a county or city court, he or she is required to notify the Pension Board thereof immediately in writing.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 25. State’s right of recourse

(1) After payment of compensation on the basis of this Act, the right of the recipient of compensation to claim compensation for damage from the person liable for damage caused by a criminal offence is transferred to the state in the amount of the compensation paid. The amount recoverable shall not exceed the amount granted upon satisfaction of the civil action.

(2) In matters concerning claims of recourse, 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 the grant of compensation on the basis of this Act, a recipient of compensation receives compensation for the same damage from the person liable for damage caused by the criminal offence or from some other source which was not deducted from the damage which was the basis for determining the amount of compensation pursuant to subsection 5 (3) of this Act, the recipient of compensation is required to notify the Pension Board thereof immediately and pay back the compensation in the amount calculated when the amount of compensation was determined.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

Chapter 5

Implementing Provisions

§ 26. Duty to inform
Preliminary investigation authorities are required to inform victims and dependants who have the right to receive compensation on the basis of this Act of the contents of this Act.

§ 27. Financing of compensation

(1) Compensation payable on the basis of this Act is financed from allocations from the state budget to the budget of the Ministry of Social Affairs and these allocations are established by the State Budget Act of the corresponding year.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

(2) Sources for covering compensation paid on the basis of this Act and the cost of payment thereof are:

1) compensation levies paid upon a judgment of conviction;

(12.06.2002 entered into force 01.09.2002 - RT I 2002, 56, 350)

2) amounts reclaimed by way of recourse;

3) allocations from reserves of the previous year;

4) other funds allocated from the state budget.

(20.12.2000 entered into force 01.01.2001 - RT I 2001, 3, 8)

§ 28. Entry into force of Act

(1) This Act enters into force on 1 January 2001.

(2) Compensation shall be paid on the basis of this Act to victims of crimes of violence committed after 1 January 2001 (incl.) and their dependants.

(08.12.1999 entered into force 01.01.2000 - RT I 1999, 95, 844)

(3) Until 1 April 2003, damage arising from incapacity for work shall be compensated for based on the average income per calendar day as calculated on the basis of § 88 of the Health Insurance Act.


§ 29. Amendment of Income Tax Act

Subsection 9 (2) of the Income Tax Act (RT I 1993, 79, 1184; 1998, 9, 111; 28, 353 and 354; 34, 485 and 489; 40, 612; 51, 757; 61, 979) is amended by adding clause 27) worded as follows:

"27) compensation paid on the basis of the State Compensation of Victims of Crime Act."

¹ RT = Riigi Teataja = State Gazette
2 Riigikogu = the parliament of Estonia
LETTONIE
La Lettonie est en train de concevoir un système d’indemnisation. Le projet de loi n’est pas disponible.
POLOGNE

La Pologne est en train de concevoir un système d’indemnisation. Le projet de loi n’est pas disponible.
RÉPUBLIQUE TCHÈQUE
LAW of July 31, 1997 on compensation for victims of crime and amendments to some laws (209/1997 Sb.)

The Parliament of the Czech Republic passed the following law:

PART ONE
COMPENSATION FOR VICTIMS OF CRIME

§ 1
Under the conditions provided in the present law, the state will award compensation to the victim of crime (hereafter referred to as "victim").

§ 2
(1) “Victim” means a person who incurred damage to the health as a result of a criminal act.

(2) Also considered a victim is a survivor of the victim who died as a result of the criminal act, if the deceased provided or was obliged to provide maintenance to that person.

(3) The compensation consists of a lump sum payment to alleviate the worsened social situation of the victim as a result of the criminal act.

(4) For the purposes of awarding compensation under the present law conduct is considered to be a criminal act which meets the definition of a criminal act or its attempt according to the special part of the criminal law.

§ 3
(1) The compensation is awarded to a citizen of the Czech Republic or a stateless person who has permanent or long-term legal resident status in the Czech Republic.

(2) A national of another State can apply for compensation under the conditions and to the extent provided by the international contract by which the Czech Republic is bound.
§ 4

The compensation is awarded if the damage to the health or resulting from the death caused by a criminal act was not fully covered.

§ 5

(1) The assistance is awarded if the offender is found guilty of the criminal act which resulted in damage to the health of the victim or if the offender is acquitted of the charges due to insanity.

(2) If such a judgement has not been declared or has not come into legal force or if criminal prosecution has not been initiated because the offender is not known or the charge cannot be announced to him or a legal obstruction prevents criminal prosecution, compensation will be awarded unless there exist, on the basis of the investigations of bodies active in the criminal proceedings, justified doubts about the occurrence of a criminal act resulting in damage to the health of the victim.

§ 6

(1) Compensation will not be awarded by the state if the victim

a) was prosecuted against as co-defendant in the criminal proceedings conducted for the criminal act which resulted in damage to the health of the victim or was an accomplice to the criminal act, 1)

b) did not give consent to the criminal prosecution of the person committing the criminal act in cases in which this consent is required for initiation of criminal prosecution or for continuation of proceedings, if he/she withdrew such consent, or

c) did not provide the bodies active in the criminal proceedings with the necessary cooperation, especially failure to report, without unnecessary delay, the criminal act for which compensation of damage is requested or exercised the right to refuse to testify as a witness in the criminal proceedings, referring to his/her relation to the offender.

(2) nor will the state award compensation unless the total assessment of pain 2) amounts to 100 points or more.

1) §§ 9 and 10 of law No.140/1961 Sb., criminal law, in the wording of later regulations.

2) §§ 2 and 3, § 7 para 1 and Annex to the Decree of the Ministry of Health, Ministry of Justice, State Authority of Social Security and Central Council of Trade Unions No.32/1965 Sb., on compensation of pain and more difficult finding one's place in society, in the wording of later regulations.
§ 7

(1) The compensation awarded will cover the loss of earnings and cost of treatment proved by the victim, or in the case of the victim specified in § 2 para 2, the proven costs connected with the burial and the costs of maintenance, minus the total of all amounts which the victim has already received with respect to entitlement to compensation of damage.

(2) If the decision concerning compensation of damage has already been made by a final judgement, the amount of damage cited in the judgement is binding for determination of the compensation to the extent to which the decision about the damage has already been made.

(3) If the victim proves after compensation has been awarded under paragraph 1 that the damage incurred is higher than that upon which the decision to award compensation was based, payment can made periodically at the victim’s request filed within the terms provided for by this law. In this case, the sums already paid will be taken into consideration.

(4) The total amount of compensation awarded according to paragraphs 1 and 3 must not exceed thirteen times the lowest monthly wage for purposes of the criminal law set by government Decree.

3) §§ 445 to 447 and § 449 para 1 of the Civil Code.
4) § 448 and § 449 para 2 of the Civil Code.

§ 8

The compensation set according to § 7 may be decreased or not awarded in view of the social situation of the victim and
a) the extent to which the victim participated in causing the origin of the damage,
b) whether the victim exhausted all legal means to claim restitution from the offender.

§ 9

(1) The compensation is awarded by the Ministry of Justice on behalf of the State on the basis of the application of the victim.

(2) The application for compensation must be filed with the Ministry of Justice, at the latest, within one year from the date of the criminal act, otherwise the right expires.

(3) Within three months after filing the application and submitting the necessary documents, the Ministry of Justice will either award compensation or inform the applicant, explaining why compensation cannot be awarded.

§ 10
(1) The application must include the name and surname of the victim, date of birth, place of residence, birth certificate number and enclose the following documents:

a) the latest decision of the body active in the criminal proceedings concerning the criminal act or its announcement; unless the victim can enclose such decision, he/she must specify the body active in the criminal proceedings which was the last to conduct proceedings concerning the criminal act and to present the data about the person suspected of committing the criminal act if the same is known to him/her,

b) the information about the damage resulting from the criminal act and its extent, including any information about the extent to which the damage has already been compensated, and about the action undertaken by the victim to claim the damage,

c) the data concerning the applicant’s financial and earning status,

d) any documents the victim has that prove the data presented under b) and c).

The documents about financial and earning status can be replaced by an affidavit.

(2) If, after filing the application for compensation, there are changes in the circumstances which affect consideration of the application for compensation and assessment of the amount of compensation to be awarded, especially if only partial compensation of the damage is made, the applicant is obliged to call the attention of the Ministry of Justice to these circumstances without delay.

§ 11

(1) When verifying conditions for awarding compensation, the authorized employees of the Ministry of Justice can examine criminal files or require bodies active in the criminal proceedings to provide any data significant for awarding compensation.

(2) The bodies active in the criminal proceedings are obliged to provide the requested data according to paragraph 1.

§ 12

(1) The victim to whom compensation has been awarded can be obliged, within five years from being awarded the compensation, to pay to the account of the Ministry of Justice the amounts received in compensation of damage up to the total amount of the assistance awarded.

(2) Unless, within two years after the expiry of the term specified in paragraph 1, the state exercises the right to recover the compensation awarded, its right expires.

(3) On the basis of the application of the victim, the Ministry of Justice can on behalf of the State waive its right to recover the compensation awarded after expiration of the term specified in paragraph 1, if such a procedure is justified by the social situation of the victim, the total amount of damage incurred and the amount of compensation received by the victim.
§ 13

Unless otherwise stipulated, the legal relations in this law are governed by the Civil Code.

§ 14

In the criminal proceedings concerning the criminal act which resulted in damage to the health or death, the bodies active in the criminal proceedings are obliged to inform the victim about the conditions under which it is possible to apply for compensation.

PART TWO
AMENDMENTS TO SOME LAWS

§ 15

Content and text 209/1997 Sb. - latest version of the text


1. In § 312 the full stop at the end of the sentence is replaced by a comma and the following words are added: "and the sums delivered to the state for compensation for the victims of crime."

2. In § 312 the existing text is marked as paragraph 1 and paragraph 2 is added which reads: "(2) From the financial sum for general utility purposes the accused must pay at least 50% to the state for awarding compensation to victims of crime according to a special law.".

§ 16

In § 11 para 2 the full stop at the end of the paragraph is replaced by a comma and letter k) is added which reads: "k) the petitioner in the proceedings for awarding compensation to the victims of crime."

§ 17


In § 4 para 1, letter h) inserted after the words "state social benefit, 44)" are the following words: "compensation to victims of crime according to a special law, 44a)".

Note No.44a) reads:
"44a) Law No. 209/1997 Sb., on compensation to victims of crime and amendments to some laws.".

PART THREE
FINAL PROVISION

§ 18

The present law comes into effect on January 1, 1998.
SOUS-TITRE III - REGIMES D’INDEMNISATION EUROPÉENS À L’EXTÉRIEUR DE L’UNION
SUISSE

L’Assemblée fédérale de la Confédération suisse,
vu les art. 64bis et 64ter de la constitution fédérale1;2
vu le message du Conseil fédéral du 25 avril 19903,
arrête:

Section 1 Dispositions générales

Art. 1 But et objet
1 La présente loi vise à fournir une aide efficace aux victimes d’infractions et à renforcer leurs droits.
2 L’aide fournie comprend:
   a. des conseils;
   b. la protection de la victime et la défense de ses droits dans la procédure pénale;
   c. l’indemnisation et la réparation morale.

Art. 2 Champ d’application
1 Bénéficie d’une aide selon la présente loi toute personne qui a subi, du fait d’une infraction, une atteinte directe à son intégrité corporelle, sexuelle ou psychique (victime), que l’auteur ait été ou non découvert ou que le comportement de celui-ci soit ou non fautif.
2 Le conjoint, les enfants, les père et mère ainsi que d’autres personnes unies à la victime par des liens analogues sont assimilés à celle-ci pour ce qui est:
   a. des conseils (art. 3 et 4);
   b. des droits dans la procédure et des prétentions civiles (art. 8 et 9) dans la mesure où ces personnes peuvent faire valoir des prétentions civiles contre l’auteur de l’infraction;
   c. de l’indemnité et de la réparation morale (art. 11 à 17) dans la mesure où ces personnes peuvent faire valoir des prétentions civiles contre l’auteur de l’infraction.

Section 4 Indemnisation et réparation morale

Art. 11 Bénéficiaires et compétence
1 Toute victime d’une infraction commise en Suisse peut demander une indemnisation ou une réparation morale dans le canton dans lequel l’infraction a été commise. L’art. 346 du code pénal suisse8 s’applique par analogie.
2 Si le résultat s’est produit à l’étranger, la victime ne peut demander une indemnisation ou une réparation morale que si elle n’obtient pas des prestations suffisantes d’un Etat étranger.
3 Lorsqu’une personne de nationalité suisse domiciliée en Suisse est victime d’une infraction à l’étranger, elle peut demander au canton dans lequel elle est domiciliée une indemnisation ou une réparation morale si elle n’obtient pas des prestations suffisantes d’un Etat étranger.

Art. 12 Conditions d’octroi
1 La victime a droit à une indemnité pour le dommage qu’elle a subi, si ses revenus
déterminants au sens de l’art. 3c de la loi fédérale du 19 mars 1965 sur les prestations complémentaires à l’assurance-vieillesse, survivants et invalidité (LPC) ne dépassent pas le quadruple du montant supérieur destiné à la couverture des besoins vitaux, fixé à l’art. 3b, al. 1, let. a, de cette même loi. Les revenus déterminants sont ceux qu’aura probablement la victime après l’infraction.

2 Une somme peut être versée à la victime à titre de réparation morale, indépendamment de son revenu, lorsque celle-ci a subi une atteinte grave et que des circonstances particulières le justifient.

Art. 13 Calcul du montant de l’indemnité
1 L’indemnité est fixée en fonction du montant du dommage et des revenus de la victime. Si les revenus ne dépassent pas le montant supérieur destiné à la couverture des besoins vitaux fixé dans la LPC, l’indemnité couvrira intégralement le dommage; s’ils sont supérieurs à ce montant, le montant de l’indemnité est réduit.

2 Le montant de l’indemnité peut être réduit lorsque, par un comportement fautif, la victime a contribué dans une mesure importante à créer ou à aggraver le dommage.

3 Le Conseil fédéral fixe les montants maximums et minimums des indemnités. Il peut édicter d’autres prescriptions relatives au calcul du montant de l’indemnité.

Art. 14 Subsidiarité des prestations de l’Etat
1 Les prestations que la victime a reçues à titre de réparation du dommage matériel sont déduites du montant de l’indemnité. Sont exceptées les prestations (en particulier les rentes et les indemnités en capital) qui ont déjà été prises en compte lors du calcul des revenus déterminants (art. 12, 1er al.). Les prestations reçues à titre de réparation du tort moral sont déduites de la même manière de la somme allouée à titre de réparation morale.

2 Lorsque l’autorité a accordé une indemnité ou une somme à titre de réparation morale, le canton est subrogé, à concurrence du montant versé, dans les prétentions que la victime peut faire valoir en raison de l’infraction. Ces prétentions priment celles que la victime peut encore faire valoir ainsi que les droits de recours de tiers.

3 Le canton renonce à faire valoir ses droits à l’égard de l’auteur de l’infraction lorsque cela se révèle nécessaire pour la réinsertion sociale de celui-ci.

Art. 15 Provision
Après un examen sommaire de la demande d’indemnisation, une provision est accordée à la victime:

a. lorsque cette dernière a besoin d’urgence d’une aide pécuniaire, ou

b. lorsqu’il n’est pas possible de déterminer dans un bref délai avec une certitude suffisante les conséquences de l’infraction.

Art. 16 Procédure et péremption
1 Les cantons prévoient une procédure simple, rapide et gratuite.

2 L’autorité constate les faits d’office.

3 La victime doit introduire ses demandes d’indemnisation et de réparation morale devant l’autorité dans un délai de deux ans à compter de la date de l’infraction; à défaut, ses prétentions sont périmées.

Art. 17 Protection juridique
Les cantons désignent une autorité de recours unique, indépendante de l’administration et jouissant d’un plein pouvoir d’examen.
Section 5 Aides financières et dispositions finales

Art. 18 Aide à la formation et aide financière de la Confédération
1 La Confédération encourage la formation spécifique du personnel des centres de consultation et des personnes chargées de l’aide aux victimes. Elle tient compte des besoins particuliers des enfants victimes d’infractions contre leur intégrité sexuelle. Elle accorde des aides financières à cet effet.13
2 La Confédération accorde aux cantons, pendant une durée limitée à six ans, une aide financière pour la mise en place du système d’aide aux victimes. Cette aide est répartie entre les cantons en proportion de leur capacité financière et de leur population. Les cantons rendent compte tous les deux ans au Conseil fédéral de l’utilisation de l’aide financière.
3 Si, par suite d’événements extraordinaires, un canton doit supporter des frais particulièrement élevés, la Confédération peut accorder des aides financières supplémentaires.

Art. 19 Référendum et entrée en vigueur
1 La présente loi est sujette au référendum facultatif.
2 Le Conseil fédéral fixe la date de l’entrée en vigueur.
Date de l’entrée en vigueur: 1er janvier 199314
Aide aux victimes d'infractions – LF


Le Conseil fédéral suisse,
vu la loi fédérale du 4 octobre 19911 sur l’aide aux victimes d’infractions (LAVI),
arrête:

Section 1: Indemnisation et réparation morale

Art. 1 Démarches de la victime
La victime doit rendre vraisemblable qu’elle ne peut rien recevoir de tiers (auteur de l’infraction, assurances, etc.) ou qu’elle n’en peut recevoir que des montants insuffisants.

Art. 22 Calcul des revenus déterminants
Les revenus déterminants (art. 12, 1er al., LAVI) sont calculés selon l’article 3c de la loi fédérale du 19 mars 19653 sur les prestations complémentaires (LPC), selon les dispositions réglementaires fédérales y relatives, ainsi que selon les dispositions cantonales spéciales qui s’y rapportent.

Art. 34 Calcul du montant de l’indemnité
1 Si les revenus déterminants de la victime ne dépassent pas le montant maximum destiné à la couverture des besoins vitaux fixé par l’article 3b, 1er alinéa, lettre a, LPC5 (ci-après: montant LPC), l’indemnité couvrira intégralement le dommage.
2 Si les revenus déterminants de la victime dépassent le quadruple du montant LPC (ci-après: plafond LAVI), aucune indemnité ne sera versée.
3 Si les revenus déterminants de la victime sont compris entre le montant LPC et le plafond LAVI, le montant de l’indemnité se calculera selon la formule suivante:

\[
\text{indemnité} = \text{dommage} - \left[ \left( \text{revenus déterminants} - \text{montant LPC} \right) \times \text{dommage} \right] / \left( \text{plafond LAVI} - \text{montant LPC} \right)
\]

**Art. 4** Montants maximum et minimum
1 Le montant maximum de l’indemnité s’élève à 100 000 francs.
2 Aucune indemnité d’un montant inférieur à 500 francs n’est versée.

**Art. 5** Remboursement de provision
1 La victime doit rembourser les sommes reçues à titre de provision lorsque sa demande d’indemnisation est rejetée.
2 Lorsque le montant de l’indemnité est inférieur à celui de la provision, elle doit rembourser la différence.
3 Le canton peut renoncer à réclamer le remboursement lorsque celui-ci exposerait la victime à la gêne.

**Art. 6** Victimes d’infractions à l’étranger
1 Les ayants droit selon l’article 11, 2e et 3e alinéas, LAVI, peuvent prétendre une indemnité lorsque le montant des prestations en espèces ou en nature reçues d’un Etat étranger à titre de réparation du dommage matériel n’équivaut pas, en termes réels et compte tenu, le cas échéant, des différences dans le coût de la vie, au montant de l’indemnité calculé selon les articles 12 à 14 LAVI.
2 L’autorité peut allouer à la victime une somme à titre de réparation morale lorsque les conditions de l’article 12, 2e alinéa, LAVI sont réunies et qu’elle estime que les prestations reçues à ce titre d’un Etat étranger ne sont pas suffisantes.
3 La victime doit rendre vraisemblable qu’elle ne peut recevoir des prestations suffisantes ni de tiers, ni de l’Etat étranger.
4 Le montant des prestations reçues de l’Etat étranger à titre d’indemnité ou de réparation morale est déduit du montant des prestations de même type accordées en vertu de la LAVI et de la présente ordonnance.
5 Lorsque l’auteur de l’infraction a agi à l’étranger et que le résultat de celle-ci s’est produit en Suisse, la victime peut demander une indemnisation ou une réparation morale selon l’article 11, 1er alinéa, LAVI.

**Section 2: Aides financières et évaluation**

**Art. 7** Aide initiale
1 La Confédération verse à la fin de chaque année aux cantons, pendant une durée de six ans, la somme inscrite au budget pour la mise en place du système d’aide aux victimes.
2 Les quotes-parts des cantons sont calculées comme il suit:
   a. 50 pour cent de la subvention fédérale sont répartis selon la capacité financière des cantons sur la base de la formule suivante:
   
   \[
   \text{Coefficient} \text{ par canton} = 2,71828 \times \text{(indice de capacité fin. x } -0,0165 \times \text{population résidante moyenne)}
   \]
   
   b. 50 pour cent de la subvention fédérale sont répartis selon la population résidante moyenne des cantons.
3 Les bases de calcul déterminantes sont:
   a. l’indice de capacité financière de l’année sur laquelle porte la répartition, calculé
Art. 8 Aide à la formation
1 La Confédération contribue par des aides financières à l’exécution de programmes de formation conçus pour l’ensemble de la Suisse ou pour l’ensemble d’une région linguistique et destinés au personnel des centres de consultation, aux juges, aux fonctionnaires de police et aux autres personnes chargées de l’aide aux victimes. Elle soutient en particulier l’organisation de cours, de séminaires ou de stages de formation ainsi que la mise à disposition du matériel didactique nécessaire.
2 Les aides financières se montent, dans les limites des crédits ouverts, au maximum aux deux tiers des dépenses occasionnées par le programme de formation concerné. Elles peuvent être allouées sous la forme de montants forfaitaires.
3 Lorsque les bénéficiaires ne sont pas des cantons, l’aide financière peut être subordonnée à la condition que les cantons intéressés participent également, en proportion de leur capacité financière et de leur population, au financement du programme de formation concerné.

Art. 9 Aides supplémentaires
En cas d’événements extraordinaires entraînant des frais particulièrement élevés pour un ou plusieurs cantons, par exemple lorsqu’une catastrophe ou un acte de terrorisme font un grand nombre de victimes, la Confédération peut verser à ceux-ci des aides supplémentaires.

Art. 10 Compétence
1 L’Office fédéral de la justice est compétent pour accorder les aides financières selon les articles 7 et 8. Lorsqu’il s’agit d’aides financières en faveur d’institutions ou de projets concernant spécifiquement les femmes, il consulte au préalable le Bureau de l’égalité entre femmes et hommes.
2 L’Assemblée fédérale est compétente pour accorder les aides supplémentaires selon l’article 9.

Art. 11 Rapports et évaluation
1 Pendant la durée de l’aide financière initiale, les cantons adressent tous les deux ans à l’Office fédéral de la justice, à l’intention du Conseil fédéral, un rapport sur l’utilisation de cette aide.
2 Ce rapport renseigne notamment sur les points suivants:
a. le nombre et la structure des centres de consultation;
b. le nombre de personnes qui se sont adressées aux centres de consultation;
c. le genre des infractions dont ces personnes ont été victimes;
d. la nature et la durée des prestations fournies par les centres de consultation;
e. les comptes des centres de consultation et le montant des prestations cantonales;
f. le nombre des demandes d’indemnisation et de réparation morale présentées et le nombre de celles qui ont été admises;
g. les effets de l’aide sur la situation des victimes.
3 Le Département fédéral de justice et police peut édicter des directives relatives au contenu du rapport.
4 L’Office fédéral de la justice évalue l’efficacité de l’aide apportée aux victimes.
d’infractions sur la base de ces rapports.

Section 3: Dispositions finales

Art. 12 Dispositions transitoires
1 Toutes les victimes d’infractions, quelle que soit la date à laquelle l’infraction a été commise, peuvent solliciter l’aide des centres de consultation dès l’entrée en vigueur de la LAVI.
2 Les dispositions relatives à la protection et aux droits de la victime dans la procédure pénale (art. 5 à 10 LAVI) sont applicables à tous les actes de procédure accomplis après l’entrée en vigueur de la LAVI.
3 Les dispositions relatives à l’indemnisation et à la réparation morale (art. 11 à 17 LAVI) sont applicables aux infractions commises après l’entrée en vigueur de la LAVI.
4 Les demandes d’indemnisation pendantes au moment de l’entrée en vigueur de la modification du 20 juin 19978 de la LAVI sont régies par l’ancien droit.9

Art. 13 Entrée en vigueur
La présente ordonnance entre en vigueur le 1er janvier 1993.
UKRAINE
L’Ukraine est en train de concevoir un système d’indemnisation. Le projet de loi n’est pas disponible
TITRE II - AMÉRIQUE
BERMUDES
1973 : 107 Criminal Injuries (Compensation) Act 1973

ARRANGEMENT OF SECTIONS

1 Interpretation
2 Criminal Injuries Compensation Board
3 Injuries which may be compensated
4 Application for compensation
5 Procedural matters
6 Assessment of compensation
7 Terms of the order
8 Interim compensation
9 Form of compensation
10 Maximum awards
11 Variation of award
12 Civil proceedings and subrogation
13 Recovery from victim or dependant
14 Presumptions
15 Exclusion of public
16 Appeal to Court of Appeal
17 Payment of compensation
18 Rules
19 Annual report
20 Application of Act
21 [omitted]

SCHEDULE

[20 December 1973]

Interpretation

1 (1) In this Act, unless the context otherwise requires—
"Board" means the Criminal Injuries Compensation Board established under section 2;
"child" includes stepchild, illegitimate child, adopted child and the child of a spouse;
"dependants", in respect of a deceased victim, means such of the relatives of the victim as were wholly or partially dependent upon his income at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted; and for the purposes of this definition, a child of the victim conceived prior to the injury which caused the victim's death, but born after that death, shall be deemed to have been wholly dependent upon the victim's income at the time of that death;

"injury" means actual bodily harm and includes pregnancy and mental or nervous shock;

"motor vehicle" has the same meaning as "motor car" in the Motor Car Insurance (Third Party Risks) Act 1943 [title 21 item 5];

"offence" means a criminal offence and includes any act which would be a criminal offence were the act performed by a person of full age and capacity, as well as an attempt to commit a criminal offence;

"relative", in respect of a victim, means his or her spouse (including any spouse by any former marriage), parent, grandparent, great-grandparent, stepfather, stepmother, child, grandchild, great-grandchild, brother, sister, half-brother, half-sister or spouse's parent and, in respect of an illegitimate victim, includes his or her mother, father, brother, sister, half-brother or half-sister;

"victim" means a person who has sustained an injury in the circumstances set out in section 3; "violence" includes—

(a) the use of physical force;
(b) the threatened or apprehended use of physical force;
(c) the use of any poison, fire or other dangerous substance.

(2) For the purposes of this Act "crime of violence" means—

(a) any offence constituted by any provision of law of which violence is an element;
(b) any offence constituted by the Criminal Code [title 8 item 31] of which negligence is an element,

but does not include an offence arising from the driving or use of a motor vehicle unless the motor vehicle was, at the time of the commission of the offence, being primarily used for the purpose of—

(i) causing injury; or
(ii) committing, or facilitating the commission of, some other offence; or
(iii) avoiding arrest, or escaping detention, in connection with some other offence.
(3) For the purposes of this Act the Board may deem persons to be spouses of each other if—
(a) although not married, they cohabit as man and wife and were known as such in the community where they lived; and
(b) the relationship was of some permanence.
(4) For the purposes of this Act the Board may deem a person not to be the spouse of another if he or she were living apart from such other person in circumstances that would have disentitled such person from maintenance.

Criminal Injuries Compensation Board

2 (1) For the purposes of this Act there shall be established a body of persons to be called the Criminal Injuries Compensation Board.
(2) The members of the Board shall be appointed by the Governor on the advice of the Premier, and shall consist of—
(a) a Chairman, who shall be a judge of the Supreme Court of Bermuda;
(b) one member who shall be a person entitled to practise in Bermuda as a medical practitioner under the Medical Practitioners Act 1950 [title 30 item 8];
(c) one member who shall be a barrister and attorney in private practice in Bermuda;
(d) two other members.
(3) The incidental provisions contained in the Schedule shall have effect with respect to the Board.

Injuries which may be compensated

3 (1) Where a person is killed or injured, and the death or injury is directly attributable to—
(a) the commission by any other person of a crime of violence;
(b) the lawful arrest, or lawfully attempted arrest, of any person for having committed an offence or who is suspected of having committed an offence;
(c) assisting a police officer in the execution of such officer's duties under any provision of law;
(d) the prevention or attempted prevention of an offence,
the Board may on application make an order for the payment of compensation, in such amount as it may determine—
(i) to or for the benefit of the victim; or
(ii) where the compensation is in respect of pecuniary loss suffered or expenses incurred, as a result of the victim's injury, by any person responsible for the maintenance of the victim, to that person; or
(iii) where the death of the victim has resulted—
(A) to or for the benefit of the victim's dependants or any one or more of them; or
(B) if there are no such dependants and the compensation is in respect of expenses incurred as a result of the victim's death, to the person who incurred those expenses.

(2) In determining whether to make an order under this section, the Board shall, without prejudice to section 6(4)(a), have regard to all such circumstances as it considers relevant and, in particular, to any provocative or negligent behaviour of the victim which it is satisfied contributed, directly or indirectly to his injury or death.

(3) Without restricting the generality of the discretion vested in the Board under this section the Board may refuse to make an order hereunder if the victim was, at the time when the injury was sustained, living with the offender as his wife or her husband or as a member of the offender's household.

(4) No order shall be made under this section—
(a) if the injury is one for which a total compensation of less than $400 would be payable; or
(b) if the victim fails, without reasonable cause—
(i) to undergo any medical examination which he may be required to undergo by the Board; or
(ii) to produce or cause or permit to be produced to the Board any medical records, X-rays or other documents relating to his injury or medical history which the Board may require to be produced.
(5) The Board may refuse to entertain a claim for compensation where no person has been prosecuted for the offence giving rise to the injury or death unless the offence has been reported to the police as soon as reasonably practicable after its commission by the victim or some other person on behalf of the victim or, in the event of his death, by one of his dependants or some other person on behalf of such person.

[section 3 amended by 1991:105 effective 1 April 1992]

Application for compensation

4 (1) An application for compensation shall be made within one year of the date of the injury or death in respect of which the application is made; but the Board may, if it thinks fit, extend the period of one year for such further period as it thinks fit.

(2) A copy of every application under subsection (1) shall be served on such persons as the Chairman of the Board may direct and every person upon whom such copy is served shall be deemed to be a party to the proceedings with effect from the date of such service.

(3) An application for compensation may be made by any of the persons mentioned in section 3(1)(i), (ii) or (iii), but so that—

(a) where the death of the victim has resulted, the application may be made by the victim's spouse on behalf of both the applicant and of such of the children of the marriage, if any, as are the victim's dependants;

(b) where—

(i) there is no surviving spouse of a deceased victim; or

(ii) the victim or other person entitled to apply for compensation is, by reason of age or other wise, incapable of making the application,

the application may be made by such person as the Board may allow.

Procedural matters

5 An order may be made under section 3 whether or not any person is prosecuted for, or convicted of, any offence connected with the injury, but so that an application may be made,
by or on behalf of the Attorney General, at any time before the order is made, for an adjournment of any proceedings under this Act on the ground—
(a) that a prosecution or appeal in respect of an offence connected with the injury has been commenced; or
(b) that such a prosecution or appeal is likely to be commenced soon,
and, in any such case, the Board may adjourn the proceedings for such period as it thinks fit.

Assessment of compensation

6 (1) Subject to the succeeding provisions of this section, compensation may be awarded under this Act in respect of any one or more of the following matters only—
(a) expenses actually and reasonably incurred as a result of the victim's injury or death;
(b) pecuniary loss to the victim as a result of total or partial incapacity for work;
(c) pecuniary loss to dependants as a result of the victim's death;
(d) other pecuniary loss resulting directly from the victim's injury;
(e) any other expenses resulting directly from the victim's injury which, for special reasons stated by the Board, it is, in the opinion of the Board, reasonable and proper to make good to the victim or his dependants out of public funds;
(f) pain and suffering of, and loss of amenities by, the victim;
(g) maintenance of a child born as a result of rape;
(h) costs of proceedings under this Act.

(2) No compensation shall be awarded by way of exemplary or vindictive damages, or by way of aggravated damages.

(3) When the victim of a criminal injury dies, the compensation, if any, under subsection (1)(c) shall, subject to subsection (4), be determined without reference to any loss or gain to his estate consequent on the injury.

(4) The Board, in determining the amount of compensation, if any, to be awarded under this section, shall—
(a) make such deduction, as in the circumstances it may think fit, in respect of any provocative or negligent behaviour of the victim which the Board is satisfied contributed, directly or indirectly, to the injury;
(b) deduct any sums paid to or for the benefit of the victim or any of his dependants, by way of compensation or damages from the offender or any person on the offender's behalf, consequent on the injury or on death resulting therefrom; and
(c) take into account any right to pension, gratuity, statutory benefit or compensation under a contract of insurance or assurance payable to or for the benefit of the victim or any of his dependants which the Board is satisfied has been or will be paid consequent on the injury or on death resulting therefrom.

**Terms of the order**

7 (1) An order for the payment of compensation under this Act may be made on, and subject to, such terms and conditions as the Board thinks fit as to—
(a) the payment, disposition, allotment or apportionment of the compensation;
(b) the holding of the compensation or any part thereof in trust for the victim or the dependants, or any of them, whether as a fund for a class or otherwise.
(2) Any compensation payable in respect of expenses may, in the discretion of the Board, be paid directly to the person entitled thereto.

**Interim compensation**

8 Where—
(a) the applicant is in actual financial need; and
(b) it appears to the Board that it will probably award compensation to the applicant, the Board may, in its discretion, order interim payments to the applicant in respect of maintenance and medical expenses and, if compensation is not awarded, the amount so paid shall not be recoverable from the applicant.
Form of compensation

9 Subject to section 10 the Board may order compensation to be paid in a lump sum or in periodic payments, or both, as the Board thinks fit.

Maximum awards

10 The amount awarded by the Board to be paid in respect of the injury or death of one victim shall not exceed—

(a) in the case of lump sum payments, $70,000; and

(b) in the case of periodic payments, $700 per month, up to a maximum of $70,000,

(c) in the case of both lump sum and periodic payments, $70,000, $20,000 as the lump sum, and $700 per month as the periodic payment.

[section 10 repealed and replaced by 1991:105 effective 1 April 1992]

Variation of award

11 (1) The Board may at any time on its motion or on the application of the victim or any dependant of the victim or the Attorney-General, vary an order for payment of compensation in such manner as the Board thinks fit, whether as to terms of the order or by increasing or decreasing the amount ordered to be paid, or otherwise.

(2) In proceedings under subsection (1), the Board shall consider—

(a) any new evidence that has become available;

(b) any change of circumstances that has occurred since the making of the order or any variation thereof, as the case may be, or that is likely to occur; and

(c) any other matter the Board considers relevant.

Civil proceedings and subrogation

12 (1) Subject to the following provisions of this section, nothing in this Act affects the right of any person to recover from any other person by civil proceedings damages in respect of the injury or death.
(2) The Board shall be subrogated to all the rights of the person for whose benefit an award of compensation is made under this Act to recover damages by civil proceedings in respect of the injury or death and the Board may maintain an action in the name of such person against any person against whom such action lies.

(3) Any amount recovered by the Board under this section shall be applied,—
   (a) firstly, to payment of the costs actually incurred in the action and in levying execution;
   (b) secondly, to reimbursement to the Board of the value of the compensation awarded, and the balance, if any, shall be paid to the person whose rights were subrogated.

(4) Any settlement or release shall not bar the rights of the Board under subsection (2) unless the Board has concurred therein.

**Recovery from victim or dependant**

13 (1) Where compensation is paid under this Act to or for the benefit of any victim or dependant and there has been or is subsequently paid to or for the benefit of such victim or dependant, by way of compensation or damages from the offender or any person on the offender's behalf, any sum which has not been deducted under section 6(4)(b), the person receiving any such sum shall forthwith notify the Board and shall forthwith reimburse to the Board—
   (a) the amount of the compensation paid under this Act to or for the benefit of such victim or dependant, if that amount is equal to or less than the said sum; or
   (b) the said sum, if the amount of the compensation paid under this Act is greater, but so that no person shall be required by virtue of this subsection to reimburse, in all, to the Board more than the amount of the compensation paid by the Board.

(2) Any moneys required to be reimbursed under subsection (1) and not so reimbursed shall be recoverable as a debt due to the Crown.

(3) Any person who, being required by subsection (1) to notify the Board of the receipt of any sum by way of compensation or damages, fails to do so shall, without prejudice to his liability under that subsection to reimburse any moneys to the Board, commits an offence: Punishment on summary conviction: imprisonment for 6 months or a fine of $1,000, or both such imprisonment and fine.
Presumptions

14 (1) In any proceedings under this Act—
(a) the fact that a person has been convicted of an offence by or before any court in Bermuda shall be receivable by the Board as evidence for the purpose of proving the acts, omissions or conduct on which the conviction was based, whether he was so convicted upon a plea of guilty or otherwise; but no conviction other than a subsisting conviction shall be so receivable in evidence;
(b) in which a person is proved to have been convicted of an offence by or before any court in Bermuda he shall be taken to have been guilty of the acts, omissions or conduct on which the conviction was based, except in so far as the contrary is proved.
(2) In subsection (1)—
"conduct" includes the state of mind or manner in which anything was done or omitted;
"offence" means an offence resulting in injury or death;
"subsisting conviction" includes, where a conviction for an offence has been replaced on appeal by a conviction for another offence, the conviction for that other offence.

Exclusion of public

15 (1) The Board may, with the consent of the person making application for compensation, exclude the public or any representative of the press from any of its sittings.

(2) At any hearing held in public the Board may make an order prohibiting the publication of any report or account of the whole or any part of the evidence at such hearing where the Board considers it necessary.

(3) Any person who publishes a report or account of any evidence at a hearing contrary to an order of the Board under subsection (2) commits an offence:
Punishment on summary conviction: a fine of $1,000.
Appeal to Court of Appeal

16 (1) The Attorney-General, or any party to the proceedings before the Board who is aggrieved by the decision of the Board, may appeal to the Court of Appeal for Bermuda against that decision within twenty-one days (or such longer period as the said Court of Appeal may in any particular case for good cause allow) after the Board delivers its decision, by lodging a notice of appeal with the Board upon the grounds that the decision of the Board is—
(a) erroneous in law; or
(b) unreasonable.
(2) Upon hearing any appeal under this section, the Court of Appeal for Bermuda may make such order, including an order for costs, as it thinks fit.
(3) Section 9 of the Court of Appeal Act 1964 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under the provisions of this section.

Payment of compensation

17 (1) Compensation ordered to be paid shall be paid out of the moneys appropriated therefor by the Legislature.
(2) Any reimbursement to the Board under section 13 shall be paid into the Consolidated Fund.

Rules

18 (1) The Chairman of the Board may make rules—
(a) for regulating the practice and procedure of the Board;
(b) providing for the manner in which the service of any document is to be effected for the purposes of this Act or the rules;
(c) prescribing any matter which is necessary or convenient to be prescribed for the carrying out of or giving effect to this Act.
(2) Section 6 of the Statutory Instruments Act 1977 [title 1 item 3] shall not apply to rules made under this section.

**Annual report**

19 (1) The Board shall as soon as practicable after the termination of each calendar year, submit an annual report to the Premier on the activities of the Board.

(2) The Premier shall as soon as practicable after receiving the report of the Board, lay such report before both houses of the Legislature.

**Application of Act**

20 This Act applies in respect of claims for compensation arising from an act or omission that occurs after this Act comes into force.

**Commencement**

21 [omitted]

[this Act was brought into operation on 26 January 1974 by SR&O 5/1974]

**SCHEDULE (Section 2)**

1 The Chairman and members of the Board shall be appointed to hold office for such period as the Governor thinks fit, but within such period shall hold office at the Governor's pleasure.

2 Any member of the Board may at any time resign his appointment by notice in writing addressed to the Governor.

3 The Board may act notwithstanding any vacancy in its membership, and no act of the Board shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.
The Board shall meet as often as may be necessary for it to dispatch its business under this Act.

A minute shall be made of every decision of the Board.

In any matter before the Board the Chairman or person acting as Chairman shall have a deliberate as well as a casting vote.

Where any member of the Board, including the Chairman thereof, is absent from Bermuda, ill, or otherwise unable to discharge the functions of a member of the Board, the Governor may, for the period of the inability, appoint any person he thinks fit to be a member of the Board in the place of the member who is so unable.

Subject to the foregoing provisions of this Schedule and the rules, the Board may determine its quorum and procedure.

In this Schedule "Governor" means the Governor acting on the advice of the Premier.
II - CANADA
Des liens vers les lois de toutes les provinces précèdent la reproduction des législations de l’Ontario et du Québec. Ainsi, le lecteur approchera l’indemnisation au Canada en anglais et en français.

II.A Liens vers les législations des provinces canadiennes

Les liens suivants renvoient aux lois des provinces qui disposent d’un régime d’indemnisation des infractions. Dans la cas du Manitoba, le lien ne conduit pas à la loi applicable mais à une brochure explicative. Afin de donner un exemple de législation canadienne dans les annexes, nous avons inclus, après les liens, le texte intégral de la loi de l’Ontario. Les lois des autres provinces sont généralement beaucoup plus longues.

Alberta
Victims of Crime Act, Chapter V-3 RSA 2000,
http://www.qp.gov.ab.ca/documents/Acts/V03.cfm?frm_isbn=0779725417

British Columbia
Crime Victim assistance Act, SBC 2001, Chapter 38,
http://www.qp.gov.bc.ca/statreg/stat/C/01038_01.htm

Manitoba
Compensation for Victims of Crime Program,

New Brunswick
Vicims Service Act, Chapter V-2.1,
http://www.gnb.ca/0062/regs/v-2-1reg.htm

Nova Scotia
Compensation for Victims of Crime Act, Chapter 83, 1989,
http://www.gov.ns.ca/legislature/legc/

Ontario
Compensation for Victims of Crime Act, R.S.O. 1990, Chapter C.24,
http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c24_e.htm

Prince Edward Island
Victims of Crime Act, Chapter V-3.1,

Quebec
Loi sur l’Indemnisation des Victimes d’Actes Criminels, LRQ, Chapitre I-6,

Saskatchewan
The Victim of Crim Act, Chapter V-6.011, 1995,

II.B Législations de l’Ontario et du Québec

II.B.1 ONTARIO

Compensation for Victims of Crime Act, R.S.O. 1990, Chapter C.24

Amended by: 1999, c. 6, s. 11; 2000, c. 26, Sched. A, s. 4.

Definitions
1. In this Act, “Board” means the Criminal Injuries Compensation Board; (“Commission”)
“child” means a child born within or outside marriage, subject to sections 158 and 159 of the
Child and Family Services Act (which relate to the effect of adoption), and includes a
grandchild of the victim and a person whom the victim has demonstrated a settled intention to
treat as a child of his or her family, and includes a child of the victim conceived before and
born alive after the victim’s death, but does not include a child placed in the home of the
victim as a foster child for consideration by a person having lawful custody; (“enfant”)
“dependant” means,
(a) the spouse of the victim,
(b) a parent of the victim, including a grandparent and a person who has demonstrated a
settled intention to treat the victim as a child of his or her family, but does not include a
person in whose home the victim was placed as a foster child for consideration by a person
having lawful custody,
(c) a child of the victim,
(d) a brother or sister of the victim,
(e) any other relative of the victim, and
(f) the same-sex partner of the victim,
who was in whole or in part dependent on the victim for support at the time of his or her death; (“personne à charge”)
“injury” means actual bodily harm and includes pregnancy and mental or nervous shock and
“injured” has a corresponding meaning; (“lésion”)
“Minister” means the Attorney General; (“ministre”)
“peace officer” means a peace officer as defined in the Criminal Code (Canada); (“agent de la paix”)
“same-sex partner” means a person of the same sex who was living with the deceased victim
in a conjugal relationship outside marriage immediately before the death of the deceased victim; (“partenaire de même sexe”)
“spouse” means,
(a) a person who was married to the deceased victim immediately before the deceased victim’s death,
(b) a person of the opposite sex who was living with the deceased victim in a conjugal
relationship outside marriage immediately before the death of the deceased victim, or
(c) a person whose marriage to the deceased victim was terminated by a decree absolute of
divorce or was declared a nullity and to whom the deceased victim was providing support or
was under a legal obligation to provide support immediately before the death of the deceased
person; (“conjoint”)
“victim” means a person injured or killed in the circumstances set out in section 5.
(“victime”) R.S.O. 1990, c. C.24, s. 1; 1999, c. 6, s. 11 (1, 2).

Administration of Act
2. The Minister is responsible for the administration of this Act. R.S.O. 1990, c. C.24, s. 2.

Criminal Injuries Compensation Board
3. (1) The Criminal Injuries Compensation Board is continued and shall be composed of
such number of members, not fewer than five, as are appointed by the Lieutenant Governor in
Council, and the Lieutenant Governor in Council shall appoint one of such members as chair
and one or more of them as vice-chairs. R.S.O. 1990, c. C.24, s. 3 (1).
Board a corporation
(2) The Board is a corporation to which the Corporations Act does not apply. R.S.O. 1990,
c. C.24, s. 3 (2).
Duties of chair
(3) The chair shall have general supervision and direction over the conduct of the affairs of
the Board, and shall arrange the sittings of the Board and assign members to conduct hearings
as circumstances require. R.S.O. 1990, c. C.24, s. 3 (3).
Substitute chair
(4) The chair may designate a vice-chair who shall exercise the powers and perform the
duties of the chair when the chair is absent or unable to act. R.S.O. 1990, c. C.24, s. 3 (4).

Publishing reports
4. The Board shall prepare and periodically publish a summary of its decisions and the
reasons therefor. R.S.O. 1990, c. C.24, s. 4.

Injuries compensable
5. Where any person is injured or killed by any act or omission in Ontario of any other person
occurring in or resulting from,
(a) the commission of a crime of violence constituting an offence against the Criminal Code
(Canada), including poisoning, arson, criminal negligence and an offence under section 86 of
that Act but not including an offence involving the use or operation of a motor vehicle other than assault by means of a motor vehicle;
(b) lawfully arresting or attempting to arrest an offender or suspected offender for an offence against a person other than the applicant or his or her dependant or against such person’s property, or assisting a peace officer in executing his or her law enforcement duties; or
(c) preventing or attempting to prevent the commission of an offence or suspected offence against a person other than the applicant or his or her dependant or against such person’s property,
the Board, on application therefor, may make an order that it, in its discretion exercised in accordance with this Act, considers proper for the payment of compensation to,
(d) the victim;
(e) a person who is responsible for the support of the victim;
(f) where the death of the victim has resulted, the victim’s dependants or any of them or the person who was responsible for the support of the victim immediately before his or her death or who has, on behalf of the victim or his or her estate and not being required by law to do so, incurred an expense referred to in clause 7 (1) (a) or (e) arising from the act or omission.
R.S.O. 1990, c. C.24, s. 5.

Limitation period for application
6. An application for compensation shall be made within two years after the date of the injury or death but the Board, before or after the expiry of the two-year period, may extend the time for the further period it considers warranted. 2000, c. 26, Sched. A, s. 4 (1).

Compensation
7. (1) Compensation may be awarded for,
(a) expenses actually and reasonably incurred or to be incurred as a result of the victim’s injury or death;
(b) pecuniary loss incurred by the victim as a result of total or partial disability affecting the victim’s capacity for work;
(c) pecuniary loss incurred by dependants as a result of the victim’s death;
(d) pain and suffering;
(e) support of a child born as a result of rape;
(f) other pecuniary loss resulting from the victim’s injury and any expense that, in the opinion of the Board, it is reasonable to incur. R.S.O. 1990, c. C.24, s. 7 (1).
Idem
(2) Where the injury to a person occurred in the circumstances mentioned in clause 5 (b) or (c), the Board may, in addition to the compensation referred to in subsection (1), award compensation to the injured person for any other damage resulting from the injury for which damages may be recovered at common law. R.S.O. 1990, c. C.24, s. 7 (2).

Referral for hearing
8. Where an application is made under section 5, the chair of the Board shall refer the application,
(a) to the Board for a hearing conducted by at least two members of the Board; or
(b) to one member of the Board for a hearing,
as the chair may direct. R.S.O. 1990, c. C.24, s. 8.

Notice of hearing
9. (1) When an application is referred under section 8 the Board shall fix a date, time and place for the hearing of the application and shall, at least 10 days before the hearing date, have notice of the date, time and place served on,
(a) the applicant;
(b) the Minister;
(c) the offender, if it is practicable to serve him or her; and
(d) any other person who appears to the Board to have an interest in the application. 2000, c. 26, Sched. A, s. 4 (2).

Parties
(2) Every person upon whom notice of a hearing is served and any other person added by the Board or member is a party to the proceeding. R.S.O. 1990, c. C.24, s. 9 (2).

Jurisdiction of member
(3) The Board or member shall hold the hearing and make an order under section 5, and, subject to section 10, this Act applies in respect of the hearing and jurisdiction of the member in the same manner as to the Board. R.S.O. 1990, c. C.24, s. 9 (3).

Hearing and review by Board
10. (1) Where an application is heard by a single member of the Board under section 9, the applicant or the Minister may, within fifteen days after service of the decision of the member, require a hearing and review by the Board and the Board shall fix a time and place for the hearing and shall at least ten days before the day fixed cause notice thereof to be served upon the parties to the proceeding. R.S.O. 1990, c. C.24, s. 10 (1).

Adding parties
(2) The Board may add persons as parties to the proceeding during a review under this section. R.S.O. 1990, c. C.24, s. 10 (2).

Quorum
(3) The hearing shall be conducted and the jurisdiction of the Board shall be exercised by at least two members of the Board and the member whose decision is being reviewed shall not sit on the review. R.S.O. 1990, c. C.24, s. 10 (3).

Order of Board
(4) After a hearing and review by the Board under this section, the Board shall make its order in accordance with this Act and its order supersedes the order of a single member made under section 9 that is the subject of the hearing and review. R.S.O. 1990, c. C.24, s. 10 (4).

Conviction as conclusive evidence
11. If a person is convicted of a criminal offence in respect of an act or omission on which a claim under this Act is based, proof of the conviction shall, after the time for an appeal has expired or, if an appeal was taken, it was dismissed and no further appeal is available, be taken as conclusive evidence that the offence has been committed. R.S.O. 1990, c. C.24, s. 11.

Hearings to be open to public; exceptions
12. All hearings shall be held in public except where, in the opinion of the Board, it is necessary to hold a hearing that is closed to the public for the reason that a public hearing,
(a) would be prejudicial to the final disposition of the criminal proceedings against the person whose act or omission caused the injury or death; or
(b) would not be in the interests of the victim, or of the dependants of the victim, of an alleged sexual offence or child abuse. R.S.O. 1990, c. C.24, s. 12.

Publication of evidence
13. (1) The Board may make an order prohibiting the publication of any report or account of the whole or any part of the evidence at a hearing where the Board considers it necessary but in making an order under this subsection the Board shall have regard to the desirability of permitting the public to be informed of the principles and nature of each case. R.S.O. 1990, c. C.24, s. 13 (1).

Offence
(2) Any person who publishes a report or account of any evidence at a hearing contrary to an order of the Board under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1990, c. C.24, s. 13 (2).

Corporations
(3) Where a corporation is convicted of an offence under subsection (2), the maximum penalty that may be imposed upon the corporation is $50,000 and not as provided therein. R.S.O. 1990, c. C.24, s. 13 (3).

Interim compensation
14. (1) If it appears to the Board that the applicant will probably be awarded compensation, the Board may in its discretion order interim payments to the applicant in respect of support, medical expenses and funeral expenses. 2000, c. 26, Sched. A, s. 4 (3).

Amount not recoverable
(2) Interim payments to the applicant are not recoverable from him or her even if compensation is not awarded afterwards. 2000, c. 26, Sched. A, s. 4 (3).

Service
15. (1) Any notice or document required to be served under this Act or the regulations is sufficiently served if delivered personally or sent by registered mail addressed to the person upon whom service is required to be made at the latest address for service appearing on the records of the Board. R.S.O. 1990, c. C.24, s. 15 (1).

Idem
(2) Where any notice or document mentioned in subsection (1) is served by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person to be served did not, acting in good faith, through absence, accident, illness or other cause beyond the person’s control, receive the notice or document or receive it until a later date. R.S.O. 1990, c. C.24, s. 15 (2).

Exception
(3) Despite subsections (1) and (2), the Board may order any other method of service of any notice or document mentioned in subsection (1). R.S.O. 1990, c. C.24, s. 15 (3).

Compensation not dependent on a conviction
16. (1) An order for compensation may be made whether or not any person is prosecuted for or convicted of the offence giving rise to the injury or death but the Board may, on its own initiative or upon the application of the Minister, adjourn its proceedings pending the final determination of a prosecution or intended prosecution. R.S.O. 1990, c. C.24, s. 16 (1).

Capacity for criminal intent
(2) Even though a person for any reason is legally incapable of forming criminal intent, the person shall, for the purposes of this Act, be deemed to have intended an act or omission that caused injury or death for which compensation is payable under this Act. R.S.O. 1990, c. C.24, s. 16 (2).

Considerations of Board
17. (1) In determining whether to make an order for compensation and the amount thereof, the Board shall have regard to all relevant circumstances, including any behaviour of the victim that may have directly or indirectly contributed to his or her injury or death. R.S.O. 1990, c. C.24, s. 17 (1).

Idem

(2) The Board may, in its discretion, refuse to make an order for compensation or order a reduced amount of compensation where it is satisfied that the applicant has refused reasonable co-operation with, or failed to report promptly the offence to, a law enforcement agency. R.S.O. 1990, c. C.24, s. 17 (2).

Idem

(3) In assessing compensation, the Board shall take into consideration any benefit, compensation or indemnity paid or payable to the applicant from any source other than social assistance. R.S.O. 1990, c. C.24, s. 17 (3); 2000, c. 26, Sched. A, s. 4 (4).

Form of compensation

18. The Board may order compensation to be paid in a lump sum or in periodic payments, or both, as the Board thinks fit. R.S.O. 1990, c. C.24, s. 18.

Maximum awards

19. (1) The amount awarded by the Board to be paid in respect of the injury or death of one victim shall not exceed,
(a) in the case of lump sum payments, $25,000; and
(b) in the case of periodic payments, $1,000 per month,
and where both lump sum and periodic payments are awarded, the lump sum shall not exceed half of the maximum therefor prescribed in clause (a). R.S.O. 1990, c. C.24, s. 19 (1).

Maximum total of payments for occurrence

(2) The total amount awarded by the Board to be paid to all applicants in respect of any one occurrence shall not exceed,
(a) in the case of lump sum payments, a total of $150,000; and
(b) in the case of periodic payments, a total of $365,000. R.S.O. 1990, c. C.24, s. 19 (2); 2000, c. 26, Sched. A, s. 4 (5).

Proportional distribution

(3) Where the total amount awarded in respect of any one occurrence exceeds the maximum amount prescribed by subsection (2), the amount prescribed shall be distributed in proportion to the amounts of the awards that would otherwise have been made. R.S.O. 1990, c. C.24, s. 19 (3).

Acts deemed an occurrence

(4) For the purposes of this section, the Board may deem more than one act to be one occurrence where the acts have a common relationship in time and place. R.S.O. 1990, c. C.24, s. 19 (4).

Application of subss. (1) and (2)

(5) Subsection (1) does not apply to amounts awarded in respect of an injury or death incurred under clause 5 (b) or (c) and such amounts shall not be taken into account for the purposes of subsection (2). R.S.O. 1990, c. C.24, s. 19 (5).

Award not subject to garnishment, etc.

20. Any money paid or payable by way of compensation under this Act or held by the Public Trustee or other person under an order made by the Board under subsection 21 (3) is not subject to garnishment, attachment, execution, set-off or any other legal process and the right thereto is not assignable. R.S.O. 1990, c. C.24, s. 20.
Conditions of payment

21. (1) An order for the payment of compensation may be made subject to such terms and conditions as the Board thinks fit,
(a) with respect to the payment, disposition, allotment or apportionment of the compensation; or
(b) as to the holding of the compensation or any part thereof in trust for the victim or the dependants, or any of them, whether as a fund for a class or otherwise. R.S.O. 1990, c. C.24, s. 21 (1).

Idem

(2) Any compensation payable for expenses under section 7 may, in the discretion of the Board, be paid directly to the person entitled thereto. R.S.O. 1990, c. C.24, s. 21 (2).

Payments in case of minor, etc.

(3) If a person entitled to an award under this Act is under the age of eighteen years or is of unsound mind or in the opinion of the Board is incapable of managing his or her own affairs, any amount payable may be paid on his or her behalf to his or her parent, spouse, same-sex partner or committee or to the Public Trustee or may be paid to such other person or applied in such manner as the Board considers in the best interest of such person, and amounts so paid shall be received and administered by the payee for the benefit of the person. R.S.O. 1990, c. C.24, s. 21 (3); 1999, c. 6, s. 11 (3).

Costs

22. Despite section 19, the Board may, with respect to any hearing or other step in a proceeding under this Act, make such order as to costs as it thinks fit. R.S.O. 1990, c. C.24, s. 22.

Appeal

23. Subject to section 25, a decision of the Board is final except that an appeal lies to the Divisional Court from any decision of the Board on any question of law. R.S.O. 1990, c. C.24, s. 23.

Release of exhibits

24. The Board shall, upon request, release documents and things put in evidence at a hearing to the lawful owner or the person entitled to possession thereof within a reasonable time after the matter in issue has been finally determined. R.S.O. 1990, c. C.24, s. 24.

Variation of award

25. (1) The Board may at any time on its own initiative or on the application of the victim, any dependant of the victim, the Minister or the offender, vary an order for payment of compensation in such manner as the Board thinks fit, whether as to terms of the order or by increasing or decreasing the amount ordered to be paid, or otherwise. R.S.O. 1990, c. C.24, s. 25 (1).

Idem

(2) In a proceeding under subsection (1), the Board shall consider,
(a) any new evidence that has become available;
(b) any change of circumstances that has occurred since the making of the order or any variation thereof, as the case may be, or that is likely to occur; and
(c) any other matter the Board considers relevant. R.S.O. 1990, c. C.24, s. 25 (2).

Procedure, etc., on review
(3) This Act, except section 6, applies to a review under subsection (1) in the same manner as to an application for compensation. R.S.O. 1990, c. C.24, s. 25 (3).

Civil proceedings

26. (1) Subject to subsections (2), (4) and (5), nothing in this Act affects the right of any person to recover from any other person by civil proceedings damages in respect of the injury or death. R.S.O. 1990, c. C.24, s. 26 (1).

Subrogation

(2) The Board is subrogated to all the rights of the person to whom payment is made under this Act to recover damages by civil proceedings in respect of the injury or death and may maintain an action in the name of such person against any person against whom such action lies, and any amount recovered by the Board shall be applied,
(a) first, to payment of the costs actually incurred in the action and in levying execution; and
(b) second, to reimbursement of the Board for the value of the compensation awarded, and the balance, if any, shall be paid to the person whose rights were subrogated. R.S.O. 1990, c. C.24, s. 26 (2).

Idem

(3) The Board may elect to limit the amount for which it is subrogated to the amount of compensation that it has paid in respect of the person whose rights were subrogated by limiting its claim to the amount so paid and, where it so elects, may maintain the action in the name of the Minister. R.S.O. 1990, c. C.24, s. 26 (3).

Settlement

(4) Any settlement or release does not bar the rights of the Board under subsection (2) unless the Board has concurred therein. R.S.O. 1990, c. C.24, s. 26 (4).

Civil actions

(5) An applicant for or a person awarded compensation shall forthwith notify the Board of any action brought against the offender who caused the injury or death of the victim. R.S.O. 1990, c. C.24, s. 26 (5).

Right of subrogation

(5.1) The Board is entitled to be reimbursed, out of any amount recovered by the applicant from the offender or any other party, for the amount of compensation awarded to the applicant. 2000, c. 26, Sched. A, s. 4 (6).

Person to assist

(6) A person awarded compensation shall give the Board such information and co-operation as he or she can furnish to assist the Board in maintaining a subrogated action for damages against the offender who caused the injury or death of the victim. R.S.O. 1990, c. C.24, s. 26 (6).

Payment of compensation

27. (1) Compensation ordered to be paid shall be paid out of the money appropriated therefor by the Legislature. R.S.O. 1990, c. C.24, s. 27 (1).

Disposition of money recovered

(2) Any reimbursement to the Board under section 26 shall be paid into the Consolidated Revenue Fund. R.S.O. 1990, c. C.24, s. 27 (2).

Regulations

28. The Lieutenant Governor in Council may make regulations,
(a) prescribing rules of practice and procedure in respect of applications to the Board and proceedings of the Board;
(b) requiring the payment of fees in respect of any matter in the jurisdiction of the Board, including witness fees, and prescribing the amounts thereof;
(c) prescribing forms for the purposes of this Act and providing for their use;
(d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1990, c. C.24, s. 28.

Agreements with Canada

29. The Crown in right of Ontario represented by the Minister, with the approval of the Lieutenant Governor in Council, may make agreements with the Crown in right of Canada respecting the payment by Canada to Ontario of such part of the expenditures required for the purposes of this Act as is agreed upon. R.S.O. 1990, c. C.24, s. 29.
II.B.2 QUEBEC

Loi sur l'indemnisation des victimes d'actes criminels

À jour au 1er août 2004

Interprétation:

1. Dans la présente loi, les mots suivants signifient:

«Commission»;

a) «Commission»: la Commission de la santé et de la sécurité du travail;

«blessure», «blessé»;

b) «blessure»: une lésion corporelle, la grossesse, un choc mental ou nerveux; «blessé» a une signification similaire;

«réclamant».

c) «réclamant»: la victime ou, si elle est tuée, ses personnes à charge, la personne visée dans l'article 6 et les parents visés dans l'article 7.

1971, c. 18, a. 1; 1976, c. 10, a. 1; 1978, c. 57, a. 75, a. 92; 1979, c. 63, a. 329.

Personnes bénéficiant de la loi.

2. Toute victime d'un crime ou, si elle est tuée, ses personnes à charge, peuvent se prévaloir de la présente loi et bénéficier des avantages qui y sont prévus.

non en vigueur

Rechute.

Lorsque la victime subit une rechute après le (indiquer ici la date du jour précédant la date de l'entrée en vigueur du chapitre 54 des lois de 1993) et plus de deux ans après la fin de la dernière période d'incapacité temporaire pour laquelle elle a eu droit à une indemnité ou, si elle n'y a pas eu droit, plus de deux ans après la date de la manifestation de son préjudice, elle est assujettie, à compter de la date de la rechute, aux dispositions de la Loi sur l'aide et l'indemnisation des victimes d'actes criminels (1993, chapitre 54) comme s'il s'agissait d'un nouveau préjudice.

1971, c. 18, a. 2; 1978, c. 57, a. 75; 1993, c. 54, a. 211.
Actes susceptibles d'indemnisation.

3. La victime d'un crime, aux fins de la présente loi, est une personne qui, au Québec, est tuée ou blessée:

a) en raison d'un acte ou d'une omission d'une autre personne et se produisant à l'occasion ou résultant directement de la perpétration d'une infraction dont la description correspond aux actes criminels énoncés à l'annexe de la présente loi;

b) en procédant ou en tentant de procéder, de façon légale, à l'arrestation d'un contrevenant ou d'un présumé contrevenant ou en prêtant assistance à un agent de la paix procédant à une arrestation;

c) en prévenant ou en tentant de prévenir, de façon légale, la perpétration d'une infraction ou de ce que cette personne croit être une infraction, ou en prêtant assistance à un agent de la paix qui prévient ou tente de prévenir la perpétration d'une infraction ou de ce qu'il croit une infraction.

Actes susceptibles d'indemnisation.

Est aussi victime d'un crime, même si elle n'est pas tuée ou blessée, la personne qui subit un préjudice matériel dans les cas des paragraphes b ou c du présent article.

1971, c. 18, a. 3; 1976, c. 10, a. 2; 1999, c. 40, a. 148.

Personnes à charge.

4. Les personnes à charge d'une victime sont, aux fins de la présente loi, les personnes qui au moment du crime ou du préjudice, le cas échéant, étaient à sa charge au sens de la Loi sur les accidents du travail.

1971, c. 18, a. 4; 1976, c. 10, a. 3; 1978, c. 57, a. 76.

Avantages prévus.

5. Les avantages dont peuvent bénéficier, suivant la présente loi, la victime d'un crime ou ses personnes à charge sont les bénéfices prévus aux sections III, IV et V de la Loi sur les accidents du travail (chapitre A-3).

Rente pour enfant né d'une agression sexuelle.

Il peut en outre être accordé à la mère qui pourvoit elle-même à l'entretien d'un enfant né par suite d'une agression sexuelle visée aux articles 271, 272 ou 273 du Code criminel (Lois révisées du Canada (1985), chapitre C-46) ou de rapports sexuels visés à l'article 153 de ce code, pour l'entretien de cet enfant, une rente mensuelle égale à la rente accordée, suivant la Loi sur les accidents du travail, à une veuve ayant un enfant. Toutefois, la rente peut être versée à une personne autre que la mère si, en raison du décès de celle-ci ou pour une autre cause, cette personne assume l'entretien de l'enfant à la satisfaction de la Commission.
Compensation pour préjudice matériel.

La victime ou, si elle est tuée, ses personnes à charge, peuvent être remboursées, jusqu'à concurrence de 1 000 $ pour le préjudice matériel subi par la victime dans les cas des paragraphes b ou c de l'article 3.

1971, c. 18, a. 5; 1976, c. 10, a. 4; 1978, c. 57, a. 75; 1985, c. 6, a. 498; 1999, c. 40, a. 148.

Remboursement de frais funéraires.

6. Malgré l'article 2, la personne qui, sans être une personne à charge, a acquitté les frais funéraires de la victime peut en obtenir le remboursement jusqu'à concurrence de 600 $; si une telle personne a acquitté des frais pour le transport du corps de la victime, elle a droit, dans les cas prévus par les règlements adoptés en vertu de la Loi sur les accidents du travail, d'être remboursée pour la somme qui y est prescrite.

1976, c. 10, a. 5; 1978, c. 57, a. 77.

Indemnité aux parents assurant l'entretien de l'enfant.

7. Nonobstant l'article 2, les parents d'un enfant mineur, soit son père, soit sa mère, qui n'étaient pas des personnes à charge de cet enfant mais qui assuraient en tout ou en partie son entretien, peuvent se prévaloir de la présente loi pour l'obtention d'une indemnité de 2 000 $ si l'enfant est décédé dans des circonstances donnant ouverture à l'application de la présente loi.

Garde physique de l'enfant.

Toutefois, si les parents ne cohabitaient pas lors du décès, seul celui qui avait alors la garde physique de l'enfant peut se prévaloir du présent article.

1976, c. 10, a. 5; 1978, c. 57, a. 75.

Options offertes au réclamant.

8. Le réclamant peut, à son option, réclamer le bénéfice des avantages de la présente loi ou exercer une poursuite civile contre toute personne responsable du préjudice matériel, de la blessure ou de la mort.

Réclamation pour la différence.

Si la somme adjugée et perçue à la suite d'une poursuite civile est inférieure au montant des indemnités que le réclamant aurait pu obtenir en vertu de la présente loi, ce dernier peut bénéficier, pour la différence, des avantages de la présente loi en avisant la Commission et en lui formulant sa réclamation dans l'année suivant la date du jugement.

1971, c. 18, a. 6; 1976, c. 10, a. 6; 1999, c. 40, a. 148.
Subrogation.

9. Dès la production d'une demande, la Commission est de plein droit subrogée aux droits du réclamant jusqu'à concurrence du montant qu'elle pourra être appelée à lui payer et elle peut, en son nom ou aux nom et lieu du réclamant, continuer ou exercer une poursuite civile.

Fonds consolidé.

Un montant ainsi recouvré est versé au fonds consolidé du revenu.

Ententes faute de ratification sans effet.

Si le réclamant choisit de se prévaloir de la présente loi, les ententes ou compromis qui peuvent intervenir entre les parties relativement à la poursuite civile ou au droit à telle poursuite sont sans effet jusqu'à ce qu'ils aient été ratifiés par la Commission; le paiement du montant convenu ou adjugé ne peut être fait que de la manière que la Commission indique.

1971, c. 18, a. 7; 1976, c. 10, a. 7; 1978, c. 57, a. 78; 1999, c. 40, a. 148.

Sauvegarde du droit de recouvrement.

10. Rien, dans la présente loi, n'affecte le droit du réclamant qui a choisi de réclamer le bénéfice des avantages de la présente loi de recouvrer de toute personne responsable du préjudice matériel, de la blessure ou de la mort les montants requis pour équivaloir, avec l'indemnité, à la perte réellement subie.

1971, c. 18, a. 8; 1976, c. 10, a. 7; 1999, c. 40, a. 148.

Délai de demande d'avantages.

11. Toute demande pour bénéficier des avantages de la présente loi, accompagnée d'un avis de l'option prévue par l'article 8, doit être adressée à la Commission dans l'année de la survenance du préjudice matériel ou de la blessure ou de la mort de la victime.

Présomption de renonciation.

Si le réclamant fait défaut de formuler la demande et de donner l'avis d'option dans le délai prescrit, il est présumé avoir renoncé à se prévaloir de la présente loi, sous réserve du deuxième alinéa de l'article 8.

Demande selon règlement.

La demande et l'avis d'option doivent être formulés suivant que le prescrit la Commission par règlement.

1971, c. 18, a. 9; 1974, c. 80, a. 7; 1976, c. 10, a. 8; 1999, c. 40, a. 148.
Interruption de prescription.

12. La demande pour bénéficier des avantages de la présente loi, produite conformément à l'article 11, interrompt la prescription prévue au Code civil jusqu'au jour où la Commission, ou, selon le cas, le Tribunal administratif du Québec rend sa décision sur la demande.

1971, c. 18, a. 10; 1977, c. 7, a. 26; 1997, c. 43, a. 303.

Poursuite n'empêche pas la demande.

13. La demande prévue à l'article 11 peut être formulée, qu'une personne soit ou non poursuivie ou déclarée coupable de l'infraction ayant causé un préjudice matériel, des blessures ou la mort; la Commission peut cependant, de son propre chef ou à la demande du procureur général, ajourner sa décision en attendant le résultat final d'une poursuite en cours ou de toute poursuite qui pourra être intentée ultérieurement.

1971, c. 18, a. 11; 1976, c. 10, a. 9; 1990, c. 4, a. 458; 1999, c. 40, a. 148.

Capacité présumée.

14. Une personne légalement incapable de former un dessein criminel est censée, pour l'application de la présente loi, avoir la capacité de former un tel dessein.

1971, c. 18, a. 12; 1976, c. 10, a. 9.

Dispositions applicables.

15. Les dispositions de la Loi sur les accidents du travail (chapitre A-3), à l'exception du paragraphe 1 de l'article 3, qui ne sont pas incompatibles avec la présente loi s'appliquent, compte tenu des adaptations nécessaires.

non en vigueur

Dispositions applicables.

Les articles 14 à 21, le chapitre VIII du titre II, à l'exclusion des articles 113 et 121, le chapitre IX de ce titre, les articles 140, 143 à 146, 148, 150 à 159 et le titre III de la Loi sur l'aide et l'indemnisation des victimes d'actes criminels (1993, chapitre 54) s'appliquent également, compte tenu des adaptations nécessaires.

Demandes de révision.

Les dispositions du chapitre IX du titre II de cette loi relatives à la décision, à la révision et à l'appel ne s'appliquent pas toutefois aux demandes de révision logées avant le (indiquer ici la date de l'entrée en vigueur du chapitre 54 des lois de 1993). Celles-ci sont instruites,
continuées, jugées et portées en appel conformément aux dispositions qui leur étaient applicables à la date où elles ont été faites.

1971, c. 18, a. 13; 1985, c. 6, a. 499; 1993, c. 54, a. 215.

Paiements temporaires.

16. Sur réception d'une demande, si la Commission est d'avis qu'elle accordera probablement le bénéfice des avantages prévus à la présente loi, elle peut faire des paiements temporaires à la personne qui a fait la demande, pour son entretien et ses frais médicaux, si cette personne est dans le besoin; si la Commission en vient ensuite à la conclusion que la demande ne doit pas être accordée, les sommes payées en vertu du présent article ne sont pas recouvrables.

1971, c. 18, a. 14.

Avis au procureur général.

17. La Commission doit aviser le procureur général de toute demande qu'elle reçoit suivant la présente loi; celui-ci peut présenter ses observations à la Commission et s'opposer à la demande s'il le juge à propos.

1971, c. 18, a. 15; 1997, c. 43, a. 304.

Fixation de l'indemnité.

18. Lorsque l'indemnité en cas d'incapacité totale ou partielle ne peut être déterminée sur la base du salaire de la victime, la Commission l'établit elle-même suivant la méthode qu'elle croit la mieux appropriée aux circonstances.

1971, c. 18, a. 16; 1978, c. 57, a. 79.

Déclaration de culpabilité preuve de l'infraction.

19. Si une personne est déclarée coupable d'un acte criminel après avoir accompli un acte ou fait une omission sur lequel est basée une demande en vertu de la présente loi, la preuve de la déclaration de culpabilité est considérée, après l'expiration du délai pour interjeter appel ou, s'il y a eu appel et que cet appel a été rejeté, ou qu'il ne peut plus y avoir appel, comme une preuve concluante que l'infraction a été commise.

1971, c. 18, a. 17; 1990, c. 4, a. 459.

Cas de non octroi d'avantages.

20. Le bénéfice des avantages prévus à la présente loi ne peut être accordé:
a) si la victime est tuée ou blessée dans des circonstances qui donnent ouverture, en sa faveur ou en faveur de ses personnes à charge, à la Loi sur les accidents du travail et les maladies professionnelles (chapitre A-3.001) ou à une loi autre qu'une loi du Parlement du Québec;

b) si la victime a, par sa faute lourde, contribué à ses blessures ou à sa mort;

c) au réclamant qui a été partie à l'infraction qui a causé la mort de la victime;

d) si la victime est blessée ou tuée par suite d'un acte criminel commis au moyen d'un véhicule-automobile, sauf le cas prévu à l'article 265 du Code criminel (Lois révisées du Canada (1985), chapitre C-46).

Prestations inférieures.

Cependant, dans le cas visé au paragraphe a, si les prestations prévues par une loi autre qu'une loi du Parlement du Québec sont inférieures à celles que prévoit la présente loi, la victime ou une personne à charge, selon le cas, peut en réclamer la différence en vertu de la présente loi.

1971, c. 18, a. 18; 1976, c. 10, a. 10; 1985, c. 6, a. 500.

Option.

20.1. Si, en raison de la blessure subie par une victime d'acte criminel ou du décès qui en résulte, une personne a droit à une indemnité en vertu de la Loi sur l'assurance automobile (chapitre A-25) et aux avantages prévus par la présente loi, cette personne peut, à son option, réclamer une indemnité en vertu de la Loi sur l'assurance automobile ou un avantage en vertu de la présente loi.

Droit aux avantages.

L'indemnisation en vertu de la Loi sur l'assurance automobile fait perdre tout droit aux avantages prévus par la présente loi.

1985, c. 6, a. 501.

Déduction d'indemnité en vertu du chapitre C-61.1.

21. Si un réclamant obtient, pour un cas donnant ouverture à la présente loi, une indemnité en vertu de l'article 79 de la Loi sur la conservation et la mise en valeur de la faune (chapitre C-61.1), l'indemnité doit être déduite de la réclamation adressée à la Commission.

1976, c. 10, a. 11.

Demande réputée valable.

22. Une demande valablement formulée en vertu de la Loi sur les accidents du travail et les maladies professionnelles (chapitre A-3.001) ou en vertu de la Loi visant à favoriser le
civisme (chapitre C-20) et refusée par la Commission au motif qu'elle aurait dû être formulée en vertu de la présente loi est néanmoins réputée avoir été valablement formulée suivant celle-ci.

1977, c. 7, a. 27; 1985, c. 6, a. 502.

Rapport au ministre.

23. Au plus tard le 30 juin de chaque année, la Commission fait rapport au ministre de ses activités dans l'application de la présente loi au cours de l'exercice précédent.

Dépôt devant l'Assemblée nationale.

Le ministre dépose le rapport de la Commission devant l'Assemblée nationale dans les 30 jours qui suivent si l'Assemblée est en session ou, si elle ne siège pas, dans les 30 jours de l'ouverture de la session suivante ou de la reprise de ses travaux.

1971, c. 18, a. 19; 1985, c. 6, a. 502.

Remboursement des dépenses.

24. Le ministre des Finances rembourse à la Commission, sur production d'un état, les dépenses encourues par elle pour l'administration de la présente loi.

1971, c. 18, a. 20.

Dépôts pour indemnités.

25. Le ministre des Finances peut, à la demande de la Commission lorsque celle-ci le croit nécessaire en vue d'assurer le prompt paiement des indemnités et des rentes qu'elle décide d'accorder en vertu de la présente loi, faire de temps à autre à la Commission des dépôts de deniers à même lesquels celle-ci paie les indemnités et les rentes.

1971, c. 18, a. 21.

Paiement sur fonds consolidé.


1971, c. 18, a. 22.

Ententes pour non résidents.
27. La Commission peut, conformément à la loi, conclure avec le gouvernement d'une autre province ou d'un pays étranger ou avec tout organisme d'un tel gouvernement une entente relative au versement des avantages prévus à la présente loi à une victime non domiciliée au Québec.

1971, c. 18, a. 23; 1988, c. 41, a. 91.

Accords pour paiement d'indemnités.

28. Le ministre de la Justice peut, au nom du gouvernement du Québec, conclure avec le gouvernement du Canada ou tout organisme de ce gouvernement, des accords relatifs au paiement par le Canada au Québec de la partie des dépenses nécessaires à l'application de la présente loi qui est déterminée par ces accords.

1971, c. 18, a. 24.

Exécution de la loi.

29. Le ministre de la Justice est responsable de l'exécution de la présente loi.


30. (Cet article a cessé d'avoir effet le 17 avril 1987).

1982, c. 21, a. 1; R.-U., 1982, c. 11, ann. B, ptie I, a. 33.

Les modifications apportées à la Loi sur les accidents du travail (chapitre A-3) par le chapitre 57 des lois de 1978 s'appliquent aux réclamants dont le droit aux avantages offerts par la présente loi naît le ou après le 1er janvier 1979.

Toutefois, les modifications apportées à l'article 34 et à la section V de la Loi sur les accidents du travail par les articles 17 et 31 du chapitre 57 des lois de 1978 s'appliquent aussi aux réclamants dont le droit aux avantages offerts par la présente loi est né avant le 1er janvier 1979. (1978, c. 57, a. 91).
<table>
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<tr>
<th>Article du Code</th>
<th>Description de l'infraction</th>
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<td>participation à une émeute</td>
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<td>le fait de causer intentionnellement des lésions corporelles ou la mort au moyen d'une substance explosive</td>
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<td>279(1)</td>
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279(2) séquestration illégale
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433 crime d’incendie
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437 une perte de vie
437 fausse alerte

1971, c. 18, annexe; 1976, c. 10, a. 12; 1985, c. 6, a. 503.

ANNEXE ABROGATIVE

Conformément à l'article 17 de la Loi sur la refonte des lois (chapitre R-3), le chapitre 18 des lois de 1971, tel qu’en vigueur au 31 décembre 1977, à l’exception des articles 25 et 27, est abrogé à compter de l’entrée en vigueur du chapitre I-6 des Lois refondues.
III – COLOMBIE
LEY 418 DE 1997 (Diciembre 26) por la cual se consagran unos instrumentos para la búsqueda de la convivencia, la eficacia de la justicia y se dictan otras disposiciones.

El Congreso de Colombia

DECRETA:

PRIMERA PARTE

PARTE GENERAL

Artículo 1º. Las normas consagradas en la presente ley tienen por objeto dotar al Estado colombiano de instrumentos eficaces para asegurar la vigencia del Estado Social y Democrático de Derecho y garantizar la plenitud de los derechos y libertades fundamentales reconocidos en la Constitución Política y/o los Tratados Internacionales aprobados por Colombia.

Artículo 2º. En la aplicación de las atribuciones conferidas en la presente ley, se seguirán los criterios de proporcionalidad y necesariedad, mientras que para la determinación de su contenido y alcance, el intérprete deberá estar al tenor literal según el sentido natural y obvio de las palabras, sin que so pretexto de desentrañar su espíritu, puedan usarse facultades no conferidas de manera expresa.

En el ejercicio de las mismas facultades no podrá menoscabarse el núcleo esencial de los derechos fundamentales, ni alterar la distribución de competencias establecidas en la Constitución y las leyes y en su aplicación se tendrá siempre en cuenta el propósito del logro de la convivencia pacífica.

Artículo 3º. El Estado propenderá por el establecimiento de un orden social justo que asegure la convivencia pacífica, la protección de los derechos y libertades de los individuos y adoptará medidas en favor de grupos discriminados o marginados, tendientes a lograr condiciones de igualdad real y a proveer a todos de las mismas oportunidades para su adecuado desenvolvimiento, el de su familia y su grupo social.

Artículo 4º. Las autoridades procurarán que los particulares resuelvan sus diferencias de manera democrática y pacífica, facilitarán la participación de todos en las decisiones que los
afectan y deberán resolver de manera pronta las solicitudes que los ciudadanos les presenten para la satisfacción de sus necesidades y la prevención y eliminación de las perturbaciones a la seguridad, la tranquilidad, la salubridad y el ambiente.

Artículo 5º. Las autoridades garantizarán conforme a la Constitución Política y las leyes de la República, el libre desarrollo, expresión y actuación de los movimientos cívicos, sociales y de las protestas populares.

Artículo 6º. En la parte general del plan nacional de desarrollo y en los que adopten las entidades territoriales se señalarán con precisión las metas, prioridades y políticas macroeconómicas dirigidas a lograr un desarrollo social equitativo y a integrar a las regiones de colonización, o tradicionalmente marginadas o en las que la presencia estatal resulta insuficiente para el cumplimiento de los fines previstos en el artículo 2º de la Constitución Política con el objeto de propender por el logro de la convivencia, dentro de un orden justo, democrático y pacífico.

Artículo 7º. Las mesas directivas de las Comisiones Primeras de Senado y Cámara, conformarán una comisión integrada por seis (6) Senadores y seis (6) Representantes, en la que tendrán asiento todos los partidos y movimientos políticos representados en el Congreso, encargada de efectuar el seguimiento de la aplicación de esta ley, recibir las quejas que se susciten con ocasión de la misma y revisar los informes que se soliciten al Gobierno Nacional.

El Gobierno deberá presentar informes dentro de los primeros diez (10) días de cada período legislativo a las comisiones de que trata este artículo, referidos a la utilización de las atribuciones que se le confieren mediante la presente ley, así como sobre las medidas tendientes a mejorar las condiciones económicas de las zonas y grupos marginados de la población colombiana.
TÍTULO II

ATENCION A LAS VICTIMAS DE HECHOS VIOLENTOS QUE SE SUSCITEN EN EL MARCO DEL CONFLICTO ARMADO INTERNO

CAPITULO 1

Disposiciones generales

Artículo 15. Para los efectos de esta ley se entiende por víctimas, aquellas personas de la población civil que sufren perjuicios en su vida, grave deterioro en su integridad personal y/o bienes, por razón de actos que se susciten en el marco del conflicto armado interno, tales como atentados terroristas, combates, ataques y masacres entre otros.

Parágrafo. En caso de duda, el representante legal de la Red de Solidaridad Social de la Presidencia de la República determinará si son o no aplicables las medidas a que se refiere el presente título.

Artículo 16. En desarrollo del principio de solidaridad social, y dado el daño especial sufrido por las víctimas, éstas recibirán asistencia humanitaria, entendiendo por tal la ayuda indispensable para sufragar los requerimientos necesarios a fin de satisfacer los derechos constitucionales de quienes hayan sido menoscabados por actos que se susciten en el marco del conflicto armado interno. Dicha asistencia será prestada por la Red de Solidaridad Social, en desarrollo de su objeto constitucional, y por las demás entidades públicas dentro del marco de sus competencias, siempre que la solicitud se eleve dentro del año siguiente a la ocurrencia del hecho.

Artículo 17. El Instituto Colombiano de Bienestar Familiar, en desarrollo de sus programas preventivos y de protección, prestará asistencia prioritaria a los menores de edad que hayan quedado sin familia o que teniéndola, ésta no se encuentre en condiciones de cuidarlos por razón de los actos a que se refiere el presente título. El Gobierno Nacional apropiará los recursos presupuestales al Instituto Colombiano de Bienestar Familiar para el desarrollo de este programa.
Parágrafo. Gozarán de especial protección y serán titulares de todos los beneficios contemplados en este título, los menores que en cualquier condición participen en el conflicto armado interno.

Artículo 18. Cuando quiera que ocurra alguno de los eventos contemplados en el artículo 15 de la presente ley, el Comité Local para la Prevención y Atención de Desastres o a falta de de este, la oficina que hiciere sus veces, o la Personería Municipal, deberá elaborar el censo de los damnificados, que contenga como mínimo la identificación de la víctima, ubicación y descripción del hecho y en un término no mayor de 8 días hábiles desde la ocurrencia del mismo lo enviará a la Red de Solidaridad Social.

Cuando la Red de Solidaridad Social establezca que alguna de las personas registradas en el respectivo censo, no tenga la calidad de víctima y haya recibido la asistencia prevista en el presente título, además de las sanciones penales a que haya lugar, perderá todos los derechos que le otorga el presente título. También deberá reembolsar las sumas de dinero y los bienes que se le hayan entregado. Si se trata de créditos, el establecimiento que lo haya otorgado podrá mantenerlo, reajustando las condiciones a la tasa de mercado.

CAPITULO 2

Asistencia en materia de salud

Artículo 19. Las instituciones hospitalarias, públicas o privadas del territorio nacional, que prestan servicios de salud, tienen la obligación de atender de manera inmediata a las víctimas de los atentados terroristas que lo requieran, con independencia de la capacidad socio-económica de los demandantes de estos servicios y sin exigir condición previa para su admisión.

Artículo 20. Los servicios de asistencia médica, quirúrgica y hospitalaria consistirán en:

1. Hospitalización.
2. Material médico quirúrgico, de osteosíntesis y órtesis, conforme con los criterios técnicos
que fije el Ministerio de Salud.

3. Medicamentos.

4. Honorarios médicos.

5. Servicios de apoyo tales como bancos de sangre, laboratorios, imágenes diagnósticas.

6. Transporte.

7. Servicios de rehabilitación física, por el tiempo y conforme a los criterios técnicos que fije el Ministerio de Salud.

8. Servicios de rehabilitación mental en los casos en que como consecuencia del atentado terrorista la persona quede gravemente discapacitada para desarrollar una vida normal de acuerdo con su situación, y por el tiempo y conforme con los criterios técnicos que fije el Ministerio de Salud.

Artículo 21. El reconocimiento y pago de los servicios a que se refiere el artículo anterior, se hará por conducto del Ministerio de Salud con cargo a los recursos del Fondo de Solidaridad y Garantía en Salud, Fosyga.

Artículo 22. Los afiliados a entidades de Previsión o Seguridad Social, tales como Caja de Previsión Social, Cajas de Compensación Familiar o el Instituto de Seguros Sociales, que resultaren víctimas de los atentados terroristas a que hace referencia el presente título, serán remitidos, una vez se les preste la atención de urgencias y se logre su estabilización, a las instituciones hospitalarias que definan dichas entidades para que allí se continúe el tratamiento requerido. Los costos resultantes del tratamiento inicial de urgencias, así como los costos de tratamiento posterior, serán asumidos por las correspondientes instituciones de Previsión y Seguridad Social.

Parágrafo. Aquellas personas que se encuentren en la situación prevista en la presente norma y que no se encontraren afiliados a alguna entidad de previsión o seguridad social, accederán
a los beneficios para desmovilizados contemplados en el artículo 158 de la Ley 100 de 1991, mientras no se afilien al régimen contributivo en virtud de relación de contrato de trabajo.

Artículo 23. Los gastos que demande la atención de las víctimas amparadas con pólizas de compañías de seguros de salud o contratos con empresas de medicina prepagada, serán cubiertos por el Estado de conformidad con lo establecido en el presente título, en aquella parte del paquete de servicios definidos en el artículo 20 que no estén cubiertos por el respectivo seguro o contrato o que lo estén en forma insuficiente.

Artículo 24. El Ministerio de Salud ejercerá la evaluación y control sobre los aspectos relativos a:

1. Número de pacientes atendidos.
2. Acciones médico-quirúrgicas.
3. Suministros e insumos hospitalarios gastados.
4. Causa de egreso y pronóstico.
5. Condición del paciente frente al ente hospitalario.
6. Los demás factores que constituyen costos del servicio, de conformidad con lo dispuesto en el artículo 20 de la presente ley.

Artículo 25. El incumplimiento de lo dispuesto en este capítulo, será causal de sanción por las autoridades competentes en desarrollo de sus funciones de inspección y vigilancia, de conformidad con lo previsto en el artículo 49 de la Ley 10 de 1990, y demás normas concordantes.

CAPITULO 3

Asistencia en materia de vivienda
Artículo 26. Los hogares damnificados por los actos contemplados en el artículo 15 de la presente ley, podrán acceder al Subsidio Familiar de Vivienda de conformidad con la normatividad vigente que regula la materia, sin que para tal efecto se tome en cuenta el valor de la solución de vivienda cuya adquisición o recuperación sea objeto de financiación.

La Junta Directiva del Instituto Nacional de Vivienda de Interés Social y Reforma Urbana, Inurbe, ejercerá las funciones que le otorga la normatividad vigente que regula la materia con relación al subsidio familiar de vivienda de que trata este capítulo, teniendo en cuenta el deber constitucional de proteger a las personas que se encuentren en situación de debilidad manifiesta y el principio de solidaridad, razón por la cual deberá dar prioridad a las solicitudes que presenten los hogares que hayan sido víctimas.

En aquellos casos en que por razón de las circunstancias económicas de las víctimas, éstas no puedan utilizar el valor del subsidio para financiar la adquisición o recuperación de una solución de vivienda, el monto del mismo podrá destinarse a financiar, en todo o en parte, el valor del canon de arrendamiento de una solución de vivienda.

Artículo 27. Para los efectos de este capítulo, se entenderá por "Hogares Damnificados" aquellos definidos de conformidad con la normatividad vigente que regula la materia, sin consideración a su expresión en salarios mínimos legales mensuales, que por causa de actos que se susciten en el marco del conflicto armado interno, pierdan su solución de vivienda total o parcialmente, de tal manera que no ofrezca las condiciones mínimas de habitabilidad o estabilidad en las estructuras. Igualmente, tendrán tal carácter los hogares cuyos miembros, a la fecha de ocurrencia del acto damnificatorio, no fuesen propietarios de una solución de vivienda y que por razón de dichos actos hubiesen perdido al miembro del hogar de quien derivaban su sustento.

Artículo 28. Los postulantes al Subsidio Familiar de Vivienda en las condiciones de que trata este capítulo, podrán acogerse a cualesquiera de los planes declarados elegibles por el Instituto Nacional de Vivienda de Interés Social y Reforma Urbana, Inurbe.

Artículo 29. La cuantía máxima del Subsidio Familiar de Vivienda de que trata este capítulo será el equivalente a quinientas (500) Unidades de Poder Adquisitivo Constante, UPAC.
Artículo 30. Las postulaciones al Subsidio Familiar de Vivienda de que trata este capítulo, serán atendidas por el Instituto Nacional de Vivienda de Interés Social y Reforma Urbana, Inurbe, con cargo a los recursos asignados por el Gobierno Nacional para el Subsidio de Vivienda de Interés Social. Las solicitudes respectivas serán decididas dentro de los diez (10) días hábiles siguientes a su presentación.

Artículo 31. Se aplicará al Subsidio Familiar de Vivienda de que trata este capítulo, lo establecido en la normatividad vigente que regula la materia, en cuanto no sea contraria a lo que aquí se dispone.

CAPÍTULO 4

Asistencia en materia de crédito

Artículo 32. El Instituto de Fomento Industrial, IFI, redescontará los préstamos que otorguen los distintos establecimientos de crédito a las víctimas de los actos a que se refiere el artículo 15 de esta ley, para financiar la reposición o reparación de vehículos, maquinaria, equipo, equipamiento, muebles y enseres, capital de trabajo y reparación o reconstrucción de inmuebles destinados a locales comerciales.

Así mismo, en desarrollo del principio de solidaridad, el Banco Central Hipotecario, BCH, otorgará directamente a dichos damnificados, préstamos para financiar la reconstrucción o reparación de inmuebles.

Parágrafo. No obstante las líneas de crédito para reposición o reparación de vehículos, el Gobierno Nacional mantendrá el seguro de protección de vehículos de transporte público, urbano e intermunicipal, a fin de asegurarlos contra los actos a que se refiere el artículo 15 de la presente ley.

Artículo 33. En desarrollo de sus funciones, la Red de Solidaridad Social, contribuirá para la realización de las operaciones contempladas en el artículo anterior, de la siguiente manera:

a) La diferencia entre la tasa a la que ordinariamente capta el Instituto de Fomento Industrial -
IFI- y la tasa a la que se haga el redescuento de los créditos que otorguen los establecimientos de crédito, será cubierta con cargo a los recursos de la Red de Solidaridad Social, conforme a los términos que para el efecto se estipulen en el convenio que se suscriba entre ésta y el Instituto de Fomento Industrial -IFI-;

b) La diferencia entre la tasa de captación del Banco Central Hipotecario -BCH- y la tasa a la que efectivamente se otorgue el crédito será cubierta, incrementada en tres (3) puntos, con cargo a los recursos de la Red de Solidaridad Social, según los términos estipulados en el convenio que para dicho efecto se suscriba entre ésta y el Banco Central Hipotecario -BCH-

En los convenios a que hace referencia este artículo, se precisarán las condiciones y montos que podrán tener tanto los créditos redescontables por el Instituto de Fomento Industrial, como aquellos que otorgue el Banco Central Hipotecario, en desarrollo del presente capítulo, para lo cual se tendrá en cuenta el principio de solidaridad y el deber de proteger a las personas que se encuentren en circunstancias de debilidad manifiesta.

Parágrafo. En los convenios a que hace referencia este artículo se precisarán las condiciones y montos que podrán tener tanto los créditos, redescontables por el Instituto de Fomento Industrial, como aquellos que otorgue el BCH, en desarrollo del presente capítulo, para lo cual se tendrá en cuenta el principio de solidaridad y el deber de proteger a las personas que se encuentren en circunstancia de debilidad manifiesta. En ningún caso estos créditos podrán exceder el 0.5 de interés mensual.

Artículo 34. En desarrollo del principio de solidaridad, el Fondo para el Financiamiento del Sector Agropecuario, Finagro, hará el redescuento de las operaciones que realicen las entidades pertenecientes al Sistema Nacional de Crédito Agropecuario a las víctimas de los hechos violentos de que trata el artículo 15 de la presente ley para financiar créditos de capital de trabajo e inversión.

Artículo 35. En desarrollo de sus funciones, la Red de Solidaridad Social de la Presidencia de la República contribuirá para la realización de las operaciones contempladas en el artículo anterior de la siguiente manera:

La diferencia entre la tasa a la que ordinariamente capta el Fondo para el Financiamiento del
Sector Agropecuario -Finagro- y la tasa a la que se haga el redescuento de los créditos que otorguen los establecimientos de crédito será cubierta con cargo a los recursos de la Red de Solidaridad Social, conforme a los términos que para el efecto se estipulen en el convenio que se suscriba entre el Fondo para el Financiamiento del Sector Agropecuario -Finagro- y la Red de Solidaridad Social.

En el convenio a que hace referencia este título, se precisarán las condiciones y montos que podrán tener los créditos redescubiertos por el Fondo para el Financiamiento del Sector Agropecuario, en desarrollo del presente capítulo, para lo cual se tendrá en cuenta el principio de solidaridad y el deber de proteger a las personas que se encuentren en circunstancias de debilidad manifiesta.

Artículo 36. Los establecimientos de crédito diseñarán los procedimientos adecuados para estudiar las solicitudes de crédito a que se refiere el presente capítulo de manera prioritaria, en el menor tiempo posible y exigiendo solamente los documentos estrictamente necesarios para el efecto.

La Superintendencia Bancaria velará por la aplicación de lo dispuesto en el presente artículo.

Artículo 37. La Red de Solidaridad Social centralizará la información sobre las personas que se beneficiaren de los créditos aquí establecidos, con los datos que para el efecto les deben proporcionar los establecimientos de crédito que otorguen los diversos préstamos, con el propósito de que las entidades financieras y las autoridades públicas puedan contar con la información exacta sobre las personas que se hayan beneficiado de determinada línea de crédito, elaborando para ello las respectivas listas.

Artículo 38. En aquellos eventos en que las víctimas de los actos a que se refiere el artículo 15 de esta ley, se encontraren en imposibilidad de ofrecer una garantía suficiente de acuerdo con las sanas prácticas del mercado financiero, para responder por los créditos previstos en los artículos anteriores, dichos créditos deberán ser garantizados por el "Fondo Nacional de Garantías Financieras, Fogafin".

Parágrafo. Quienes pretendan ser beneficiarios de la garantía establecida en este artículo deberán acreditar su condición de damnificados y su imposibilidad de ofrecer garantías ante la
Red de Solidaridad Social, la cual expedirá las respectivas certificaciones.

Artículo 39. El establecimiento de crédito respectivo podrá hacer efectivo ante el Fondo Nacional de Garantías Financieras "Fogafin", el certificado de garantía correspondiente, para que se le reembolse el saldo a su favor, siempre y cuando además de cumplir las demás condiciones que se hayan pactado, acredite al Fondo que adelantó infructuosamente las actuaciones necesarias para la recuperación de las sumas adeudadas.

Artículo 40. En aquellos eventos en que las víctimas de los hechos violentos a que se refiere el artículo 15 de la presente ley, se encontraren en imposibilidad de ofrecer una garantía suficiente de acuerdo con las sanas prácticas del mercado financiero, para responder por los créditos previstos en los artículos anteriores, dichos créditos podrán ser garantizados por el Fondo Agropecuario de Garantías, FAG.

Para efectos de lo dispuesto en el inciso anterior, la Red de Solidaridad Social podrá celebrar un contrato de cooperación con el Fondo Agropecuario de Garantías, FAG, cuya función será garantizar el pago de los créditos otorgados en desarrollo del presente capítulo por los establecimientos de crédito, a través de las líneas de redescuentos del Fondo para el Financiamiento del Sector Agropecuario, Finagro, a las víctimas de los hechos violentos de que trata el artículo 15, en los casos previstos en el inciso primero del presente artículo.

El Fondo Agropecuario de Garantías, FAG, expedirá el certificado de garantía en un lapso que no podrá exceder de tres (3) días hábiles, contados a partir de la fecha en que se haya presentado la solicitud respectiva al FAG y se haya acreditado el cumplimiento de los requisitos correspondientes.

Parágrafo. Quienes pretendan ser beneficiarios de la garantía establecida en este artículo, deberán acreditar su condición de damnificados y su imposibilidad de ofrecer garantías ante la Red de Solidaridad Social, la cual expedirá certificaciones respectivas.

Artículo 41. El establecimiento de crédito respectivo podrá hacer efectivo ante el Fondo Agropecuario de Garantías -FAG-, el certificado de garantía correspondiente, para que se le reembolse el saldo a su favor, siempre y cuando además de cumplir las demás condiciones que se hayan pactado, acredite a la Red de Solidaridad Social que adelantó infructuosamente
las actuaciones necesarias para la recuperación de las sumas adeudadas, de acuerdo con lo que se señale en el contrato entre la Red de Solidaridad Social y el Fondo en mención.

CAPITULO 5

Asistencia en materia educativa

Artículo 42. Los beneficios contemplados en los Decretos 2231 de 1989 y 48 de 1990, serán concedidos también a las víctimas de los actos contemplados en el artículo 15 de la presente ley, caso en el cual corresponderá a la Red de Solidaridad Social, expedir la certificación correspondiente.

CAPITULO 6

Asistencia con la participación de entidades sin ánimo de lucro

Artículo 43. Sin perjuicio de lo dispuesto en los artículos anteriores, la Red de Solidaridad Social en desarrollo de su objeto y con sujeción a lo dispuesto por el artículo 355 de la Constitución Política y en las normas que reglamenten la materia, podrá celebrar contratos con personas jurídicas sin ánimo de lucro de reconocida idoneidad, con el fin de impulsar los programas y actividades de dichas entidades dirigidos a apoyar a las víctimas de los actos a que se refiere el artículo 15 de esta ley. Dichos programas de apoyo podrán incluir la asistencia económica, técnica y administrativa a quienes por su situación económica no puedan acceder a las líneas ordinarias de crédito del sistema financiero.

CAPITULO 7

Otras disposiciones

Artículo 44. Las actuaciones que se realicen para la constitución y registro de las garantías que se otorguen para amparar los créditos a que se refiere el capítulo 4 de este título, deberán adelantarse en un término no mayor de dos (2) días hábiles, contados a partir de la fecha de la solicitud, y estarán exentas de derechos notariales, registrales y del pago de los impuestos nacionales actualmente vigentes para tales trámites. Igualmente estarán exentos de impuestos
nacionales los documentos que deban expedirse para efectos de los créditos que se otorguen en desarrollo del mismo.

Para efectos de acreditar que la respectiva actuación tiene por objeto amparar los créditos a que se refiere el capítulo 4 de este título, bastará la certificación del establecimiento de crédito beneficiario de la garantía, donde identifique el préstamo como crédito de solidaridad.

Artículo 45. Las Asambleas Departamentales y los Concejos Distritales y Municipales podrán establecer dentro de la órbita de su competencia exenciones de los impuestos de beneficencia, predial, industria y comercio, rodamiento de vehículos, registro y anotación y de aquellos otros que consideren del caso, en beneficio de las víctimas de los actos a que se refiere el artículo 15 de esta ley.

Artículo 46. En cumplimiento de su objeto y en desarrollo de sus facultades, la Red de Solidaridad Social atenderá gratuitamente y sin intermediarios a las víctimas de actos a que se refiere el artículo 15, en los términos previstos en los artículos 20 y 23 de la presente ley, los gastos funerarios de las mismas, para proteger a los habitantes contra las consecuencias de actos que se susciten en el marco del conflicto armado interno, subsidiará las líneas de crédito a que se refiere el presente título, de conformidad con las reglamentaciones que adopte su Junta Directiva. Igualmente podrá cofinanciar los programas que adelanten entidades sin ánimo de lucro, celebrando para este último efecto los contratos a que se refiere el artículo 355 de la Constitución Política y las normas que lo reglamentan, todo en función de la protección y ayuda a los damnificados.

Las víctimas que sufrieren una pérdida del 50% o más de su capacidad laboral calificada con base en el Manual Unico para la calificación de invalidez expedido por el Gobierno Nacional, tendrán derecho a una pensión mínima legal vigente, de acuerdo con lo contemplado en el Régimen General de Pensiones de la Ley 100 de 1993, siempre y cuando carezcan de otras posibilidades pensionales y de atención en salud, la que será cubierta por el Fondo de Solidaridad Pensional a que se refiere el artículo 25 de la Ley 100 de 1993.

Los pagos que deban hacerse por razón de los seguros que se contraten se harán con cargo a los recursos de la Red de Solidaridad Social.
Artículo 47. La asistencia que la Nación o las entidades públicas presten a las víctimas de actos que se susciten en el marco del conflicto armado interno, en desarrollo de lo dispuesto en el presente título y de los programas de atención que al efecto se establezcan, no implica reconocimiento por parte de la Nación o de la respectiva entidad de responsabilidad alguna por los perjuicios causados por tales actos.

Artículo 48. Para efectos de atender a las víctimas de los hechos violentos de que trata el artículo 15 de esta ley en los términos del presente título, se asignará anualmente un rubro específico en el Presupuesto General de la Nación.

Artículo 49. Quienes sufran perjuicios por causa de homicidios u otros atentados o agresiones contra la vida, la integridad física, la seguridad o la libertad personales, cometidos por móviles ideológicos o políticos, o sean objetos de amenazas referentes a la comisión de atentados o agresiones de esta naturaleza, serán beneficiados por una ayuda humanitaria de emergencia, tendiente a mitigar o a impedir la agravación o la extensión de los efectos de los mismos.

La mencionada ayuda humanitaria será otorgada por la Red de Solidaridad Social con cargo al monto del rubro específico que anualmente se asignará al efecto en el Presupuesto General de la Nación y hasta por el importe total de dicho rubro.
IV ÉTATS-UNIS
IV.A DOCUMENTATION FÉDÉRALE

La législation fédérale relative au financement des programmes d’indemnisation des victimes pose des conditions qui garantissent l’homogénéité de l’aide aux victimes :

Title 42 USC, Chapter 112

Sec. 10601. - Crime Victims Fund

(a) Establishment There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the "Fund"). (b) Fines deposited in Fund; penalties; forfeited appearance bonds Except as limited by subsection (c) of this section, there shall be deposited in the Fund - (1) all fines that are collected from persons convicted of offenses against the United States except - (A) fines available for use by the Secretary of the Treasury pursuant to - (i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and (ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and (B) fines to be paid into - (i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.); (ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 and for the purposes set forth in section 404(a)(8) of title 39; (iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and (iv) county public school funds pursuant to section 3613 of title 18; (2) penalty assessments collected under section 3013 of title 18; (FOOTNOTE 1) [1] See References in Text note below. (3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of title 18; and (4) any money ordered to be paid into the Fund under section 3671(c)(2) of title 18. [1] (c) Retention of sums in Fund; availability for expenditure without fiscal year limitation Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation. (d) Availability for judicial branch administrative costs; grant program percentages The Fund shall be available as follows: (1) Repealed. Pub. L. 105-119, title I, Sec. 109(a)(1), Nov. 26, 1997, 111 Stat. 2457. (2) The first $10,000,000 deposited in the Fund shall be available for grants under section 10603a of this title. (3) Of the sums remaining in the Fund in any particular fiscal year after compliance with paragraph (2), such sums as may be necessary shall be available for the United States Attorneys Offices to improve services for the benefit of crime victims in the Federal criminal justice system. (4) Of the remaining amount
deposited in the Fund in a particular fiscal year - (A) 48.5 percent shall be available for grants under section 10602 of this title; (B) 48.5 percent shall be available for grants under section 10603(a) of this title; and (C) 3 percent shall be available for grants under section 10603(c) of this title. (5) (A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 10602(a)(1) of this title, the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $50,000,000. (B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 10602 and 10603 of this title in years in which supplemental grants are needed.
(e) Amounts awarded and unspent Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 3 succeeding fiscal years, at the end of which period, any remaining unobligated sums in excess of $500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than $500,000 shall be returned to the Fund. (f) "Offenses against the United States" as excluding As used in this section, the term "offenses against the United States" does not include - (1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.); (2) an offense against the laws of the District of Columbia; and (3) an offense triable by an Indian tribal court or Court of Indian Offenses. (g) Grants for Indian tribes; child abuse cases (1) The Attorney General, acting through the Director, shall use 15 percent of the funds available under subsection (d)(2) of this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve - (A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and (B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse. (2) As used in this subsection, the term "tribe" [2] has the meaning given that term in section 450b(b)

Sec. 10602. - Crime victim compensation

(a) Authority of Director; grants

(1)

Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as
provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

(2)
If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year, other than amounts awarded for property damage.

(3)
Not more than 5 percent of a grant made under this section may be used for the administration of the State crime victim compensation program receiving the grant.

(b) Eligible crime victim compensation programs
A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if -

(1)
such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for -

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;
(B) loss of wages attributable to a physical injury resulting from a compensable crime; and
(C) funeral expenses attributable to a death resulting from a compensable crime;

(2)
such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3)
such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4)
such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;
such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

such program provides compensation to residents of the State who are victims of crimes occurring outside the State if -

(A) the crimes would be compensable crimes had they occurred inside that State; and

(B) the places the crimes occurred in are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or are States not having eligible crime victim compensation programs;

such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender;

such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense; and

such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) Exclusion from income for purposes of means tests

Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant.
until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.

(d) Definitions

As used in this section -

(1) the term "property damage" does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;

(2) the term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses or other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18, crimes involving terrorism, driving while intoxicated, and domestic violence; and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(e) Relationship to certain Federal programs

Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay, - [1]

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program

IV.B DOCUMENTATION DES ÉTATS

Cette section comporte plusieurs liens correspondant aux législations des états ainsi que la reproduction de la loi applicable en Pennsylvanie.
IV.B.1 LIENS VERS LES LÉGISLATIONS DES ÉTATS


Nous avons sélectionné quelques liens permettant d’accéder directement aux programmes de quelques états. Nous y ajoutons la partie de la loi pennsylvanienne sur les victimes relative à l’indemnisation publique.

CONNECTICUT

http://www.jud.state.ct.us/faq/crime.html#losses

DELAWARE

http://courts.state.de.us/vccb/

NEW HAMPSHIRE

http://www.doj.nh.gov/victim/compensation.html

NEW JERSEY

http://www.state.nj.us/victims/

OHIO
IV.B.2 LOI APPLICABLE EN PENNSYLVANIE

Nous avons reproduit la partie du *Crime Victims Act* de qui concerne l’indemnisation publique des victimes d’infractions.

**Crime Victims Act**

**TITLE 18**  
**CRIMES AND OFFENSES**  
**CHAPTER 2**  
**CRIME VICTIMS ACT**  
**CHAPTER 1. PRELIMINARY PROVISIONS**
§ 11.101. Short title
This act shall be known and may be cited as the Crime Victims Act.

§ 11.102. Legislative intent
The General Assembly finds and declares as follows:
(1) In recognition of the civic and moral duty of victims of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies and in further recognition of the continuing importance of victim cooperation to State and local law enforcement efforts and the general effectiveness and wellbeing of the criminal justice system of this Commonwealth, all victims of crime are to be treated with dignity, respect, courtesy and sensitivity.
(2) The rights extended to victims of crime in Chapter 2 are to be honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.

§ 11.103. Definitions
The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:
"Adult." Any of the following:
(1) An individual charged with a crime who is 18 years of age or older.
(2) An individual who is subject to criminal court jurisdiction following the transfer of a case to criminal proceedings.
(3) An individual who is subject to criminal court jurisdiction after having been charged with a crime excluded from the definition of "delinquent act" pursuant to 42 Pa.C.S. § 6302 "delinquent act" (2)(i), (ii), (iii) or (v) (relating to definitions).
"Board." The Pennsylvania Board of Probation and Parole.
"Claimant." The person filing a claim under Chapter 7.
"Committee." The Victims' Services Advisory Committee established in section 321.
"Crime." An act which was committed:
(1) In this Commonwealth by a person, including a juvenile, without regard to legal exemption or defense which would constitute a crime under:
   (i) the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act;
   (ii) 18 Pa.C.S. (relating to crimes and offenses), 30 Pa.C.S. § 5502 (relating to operating watercraft under influence of alcohol or controlled substance) or 5502.1 (relating to homicide by watercraft while operating under influence) and 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance), 3732 (relating to homicide by vehicle), 3735 (relating to homicide by vehicle while driving under influence), 3735.1 (relating to aggravated assault by vehicle while driving under the influence) or 3742 (relating to accidents involving death or personal injury); or
   (iii) the laws of the United States.
(2) Against a resident of this Commonwealth which would be a crime under paragraph (1) but for its occurrence in a location other than this Commonwealth.
(3) Against a resident of this Commonwealth which is an act of international terrorism.
"Department." The Department of Corrections of the Commonwealth.
"Direct victim." An individual against whom a crime has been committed or attempted and who as a direct result of the criminal act or attempt suffers physical or mental injury, death or the loss of earnings under this act. The term shall not include the alleged offender. The term includes a resident of this Commonwealth against whom an act has been committed or attempted which otherwise would constitute a crime as defined in this act but for its occurrence in a location other than this Commonwealth and for which the individual would otherwise be compensated by the crime victim compensation program of the location where the act occurred but for the ineligibility of such program under the provisions of the Victims of Crime Act of 1984 (Public Law 98-473, 42 U.S.C. § 10601 et seq.).
"Dispositional proceeding." A proceeding which occurs in open common pleas court which potentially could dispose of the case. The term includes Accelerated Rehabilitative Disposition, pleas, trial and sentence.
"Diversionary program." A program which is used to divert the defendant to an alternative form of

"Family." When used in reference to an individual:
(1) anyone related to that individual within the third degree of consanguinity or affinity;
(2) anyone maintaining a common-law relationship with that individual; or
(3) anyone residing in the same household with that individual.

"Injury." Includes physical or mental damages incurred as a direct result of the crime and aggravation of existing injuries if additional losses can be attributed to the direct result of the crime.

"International terrorism." Activities which meet all of the following:
(1) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or of any state.
(2) Appear to be intended:
   (i) to intimidate or coerce a civilian population;
   (ii) to influence the policy of a government by intimidation or coercion; or
   (iii) to affect the conduct of a government by assassination or kidnapping.
(3) Occur primarily outside of the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce or the locale in which their perpetrators operate or seek asylum.

"Intervenor." An individual who goes to the aid of another and suffers physical or mental injury or death as a direct result of acting not recklessly to prevent the commission of a crime, to lawfully apprehend a person reasonably suspected of having committed such crime or to aid the victim of such crime.

"Juvenile." An individual who is alleged or has been determined to be a "delinquent child" as defined in 42 Pa.C.S. § 6302 (relating to definitions).

"Law enforcement agency." The Pennsylvania State Police and a local law enforcement agency.

"Local correctional facility." A jail, prison or detention facility operated by a county or jointly by more than one county and used for the confinement of individuals for safe custody. The term does not include any facility used for the detention or confinement of juveniles.

"Local law enforcement agency." A police department of a city, borough, incorporated town or township.

"Loss of earnings." Includes the loss of the cash equivalent of one month's worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the victim's income and the victim is deprived of money as a direct result of a crime.

"Office." The Office of Victim Advocate established in section 302.

"Office of Victims' Services." The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

"Out-of-pocket loss." The term includes the following losses which shall be reimbursed at a rate set by the Office of Victims' Services:
(1) expenses for unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, non medical remedial care and treatment as approved by the Office of Victims' Services or other services;
(2) expenses for counseling, prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses or dental devices reasonably necessary as a result of the crime upon which the claim is based and for which the claimant either has paid or is liable;
(3) expenses related to the reasonable and necessary costs of cleaning the crime scene of a private residence. "Cleaning" means to remove or attempt to remove stains or blood caused by the crime or other dirt or debris caused by the processing of the crime scene;
(4) expenses resulting from the temporary or permanent relocation of a direct victim and individuals residing in the household of the direct victim due to the incident forming the basis of the victim's claim when there is an immediate need to protect the safety and health of the victim and individuals residing in the household, as verified by a medical provider, human services provider or law enforcement;
(5) expenses for physical examinations and materials used to obtain evidence; or
(6) other reasonable expenses which are deemed necessary as a direct result of the criminal incident. Except as otherwise provided, the term does not include property damage or pain and suffering.

"Personal injury crime." An act, attempt or threat to commit an act which would constitute a misdemeanor or felony under the following:
18 Pa.C.S. Ch. 25 (relating to criminal homicide).
18 Pa.C.S. Ch. 27 (relating to assault).
18 Pa.C.S. Ch. 29 (relating to kidnapping).
18 Pa.C.S. Ch. 31 (relating to sexual offenses).
18 Pa.C.S. § 3301 (relating to arson and related offenses).
18 Pa.C.S. Ch. 37 (relating to robbery).
18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation).
30 Pa.C.S. § 5502.1 (relating to homicide by watercraft while operating under influence).
75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) in cases involving bodily injury.
75 Pa.C.S. § 3732 (relating to homicide by vehicle).
75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).
75 Pa.C.S. § 3735.1 (relating to aggravated assault by vehicle while driving under the influence).
75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury).
The term includes violations of any protective order issued as a result of an act related to domestic violence.

"Preadjudication disposition." Any of the following:
(1) Disposition of an adult without a trial. This paragraph includes accelerated rehabilitative disposition.
(2) Disposition of a juvenile prior to an adjudication of delinquency under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), including informal adjustment as set forth in 42 Pa.C.S. § 6323 (relating to informal adjustment), and consent decree as set forth in 42 Pa.C.S. § 6340 (relating to consent decree).

"Prosecutor's office." The Office of Attorney General or the office of a district attorney of a county.

"Victim." The term means the following:
(1) A direct victim.
(2) A parent or legal guardian of a child who is a direct victim, except when the parent or legal guardian of the child is the alleged offender.
(3) A minor child who is a material witness to any of the following crimes and offenses under 18 Pa.C.S. (relating to crimes and offenses) committed or attempted against a member of the child's family:
Chapter 25 (relating to criminal homicide).
Section 2702 (relating to aggravated assault).
Section 3121 (relating to rape).
(4) A family member of a homicide victim, including stepbrothers or stepsisters, stepchildren, stepparents or a fiancé, one of whom is to be identified to receive communication as provided for in this act, except where the family member is the alleged offender.

"Victim advocate." The victim advocate in the Office of Victim Advocate within the Pennsylvania Board of Probation and Parole.

CHAPTER 7. COMPENSATION
§ 11.701. Persons eligible for compensation
(a) General rule.--Except as otherwise provided in this act, the following persons shall be eligible for compensation:
(1) A direct victim.
(2) An intervenor.
(3) A surviving spouse, parent or child of a deceased direct victim or intervenor.
(4) Any other individual dependent for principal support upon a deceased direct victim or intervenor.
(5) Deleted.
(6) Any person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial
expenses incurred as a direct result of the crime.

(b) Exception.--A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person shall not be eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime shall not be eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

(c) Deleted

§ 11.702. Filing of claims for compensation

(a) General rule.--Except as otherwise provided in this act, a claim for compensation may be filed by an individual eligible for compensation as provided in section 701 or as follows:

(1) If the individual is a minor, the claim may be filed by a parent or guardian. If the parent or guardian of a minor who is eligible for compensation is unavailable or fails to assume financial responsibility for the minor's care, a person who assumes financial responsibility for services eligible for compensation and who is not a provider of services or an insurance company may file a claim on behalf of the minor and may receive compensation for eligible services provided to the minor.

(2) If the individual is mentally incompetent, the claim may be filed by a guardian or legal representative. If the guardian or legal representative of a mentally incompetent individual who is eligible for compensation is unavailable or fails to assume financial responsibility for the individual's care, a person who assumes financial responsibility for services eligible for compensation and who is not a provider of services or an insurance company may file a claim on behalf of the individual and may receive compensation for eligible services provided to the individual.

(b) Time.--

(1) Except as set forth in paragraph (2), a claim must be filed not later than two years after the occurrence of the crime upon which the claim is based or not later than two years after the death of the direct victim or intervenor as a result of the crime or the discovery and identification of the body of a murder victim.

(2) Exceptions shall be as follows:

(i) Deleted.

(ii) If a direct victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the direct victim's parent or a person responsible for the direct victim's welfare, an individual residing in the same home as the direct victim or a paramour of the direct victim's parent, all of the following shall apply:

(A) The limitation period under this subsection is tolled until the direct victim reaches 21 years of age.

(B) The limitation period shall run until the later of:

(I) the end of the limitation period for the offense as set forth in 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal proceedings); or

(II) the end of the limitation period under paragraph (1).

(ii.1) If a direct victim is under 18 years of age at the time of the occurrence of the crime and the direct victim is seeking reimbursement for counseling services only, all of the following shall apply:

(A) The limitation period under this subsection is tolled until the direct victim reaches 21 years of age.

(B) The limitation period shall run until the later of:

(I) the end of the limitation period for the offense as set forth in 42 Pa.C.S. Ch. 55 Subch. C; or

(II) the end of the limitation period under paragraph (1).

(b.1) Returned claims.--If a claim has been filed but subsequently returned to the claimant for correction or for additional verification or information, the date the claim was first received by the bureau shall be the permanent filing date for purposes of subsection (b). The correction or additional verification or information must be filed within a period of time established by the Office of Victims' Services.

(c) Manner.--Claims must be filed with the bureau in person, by mail or by any electronic means authorized by the Office of Victims' Services.

(d) Deleted

§ 11.703. Minimum allowable claim
(a) **General rule.**—Except as set forth in subsection (b), no award shall be made on a claim unless the claimant has incurred an aggregate minimum out-of-pocket loss, loss of earnings or loss of support of $100.

(b) **Exception.**—Subsection (a) shall not apply if the direct victim was 60 years of age or older at the time the crime occurred.

§ 11.704. **Determination of claims**

(a) **Processing.**—The Office of Victims’ Services shall establish functional procedures for the intake, verification and processing of claims.

(b) **Review.**—

1. The Office of Victims’ Services shall review the claim and all supporting documents and investigate the validity of the claim. The investigation shall include an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based. The Office of Victims’ Services may not request or review counseling notes of mental health service providers. The Office of Victims’ Services shall request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.

2. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the crime in question.

(c) **Determination.**—The Office of Victims’ Services shall determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations. If the Office of Victims’ Services is unable to determine if a claim is justified based upon the supporting documents, it may direct a hearing before a hearing examiner designated by the commission. At the hearing, any relevant evidence not legally privileged shall be admissible.

(d) **Notice.**—The Office of Victims’ Services shall promptly notify the claimant of its final decision.

(e) **Records.**—The Office of Victims’ Services shall maintain complete records and histories on all claims filed, supplemental awards paid to claimants, claims status and third-party entitlements and recoveries.

§ 11.705. **Judicial review**

Within 30 days after receipt of a copy of the report containing a final decision of the Office of Victims’ Services, the claimant may appeal the final decision of the Office of Victims’ Services in the manner provided for appeals from administrative agencies as provided in 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 11.706. **Emergency awards**

(a) **Authorization.**—Notwithstanding the provisions of sections 704 and 707, if it appears to the Office of Victims’ Services that the claim is one with respect to which an award probably will be made and that undue hardship will result to the claimant if immediate payment is not made, the Office of Victims’ Services may make an emergency award to the claimant pending a final decision in the case. The following shall apply:

1. The total amount of the emergency award shall not exceed $1,500 per claim or at a rate set by the Office of Victims’ Services.

2. The amount of the emergency award shall be deducted from any final award made to the claimant.

3. The excess of the amount of the emergency award over the amount of the final award or the full amount of the emergency award if no final award is made shall be repaid by the claimant to the Office of Victims’ Services.

(b) **Reconsideration.**—The Office of Victims’ Services may reconsider an emergency award at any time prior to the final decision in the case and increase previous orders for emergency compensation up to the overall limit of $1,500 per claim or at a rate set by the Office of Victims’ Services.

(c) **Compilation.**—The Office of Victims’ Services shall compute the total number and amount of emergency awards given in each fiscal year for inclusion in the annual report.

§ 11.707. **Awards**

(a) **Requirements.**—No award shall be made unless it is determined by a preponderance of the evidence that:

1. A crime was committed.

2. The person injured or killed was a direct victim or intervenor.
(3) The crime was promptly reported to the proper authorities. In no case may an award be made if the record shows that the report was made more than 72 hours after the occurrence of the crime unless:

(i) the victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the victim's parent or a person responsible for the victim's welfare, an individual residing in the same home as the victim or a paramour of the victim's parent; or

(ii) the Office of Victims' Services finds the delay to have been justified, consistent with bureau regulations.

(4) The direct victim, intervenor or claimant has fully cooperated with all law enforcement agencies and the Office of Victims' Services unless the Office of Victims' Services finds the noncompliance to have been justified consistent with Office of Victims' Services regulations.

(a.1) Protection from abuse.--A claimant who satisfies the eligibility requirements of subsection (a)(1), (2) and (4) may satisfy the eligibility requirement under subsection (a)(3) for reporting a crime to the proper authorities by commencing an action brought in accordance with 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and as provided for in the Pennsylvania Rules of Civil Procedure. In no case may an award be made if the record shows that the petition was:

(1) Withdrawn, unless the Office of Victim Services finds the withdrawal to have been justified, consistent with regulations of the Office of Victim Services.

(2)Filed more than 72 hours after the occurrence of the criminal conduct leading to the commencement of the action, unless:

(i) the victim is under 18 years of age at the time of the occurrence of the criminal conduct and the alleged offender is the victim's parent or a person responsible for the victim's welfare, an individual residing in the same home as the victim or a paramour of the victim's parent; or

(ii) the Office of Victim Services finds the delay to have been justified, consistent with regulations of the Office of Victim Services.

(b) Amount.--

(1) Any award made under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from such injury. In no case shall the total amount of an award exceed $35,000 except for payment of the following:

(i) counseling, the maximum amount of which shall be in accordance with paragraph (4.1);

(ii) forensic rape examination and medications directly related to the sexual assault or rape, the amount of which shall not exceed $1,000; or

(iii) reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which shall not exceed $500.

(2) An award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter, be in an amount equal to the actual loss sustained. The following shall apply:

(i) No such award shall exceed the average weekly wage for all persons covered by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L. 2897, No. 1), known as the Unemployment Compensation Law, in this Commonwealth as determined annually by the Department of Labor and Industry for each week of lost earnings or support.

(ii) Except as set forth in subparagraph (iii), the aggregate award for the loss shall not exceed $15,000.

(iii) In the case of death of a direct victim or intervenor, the aggregate award shall not exceed $20,000.

(3) If an order of restitution has been entered on behalf of the direct victim, those amounts actually collected shall be applied first to property losses incident to the crime and secondly to personal injury losses as set forth in subsection (f).

(4) An award for counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker and subject to the provisions of paragraph (4.1) may be made to:

(i) a direct victim;

(ii) an individual responsible for the direct victim's welfare;

(iii) an individual who is physically present at the crime scene and witnesses a violent crime;

(iv) in the case of a homicide, an individual who discovers the body;

(v) anyone related to the direct victim within the second degree of consanguinity or affinity;
(vi) anyone maintaining a common-law relationship with the direct victim;
(vii) anyone residing in the same household with the direct victim; or
(viii) anyone engaged to be married to the direct victim.

(4.1) In the case of an award made pursuant to paragraph (4), the following shall apply:
(i) The amount of an award under paragraph (4)(i) shall not exceed $5,000 where the direct victim is an adult and shall not exceed $10,000 where the direct victim is a minor.
(ii) The amount of an award under paragraph (4)(ii), (v), (vi), (vii) or (viii) shall not exceed $2,500 except in the case of a homicide whereby the amount of this award shall not exceed $5,000.
(iii) The amount of an award under paragraph (4)(iii) or
(iv) shall not exceed $1,500.

(5) An award for the reasonable and necessary costs for the replacement of prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription medications damaged or stolen as a result of the crime shall be at a rate set by the Office of Victims' Services. Expenses for prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription medications needed as a result of the crime shall be counted against the $35,000 award limitation.

(c) Public assistance.--Provisions of awards made pursuant to a statute compensating or benefiting a direct victim or claimant shall in no way affect the claimant's or direct victim's eligibility under public assistance or any other Federal or Commonwealth social benefit or assistance program.

(d) Apportionment.--If there are two or more individuals entitled to an award as a result of the death of a direct victim or intervenor, the award shall be apportioned among the claimants.

(e) Reduction.--Except as otherwise provided in this act, an award made under this chapter shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury:
(1) from or on behalf of the individual who committed the crime;
(2) under any insurance or health and welfare programs, including those mandated by law;
(3) under any contract of insurance wherein the claimant is the beneficiary;
(4) from public funds;
(5) as an emergency award under section 706;
(6) under any pension program, including those providing for disability or survivor's benefits; or
(7) under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.

(f) Direct victim responsibility.--
(1) Except as set forth in paragraphs (2) and (3), in determining the amount of an award, the Office of Victims' Services shall determine whether the direct victim or intervenor, because of conduct, contributed to the infliction of the injury. The Office of Victims' Services shall reduce the amount or deny the claim altogether in accordance with the determination.
(2) If the crime involved is rape or sexual assault, the conduct of the direct victim shall not be considered. If the crime involved is related to domestic violence, the conduct of the direct victim shall not be considered unless the direct victim was the primary aggressor.
(3) If the crime involved is a homicide, the conduct of the direct victim shall not be considered for claims by eligible claimants for counseling.

(g) Intervenor responsibility.--In determining the amount of an award to an intervenor, the Office of Victims' Services may consider whether the intervenor, because of conduct, contributed to the infliction of the injury. The Office of Victims' Services shall reduce the amount or deny the claim altogether in accordance with the determination.

(h) Forensic rape investigation.--
(1) A hospital or other licensed health care provider may submit a claim for reimbursement for the cost of a forensic rape examination if the cost is not covered by insurance or if the victim requests that the insurance carrier not be billed. Upon filing of a claim, the Office of Victims' Services shall promptly notify the prosecutor of the county where the crime is alleged to have occurred. The reimbursement, where applicable, shall be at a rate set by the Office of Victims' Services.
(2) The cost of a forensic rape examination and the cost of medications prescribed to the direct victim shall not be charged to the victim.
(3) A sexual assault or rape victim need not be an applicant for any other compensation under this
§ 11.708. Manner of payment

(a) Lump sum.--The award shall be paid in a lump sum, except that, in the case of death or protracted disability, the award may provide for periodic payments. No award made under this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. All awards shall be paid by or under the authority of the State Treasurer. An award shall not be considered as compensation taxable as income under Article III of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971. The Office of Victims' Services shall reconsider at least annually every award being paid in installments. The Office of Victims' Services may reconsider a claim at any time and modify or rescind previous orders for compensation based upon a change in financial circumstances of a direct victim or one or more surviving dependents.

(b) Medical expenses.--Medical expenses, except as otherwise provided, shall be paid to a hospital or other licensed health care provider on behalf of the victim at a rate set by the Office of Victims' Services.

§ 11.709. Confidentiality of records

(a) General rule.--All reports, records or other information obtained or produced by the bureau during the processing or investigation of a claim shall be confidential and privileged, shall not be subject to subpoena or discovery, shall be used for no purpose other than the processing of a claim and, except as otherwise provided by law or as provided in this section, shall not be introduced into evidence in any judicial or administrative proceeding.

(b) Disclosure restricted.--Except as otherwise provided by law, no person who has had access to a report, record or any other information under this subsection shall disclose the content of such a report, record or other information or testify in a judicial or administrative proceeding without the written consent of the direct victim or intervenor or, if the direct victim or intervenor is deceased, the claimant.

(c) Construction.--This section shall not be construed to preclude or limit introduction of the contents of a report, record or other information in an appeal hearing before the Office of Victims' Services or in an investigation, prosecution or judicial proceeding enforcing section 1303 or in communicating with the prosecutor's office regarding restitution.

§ 11.710. Responsibilities of employers, service providers and insurance companies

(a) Response.--Employers, insurance companies or providers of services to direct victims, intervenors or claimants, including, but not limited to, doctors, hospitals and counselors, shall respond in writing to the Office of Victims' Services' request for confirmation or other information under this chapter within 30 days of receipt of the Office of Victims' Services' request.

(b) Penalty.--Any person who fails to respond to a request under subsection (a) shall be subject to a penalty of not more than $50 per day, up to and including the date of compliance.

(c) Enforcement.--The office of the district attorney of the county in which the crime occurred and the Office of Victims' Services shall be charged with enforcement of this section and the collection of penalties, which may be given to local victim service agencies or used for the enforcement and collection of penalties under this section.

CHAPTER 9. SERVICES

§ 11.901. Eligibility of victims

A victim has the rights and is eligible for the services under sections 201 and 902 only if the victim reported the crime to law enforcement authorities without unreasonable delay after its occurrence or discovery, unless the victim had a reasonable excuse not to do so.

§ 11.902. Establishment of basic services for victims of crime

The commission shall provide technical assistance to and make grants to district attorneys, other criminal justice agencies or victim service agencies which provide crime victims with the following services:

1. Notification services, including all of the following:
   a. Information concerning financial assistance and other social services available as a result of being a victim of crime.
(ii) Notification that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the victim an unnecessary trip to court.

(iii) Notification of the final disposition of the case.

(2) Protection services, including all of the following:

(i) Protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.

(ii) A secure waiting area during court proceedings which does not require them to be in close proximity to defendants and families and friends of defendants.

(3) Procedures for the expedited return by law enforcement officials of personal property of victims which is held for prosecutorial purposes.

(4) Services related to the rights of victims under Chapter 2.

(5) Other services as defined by the commission.

§ 11.903. Grant program for services

(a) Authority.--The commission has the authority to make grants to district attorneys and other criminal justice agencies for the provision of the services under section 902.

(b) Regulations.--The commission shall promulgate regulations necessary to ensure the cost-effective delivery of victim services or victim and witness services consistent with section 902.

(c) Participation.--In determining grant awards, the commission shall promote broad-based participation by a maximum number of criminal justice agencies statewide.

(d) Data.--An agency which makes application for awards under this section shall provide data in support of the request as the commission requires. An agency which receives an award shall provide the commission with reports as the commission determines necessary to assess the agency's progress in the development of victim services.

(e) Report.--The commission shall submit an annual report to the General Assembly on the progress of services provided for in section 902. The report shall include:

(1) The number of participating agencies and population served.

(2) The extent of services provided.

(3) Any impediments to the progress of the program.

(4) Recommendations for reform.

(f) Allocation.--In the allocation of funds for services under section 902, the commission shall consider the revenue collected by potential grant recipients under the penalty assessments authorized in section 1203 of the act of June 13, 1967 (P.L. 31, No. 21), known as the Public Welfare Code, pertaining to domestic violence and rape crisis services and the extent to which crime victims' compensation claims assistance is made available.

CHAPTER 11. FINANCIAL MATTERS

§ 11.1101. Costs

(a) Imposition.--

(1) A person who pleads guilty or nolo contendere or who is convicted of a crime shall, in addition to costs imposed under 42 Pa.C.S. § 3571(c) (relating to Commonwealth portion of fines, etc.), pay costs of at least $60 and may be sentenced to pay additional costs in an amount up to the statutory maximum monetary penalty for the offense committed.

(2) A person placed in a diversionary program shall pay costs of at least $60 in addition to costs imposed pursuant to 42 Pa.C.S. § 3571(c).

(3) A juvenile shall pay costs of at least $25 if any of the following apply to the case:

(i) There is a consent decree.

(ii) There is an adjudication of delinquency.

(b) Disposition.--

(1) There is established a special nonlapsing fund, known as the Crime Victim's Compensation Fund. This fund shall be used by the Office of Victims' Services for payment to claimants and technical assistance. Thirty-five dollars of the costs imposed under subsection (a)(1) and (2) plus 30% of the costs imposed under subsection (a)(1) which exceed $60 shall be paid into this fund. All costs imposed under subsection (a)(3) shall be paid into this fund.

(2) There is established a special nonlapsing fund, known as the Victim Witness Services Fund. This fund shall be used by the commission for victim-witness services and technical assistance in nonvictim compensation-related areas in accordance with this section. Twenty-five dollars of the costs imposed
under subsection (a)(1) and (2) plus 70% of the costs imposed under subsection (a)(1) and (2) which exceed $60 shall be paid into this fund.

(c) Payment.--This cost shall be imposed notwithstanding any statutory provision to the contrary.

(d) Mandamus.--The district attorney, the Office of Victims' Services, the commission or any victim shall have standing to seek a mandamus order requiring the county to collect the costs imposed by this section.

(e) Court order.--No court order shall be necessary in order for the defendant to incur liability for costs under this section. Costs under this section must be paid in order for the defendant to be eligible for probation, parole or accelerated rehabilitative disposition.

§ 11.1102. Costs for offender supervision programs

(a) County fund.--The county treasurer of each county shall establish and administer a county offender supervision fund consisting of the fees collected under this section. The county treasurer shall disperse money from this fund only at the discretion of the president judge of the court of common pleas. The money in this fund shall be used to pay the salaries and employee benefits of all probation and parole personnel employed by the county probation and parole department and the operational expenses of that department. Money from this fund shall be used to supplement Federal, State or county appropriations for the county adult probation and parole department. The president judge shall by August 31 provide the board with an annual statement which fully reflects all collections deposited into and expenditures from the offender supervision fund for the preceding fiscal year. The board shall promulgate regulations to provide for the permanent administration of this program.

(b) State fund.--There is established a State Offender Supervision Fund to be administered by the board and comprised of the supervision fees collected by the board under this section. The money in this fund shall be used to supplement the Federal or State funds appropriated for the improvement of adult probation services.

(c) Court.--The court shall impose as a condition of supervision a monthly supervision fee of at least $25 on any offender placed on probation, parole, accelerated rehabilitative disposition, probation without verdict or intermediate punishment unless the court finds that the fee should be reduced, waived or deferred based on the offender's present inability to pay. Of the fee collected, 50% shall be deposited into the County Offender Supervision Fund established in each county pursuant to this section, and the remaining 50% shall be deposited into the State Offender Supervision Fund established pursuant to this section.

(d) Board.--The board shall impose as a condition of supervision a monthly supervision fee of at least $25 on any offender under the board's supervision unless the board finds that such fee should be reduced, waived or deferred based on the offender's present inability to pay. All fees collected shall be deposited into the State Offender Supervision Fund established under subsection (b).

(e) Continuation.--

(1) For offenders under supervision of a county probation department or the board as of August 14, 1991, the fee shall automatically become a part of the supervision conditions as if the court or board had imposed it unless the court or board makes a finding that the offender is presently unable to pay.

(2) The court or board may make a finding that the offender is unable to pay based on any of the following factors:

(i) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(ii) The offender is a student in a school, a college, a university or a course of vocational or technical training designed to fit the student for gainful employment.

(iii) The offender has an employment handicap as determined by an examination acceptable to or ordered by the court or board.

(iv) The offender's age prevents employment.

(v) The offender is responsible for the support of dependents, and the payment of the assessment constitutes an undue hardship on the offender.

(vi) Other extenuating circumstances as determined by the court or board.

CHAPTER 13. ENFORCEMENT

§ 11.1301. Subrogation

(a) General rule.--Payment of an award made under Chapter 7 shall subrogate the Commonwealth, to the extent of the payment, to any right of action against any person accruing to the claimant, the direct
victim or the intervenor to recover losses resulting from the crime with respect to which the award is made. In such a case, the Commonwealth shall be entitled to bring an action against the person causing or otherwise liable for the personal injuries or death for which the payment was made. Money recovered under this section shall be deposited in the Crime Victim's Compensation Fund established in section 1101(b)(1).

(b) Excess.--If an amount greater than that paid under Chapter 7 is recovered and collected in such an action, the Commonwealth shall pay the balance to the claimant. The Attorney General shall enforce any subrogation. A claimant who fails to notify the Office of Victims' Services of the receipt of funds from any other claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by the bureau to the claimant or on the claimant's behalf.

§ 11.1302. Restitution
To the extent that restitution is ordered either prior to or subsequent to the making of an award by the Office of Victims' Services, the restitution shall be paid to the Commonwealth to the extent of the award by the Office of Victims' Services.

§ 11.1303. Penalty
An individual who asserts a false claim under Chapter 7 commits a misdemeanor of the third degree and shall, upon conviction, forfeit any benefit and reimburse and repay the Commonwealth for payments received or paid on the individual's behalf under Chapter 7.

§ 11.5101. Effect on legal actions
Nothing in Chapters 2, 3, 5 and 9 creates a cause of action or defense in favor of any person arising out of the failure to comply with any of these chapters.

§ 11.5102. Continuation of existing law
This act is a codification of the statutory provisions repealed in section 5103 and, except where clearly different from current law, shall be deemed to be a continuation of prior law. Funds, programs, regulations and Commonwealth agencies governed by the repealed provisions shall be deemed continued by this act.
V TRINITÉ ET TOBAGO
32. Limitation of application
33. Grounds for denial
34. Maximum payment
35. Method of payment
36. Duty to refund compensation
37. Failure to disclose
38. Minister’s discretion
39. Subrogation of Board
40. Regulations
FIRST SCHEDULE
SECOND SCHEDULE

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Legal Supplement Part A to the “Trinidad and Tobago Gazette”, Vol. 38, No. 176, 4th October, 1999

Fourth Session Fifth Parliament Republic of Trinidad and Tobago

REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 21 of 1999

[L.S.]

AN ACT to establish the Criminal Injuries Compensation Board, to make provision for the payment of compensation to victims of criminal injuries and for matters relating thereto.

[ Assented to 29- h September, 1999]

ENACTED by the Parliament of Trinidad and Tobago as follows:—

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Criminal Injuries Compensation Act, 1999.
2. This Act comes into force on such date as is fixed by the President by Proclamation.
3. In this Act—
   “application” means an application made under section 24;
   “Board” means the Criminal Injuries Compensation Board established by section 5 of this Act;
   “child” includes a step-child, an adopted child and a child of the victim born after his death;
   “criminal injury” or “injury” includes any harm or damage done to a person’s physical or mental condition as a result of a crime listed in the First Schedule, any disease deliberately, recklessly or negligently inflicted on another person and pregnancy arising out of a rape;
   “dependant” means—
(a) a spouse or former spouse who was being maintained by the victim at the time of the victim’s death;
(b) a person who was living in a cohabitational relationship with the victim for not less than three years before his death;
(c) a child under the age of eighteen; or
(d) a person who at the time of the victim’s death was financially dependant on him;

“GAAP” means Generally Accepted Accounting Practice which includes the International Accounting Standards adopted by the Institute of Chartered Accountants of Trinidad and Tobago (I.C.A.T.T.);

“member” means a member of the Board;

“Minister” means the Minister to whom responsibility for social services is assigned and “Ministry” has the corresponding meaning;

“Secretary” means the Secretary to the Board;

“victim” means a person who suffers criminal injury or is killed by any act or omission of another person which act or omission is a crime listed in the First Schedule.

4. (1) This Act applies to a—
(a) person who suffers injury; and
(b) dependant of a person who dies, as a result of a crime listed in the First Schedule.

(2) The Minister may by Order amend the First Schedule.

PART II
ESTABLISHMENT, COMPOSITION AND PROCEDURE OF BOARD
5. There is hereby established a body corporate to be known as the “Criminal Injuries Compensation Board” (hereinafter referred to as “the Board”).

6. (1) The Board shall consist of a Chairman and six other members, all of whom shall be appointed by the Minister.

(2) The Chairman shall be an attorney-at-law with no less than ten years experience in the practice of criminal law.

(3) The other members of the Board shall comprise the following persons:
(a) a medical practitioner of no less than ten years experience;
(b) an attorney-at-law of no less than seven
years experience in the practice of civil law;
(c) an attorney-at-law of no less than seven
years experience in the practice of criminal
law;
(d) a psychologist;
(e) a representative from the Ministry with
responsibility for social services; and
(f) a duly appointed representative of the
Tobago House of Assembly.

7. (1) Subject to subsections (2) to (6), an
appointment to the Board shall be for a period not
exceeding three years and the members shall be eligible
for reappointment.
(2) The Chairman may resign at any time, by
letter addressed to the Minister.
(3) Other members may resign at any time by
letter addressed to the Chairman who shall forward it
to the Minister.
(4) An appointment to the Board and the
termination thereof whether by death, resignation,
revocation, effluxion of time or otherwise shall be
notified in the Gazette.
(5) Where a member is unable to perform the
functions of office owing to his absence from Trinidad
and Tobago, illness or otherwise, the Minister may
appoint another person to act as a temporary member
during that period.
(6) Where the absent member is the Chairman,
the Minister shall appoint a member, not being a
temporary member, to act in his place.
(7) Where a member is absent without leave for
three consecutive meetings of the Board he is deemed
to have vacated his seat.

8. (1) The Board shall pay its Chairman and other
members such remuneration as the Minister approves.
(2) For the purpose of defraying reasonable
travelling and out-of-pocket expenses incidental to
their office, members of the Board shall be paid such
allowances as may be approved by the Minister.

9. The Board shall be responsible for receiving and
considering applications for compensation and deciding
what compensation, if any, shall be paid.

10. (1) The Board shall meet at least twice a month
and at such other times as may be necessary or
expedient for the transaction of its business.
(2) Meetings of the Board shall be held at such
place and time and on such day as the Board determines.
(3) The Chairman, or in his absence, a member elected by the Board, shall preside at all meetings of the Board.
(4) Four members of the Board shall form a quorum.
(5) The Chairman shall have a casting vote only.
(6) The decisions of the Board shall be by a majority of votes of the members present and voting.
(7) The Secretary shall keep, in proper form, the minutes of each meeting and the minutes shall be confirmed by the Board and signed by the Chairman at a subsequent meeting.
(8) All decisions made by the Board shall be recorded in the minutes.
(9) The Board may co-opt any person to attend a particular meeting of the Board for the purpose of assisting or advising the Board, but no such co-opted person shall have a right to vote.
(10) Subject to this section, the Board may, by standing orders, regulate its own procedure at meetings.
(11) The Chairman shall cause notices to be issued to all members, for a special meeting of the Board, within seven days of receiving a request in writing signed by any three members, so to do.
(12) A request for a special meeting shall include sufficient indication of the purpose of the requested meeting.

11. In the performance of its administrative functions the Board shall act in accordance with any general policy directions of the Minister.

12. The Board shall have an official seal that shall be kept in the custody of the Chairman or otherwise as the Board determines.

13. The seal of the Board shall be affixed to any document required to be executed by it and such document shall be deemed to be duly executed if signed by the Chairman or the Secretary.

PART III
STAFF
14. (1) The Board shall appoint a suitably qualified person to be the Secretary.
(2) In addition to performing the duties of Secretary, as determined by the Board, the Secretary
shall be the Accounting Officer for the purposes of the Exchequer and Audit Act and for that purpose shall be a qualified Accounting Technician.

15. (1) The Secretary to the Board shall hold office for not more than five years and shall be eligible for reappointment.
   (2) The Secretary may resign by giving notice in writing addressed to the Chairman.
   (3) The Board may terminate the Secretary’s appointment by giving one month’s notice or salary in lieu thereof.

16. The Board shall pay the Secretary such remuneration as the Minister approves.

17. (1) An officer in the Public Service or in the service of a Statutory Authority may, with the approval of the appropriate Service Commission and the Board, consent to be appointed on transfer to the service of the Board.
   (2) The officer shall, upon transfer, have preserved this superannuation and pension rights accruing at the time of transfer.

18. (1) An officer in the Public Service or in the service of a Statutory Authority may, with the consent of the appropriate Service Commission and the Board, consent to be transferred on secondment to the service of the Board.
   (2) Where a transfer on secondment is effected, such arrangements as may be necessary shall be made to preserve the rights of the officer transferred, to any pension, grant or other allowance for which he would have been eligible had he not transferred.

PART IV
FINANCIAL PROVISIONS
19. (1) The Board shall establish a fund consisting of such sums as are appropriated by Parliament from the Consolidated Fund for the purpose of meeting its operating expenses.
   (2) The moneys of the fund, in any financial year, shall be applied in defraying the following expenditure:
      (a) the remuneration and allowances of the Chairman and other members of the Board;
      (b) the remuneration and allowances of the Secretary and other members of staff;
      (c) other operating expenses of the Board.
   (3) All moneys appropriated by Parliament to
meet the operating expenses of the Board shall be paid into a bank account opened with the approval of the Minister of Finance.

20. (1) Parliament shall also appropriate moneys from the Consolidated Fund for the payment of compensation to victims or their dependants, as the case may be.
(2) Moneys appropriated under subsection (1) shall be a separate item of expenditure of the Ministry from which the Ministry shall pay compensation to a victim on the written authority of the Board.
21. (1) The Board shall, at least seven months before the commencement of each financial year, submit to the Minister, for his approval, an estimate of expenditure in relation to its operating expenses and the payment of compensation for such year, in such form as the Minister may prescribe.
(2) The Board shall, at such time as the Minister directs, furnish him with any further information in relation to the estimate of expenditure as he may require.
(3) The estimate of expenditure as approved by the Minister shall be the expenditure budget of the Board for the financial year to which it relates and is subject to the approval of the Minister of Finance.

22. (1) The Board shall keep proper books of accounts and records of all moneys received and expended by the Board and shall record the matters in respect of which such sums were received and expended.
(2) Within three months after the end of each financial year the Board shall cause to be prepared, in respect of that year—
(a) a report setting out the activities of the Board; and
(b) financial statements prepared in accordance with GAAP.
(3) In instances where the standards included in GAAP are inappropriate or inadequate the Treasury shall provide instructions.
(4) The Accounts of the Board are public accounts of Trinidad and Tobago for the purposes of section 116 of the Constitution.
(5) As soon as the accounts of the Board have been audited, the Auditor General shall send a copy of the Financial Statements and Report to the Chairman of the Board, the Minister and the Minister of Finance and shall forward the report to Parliament in accordance with section 116 of the Constitution.
23. The Financial year of the Board shall be the period of twelve months beginning the first day of October in any year.

PART V
APPLICATION FOR COMPENSATION
24. (1) A victim or his dependant may apply to the Board for compensation in accordance with the provisions of this Act.
(2) Every application shall be made to the Board in the manner prescribed in the Second Schedule.
(3) An applicant shall submit the following documents with the application:
   (a) a medical certificate, evidencing the injury sustained, where the application is being made by the victim; or
   (b) the death certificate of the victim, where the application is being made by a dependant.
(4) The applicant shall also submit other relevant documents and other information as requested by the Board.
(5) Where a dependant is—
   (a) an infant, the application may be made on his behalf by a parent, guardian or person acting in loco parentis;
   (b) a mentally and ill person within the meaning of the Mental Health Act, the application may be made by the person with whom he normally resides or a duly authorised medical officer.

25. (1) The Board shall conduct its own inquiries with reference to an application and may consider any statement, document or other information that may assist it in making its decision.
(2) The Board shall obtain a copy of the report of the police complainant in respect of the crime to which the application refers and may require the applicant or any other person to furnish it, within a specified period, with such other information it may require.
(3) In determining whether or not to pay compensation, consideration shall be given to—
   (a) the nature of the injuries suffered;
   (b) whether there was any provocation by the victim; and
   (c) whether the victim or dependant cooperated with the police and prosecutors in the investigation and prosecution of the case.
(4) In determining the amount of compensation, consideration shall be given to—
(a) the amount received or receivable from any other source by the victim or his dependant, as a result of the criminal injury;
(b) the conduct of the victim which contributed to the injury.
(5) For the purposes of subsection (4)(a) all amounts received or receivable shall be disclosed to the Board by the victim or his dependant, in writing, at the time of the making of the application or as soon thereafter as it comes to his knowledge.
(6) For the purpose of subsection (4)(b) and subject to subsection (7) where the infliction of injury to the victim was attributable to the conduct of the victim, the application for compensation may be rejected or the amount of compensation reduced, having regard to the contribution of the victim to the criminal injury.
(7) Where injury to the victim was due to his effort to prevent a crime or to apprehend a person who had committed a crime or to aid or attempt to aid a member of the security forces so to do, the amount of compensation shall not be reduced.
(8) For the purposes of subsection (7) “member of the security forces” means a member of the—
(a) Police Service;
(b) Prison Service;
(c) Fire Service;
(d) Defence Force to the extent that such member has been assigned to act in aid of the Police;
(e) Supplemental Police established under the Supplemental Police Act.
(9) Where the application is rejected by the Board, the Board shall inform the applicant in writing.
26. The Board, in considering an application, shall not be bound to entertain submissions from legal or other representatives of a victim or dependant and shall not be bound by the rules of evidence or legal procedure.

27. (1) The Board shall hear claims for compensation in Port-of-Spain, San Fernando and Tobago at such times and in such places as the Board may determine.
(2) The Board shall notify the applicant of the time and place of the hearing of the relevant application.
(3) Where the Board makes a decision to hear the applicant it shall be entitled to call and examine any other person.
(4) The Board shall reach its decision on the basis of evidence and other information available to it at the hearing.

(5) Subject to section 26 the applicant shall be entitled to be assisted in presenting his case by a legal adviser or by any other person of his choice.

(6) The Board shall not be liable to the applicant for the cost of assistance by a legal adviser but may pay the expenses of other persons required to attend the hearing.

(7) All hearings shall be in private.

28. (1) Subject to section 30(2), the Board shall make its determination regarding an application within thirty days of acknowledgment of receipt of the application and all other supporting documents and information. (2) The decision of the Board shall be final.

Part VI
PAYMENT OF COMPENSATION
29. (1) Subject to an application being submitted to the Board, the Board may pay compensation under this Act to—
(a) the victim;
(b) a dependant of the deceased victim; or
(c) the person responsible for the care and maintenance of the victim or dependant, where that person has suffered pecuniary loss or has incurred expense in the care of the injured victim or dependant, as the case may be.

(2) Compensation may be paid in respect of—
(a) expenses reasonably incurred as a result of the injury or death of the victim;
(b) loss of earning power as a result of total or partial incapacity of such victim;
(c) pecuniary loss to the dependant of the deceased victim;
(d) other pecuniary loss or expenses incurred resulting from the personal injury or death of the victim which the Board determines to be reasonable.

30. (1) Compensation may be paid whether or not a person is prosecuted or convicted of the crime on account of which the application was made.

(2) The Board may suspend consideration of any application for such period as it thinks appropriate on the ground that the prosecution for the crime, out of which the injury occurred, has commenced or is
imminent.

31. Notwithstanding the incapacity of the person responsible for the injury or death by reason of age, insanity, or otherwise, compensation may be payable under this Act.

32. No compensation shall be paid unless the application is made within one year after the date of the injury or death or after that date, upon determination by the Board, that good cause exists for the delayed application.

33. No compensation shall be paid where the victim—
(a) was guilty of a contravention of, or failed to comply with, any law which caused or contributed to his injuries;
(b) was injured as a result of the operation of a motor vehicle, boat or airplane unless the same was used as a weapon in a deliberate attempt to do the victim harm or to cause bodily injury.

34. (1) Subject to subsection (2), the amount of compensation payable, under this Act, in respect of the death or injury of any victim shall be within the absolute discretion of the Board and shall be in the nature of an *ex gratia* payment.
(2) No compensation shall be paid, in an amount in excess of twenty-five thousand dollars.
(3) The Minister may, by Order, increase the amount payable generally up to a maximum of fifty thousand dollars.
(4) Subject to the provisions of this Act, as to the payment of compensation to dependants, no compensation is payable for the benefit of the estate of a deceased victim.

35. Compensation shall be paid in lump sum, except that in the case of death or protracted disability compensation may provide for periodic payments to compensate for loss of earnings or support.

36. Where a victim or dependant to whom compensation is paid subsequently receives a settlement by way of damages or an award, he shall repay to the Board an amount equal to the compensation paid to him by the Board.

37. A victim or dependant who—
(a) provides false information to the Board;
(b) fails to disclose the amount received from any other source in respect of the injury; or
(c) fails to refund the compensation in accordance with section 36,
commits an offence and is liable on summary conviction to a fine equal to that of the compensation received or the amount received from other sources whichever is less and to imprisonment for six months.

38. Where the victim or a dependant fails to comply with the requirements of section 36, the Court may in its discretion, having regard to all the circumstances of the victim or dependant, decide whether or not the amount of compensation paid to such victim or dependant shall be refunded to the Board.

39. (1) The Board is subrogated to all the rights of the person to whom payment is made under this Act to recover damages by civil proceedings in respect of the injury or death and may maintain an action in the name of such person against whom action lies.
(2) Where the Board pursues an action under subsection (1), any amount recovered shall be applied—
(a) first to the payment of costs actually incurred in the action;
(b) second, to the reimbursement to the Board of the value of the compensation awarded; and
(c) finally, in respect of the balance, if any, to the payment of the person whose rights were subrogated.

40. (1) The Minister may make regulations to give effect to the provisions of this Act including prescribing any procedures to be followed in the making and determination of applications.
(2) The regulations made under this section shall be subject to negative resolution of Parliament.

FIRST SCHEDULE
[Section 4(1)]
CRIMES TO WHICH THIS ACT APPLIES
(a) Murder;
(b) Manslaughter;
(c) Wounding with intent;
(d) Inflicting injury with or without a weapon;
(e) Using a drug with intent to commit an offence;
(f) Administering poison or other destructive or noxious substance so as to endanger life or inflict grievous bodily
harm;
(g) Administering poison with intent to injure or annoy;
(h) Offences under the Sexual Offences Act. Act No. 27 of 1986

Regulations

SECOND SCHEDULE
[Section 24(2)]
APPLICATION FOR COMPENSATION UNDER THE CRIMINAL
INJURIES COMPENSATION ACT, 1999
To: The Chairman
Criminal Injuries Compensation Board
I...................................................of.......................................................
(Address)

being a victim of a crime or a dependant person entitled to
compensation, hereby apply for compensation under the above Act
and furnish the following particulars—
Name of Victim ....................................................................................
(Print in block letters)
Name of Applicant (if different from above) ........................................
Capacity in which application made..............................As Victim o
..................................... As Dependant o
Age.................. Date of Birth.............................Sex..........................
Occupation............................................................................................
Place of Employment ...........................................................................
Earnings (Monthly)..............................Other.................................
NIS #............................
Identification o Passport ......................... o ID Card.....................
Driver’s Permit o ................................
Crime committed .................................. Date.............................
Nature of injuries or loss sustained ...................................................
Circumstances of injuries or loss sustained..........................
No. 21 Criminal Injuries Compensation 1999
No. of dependants and dates of birth
Name Date of Birth Relationship
1. .............................. .............................. ................................
2. .............................. ............................... ................................
3. .............................. ............................... ..................................
4. .............................. ............................. ..................................
Police Station where complaint was made..........................
Date on which complaint was made ................................................
Status of Police Investigation.........................................................
(State whether police investigations have begun, are in progress or are completed)
...............................................................................................................
...............................................................................................................
...............................................................................................................
Court Proceedings ..................................................................
(State whether these are civil or criminal)
Status of Court Proceedings ..........................................................
.................................................................................................................
(State whether these have begun and if they have been completed state the result)
Medical Treatment Received ..............................................................................
(Please attach medical certificate)
..............................................................................................................
Whether Insured Yes o No o
Name of Company ...........................................................................................
Type of Insurance .............................................................................................
Do you waive your right to pursue the cause of action which arises as a result of the crime? Yes o No o
Declaration ........................................................................................................
..............................................................................................................
..............................................................................................................
..............................................................................................................
(State whether you have received or expect to receive amounts from another source or sources)
..............................................................................................................
..............................................................................................................
..............................................................................................................
..............................................................................................................
Undertaking (to repay any amounts received from other sources)
..............................................................................................................
..............................................................................................................
..............................................................................................................
..............................................................................................................
List all documents accompanying application
..............................................................................................................
..............................................................................................................
..............................................................................................................
..............................................................................................................
TITRE III - ASIE
I HONG KONG
THE ADMINISTRATIVE DOCUMENT

This paper sets out the general basis of the Scheme for compensating victims of crimes of violence and victims of law-enforcement officers using weapons in the execution of their duty.

THE SCHEME

Administration

1. The Scheme which came into force on 23rd May 1973 will continue to be administered by the Criminal Injuries Compensation Board and the Law Enforcement Injuries Compensation Board, appointments to which will be made by the Chief Executive by notice in the Gazette. The Chairman and members of the Boards will be selected for their professional, business or administrative experience. The Boards will be serviced by staff who will be carried on the establishment of the Social Welfare Department. Other administrative costs will also be met from Social Welfare Department costs.

2. Each Board will award (from money voted by Legislative Council) compensation if satisfied, in accordance with the principles set out below, that compensation is justified.

3. The Boards’ office will be at the Social Welfare Department but other offices may be established if the need arises. The Boards will hold hearings at that address, or elsewhere if necessary.

4. A Board will be entirely responsible for deciding what compensation should be paid in individual cases (subject to following such scales as may be directed by the Chief Executive from time to time). The Board's decision will be final. The Boards Chairman will submit annually to the Chief Executive a full report on the operation of the Scheme, together with its accounts.

Criminal Injuries Compensation Board

5. The Board will entertain an application for ex gratia compensation where the applicant or (in the case of an application by a spouse* or dependant*), the deceased sustained in Hong Kong on or after the 23rd May 1973 personal injury directly attributable to and arising out of:-

(a) a crime of violence (including arson and poisoning);
(b) an arrest or attempted arrest of an offender or suspected offender;

(c) the prevention or attempted prevention of an offence; or

(d) the giving of help to any police officer or other person who is engaged in arresting or attempting to arrest an offender or suspected offender or preventing or attempting to prevent an offence.

*These terms have the same meaning as they do in the Emergency Relief Fund Scheme.

In considering for the purpose of this paragraph whether an act is a criminal act, any immunity at law of an offender attributable to his youth or insanity or other condition, will be left out of account.

6. Compensation will not be payable unless the Board is satisfied:

(a) that, subject to paragraph 20, the injury was not caused by a law-enforcement officer in circumstances falling within paragraph 16;

(b) that the injury gave rise to at least 3 days (w.e.f. 4th March 1981) loss of earnings or earning capacity except in cases which fall within paragraph 14 and in which the Board is satisfied that there are exceptional circumstances to warrant an award the Board may make under paragraph 10; (for all fatal and permanent disability cases, it is considered that the loss of the earning capacity is greater than 3 days); without prejudice to the generality of the requirement of three days loss of earnings or earning capacity, a person shall be deemed to have suffered three days loss of earnings or earning capacity if he is on sick leave as certified by a registered medical practitioner or in hospital for three days whether he is a wage earner or not;

(c) that the circumstances of the injury have been the subject of criminal proceedings, or were reported to the police without unreasonable delay;

(d) that the applicant has given the Board all related information and reasonable assistance, particularly in relation to any medical reports which it might require;

(e) that for a new application, the claim for compensation has been made within 3 years of the date of the incident (w.e.f. 4th March 1981);

(f) that for a re-application where the first claim for compensation had been made within 3 years of the date of the incident but the case was closed due to self-withdrawal or lost contact, the second or subsequent claim has been made either within 3 years of the date of the incident or within 1 year of the date of self-withdrawal or lost contact, whichever is later (w.e.f. 1st July 1991); and

(g) that the victim is a person having the right to remain in Hong Kong or being permitted to remain in Hong Kong under the Immigration Ordinance, Cap. 115, who is not in contravention of a limit of stay (if any) in force against
him at the time of the incident. Where permission to remain is granted subsequently after a person has landed in Hong Kong or that permission is granted to extend a person’s stay after he has been overstaying in Hong Kong, payment of compensation may be granted if the incident occurs on or after the effective date of such permission (w.e.f. 24th May 1997).

7. (1) Where the victim who suffered injuries, and the offender, who inflicted them, were living together at the time as members of the same family no compensation will be paid except in accordance with sub-paragraph (2). For the purpose of this paragraph where a man and a woman were living together as man and wife they will be treated as if they were married to one another.

(2) Compensation will be paid only where:-

(a) the offender has been prosecuted in connection with the offence except where the Board considers that there are practical, technical or other grounds for not prosecuting the offender; and

(b) the Board is satisfied that it is in the interests of the applicant, or the minor or other person on whose behalf the application is made, as the case may be, to make an award.

8. Traffic offences will be excluded from the Scheme, except where there has been a deliberate attempt to run the victim down.

9. The Board will scrutinise with particular care all applications in respect of sexual offences or other offences arising out of a sexual relationship, in order to determine whether there was any responsibility, either because of provocation or otherwise on the part of the victim (see paragraph 12 below), and they will especially have regard to any delay which has occurred in submitting the application. The Board will consider applications for compensation for loss of earnings or earning capacity (whether caused by injury or pregnancy) attributable to the sexual offence. Compensation will not be payable for the maintenance of a child born as a result of a sexual offence.

**Basis of Compensation**

10. Subject to paragraph 14 the assessed award of compensation will be paid without reference to means in accordance with the Emergency Relief Fund scale (the current scale is at Appendix A) and will usually take the form of a lump sum payment. In this part the assessed award of compensation means all types of grants including Injury Grant, Interim Maintenance Grant, Disability Grant, Burial Grant or Death Grant which an applicant may be entitled to under the Scheme. More than one payment may, however, be made in circumstances, for example, where only a provisional medical assessment can be given in the first instance. For the assessment of the degree of disability, mental impairment of victims of sexual offences should be taken into account. Other victims can also be similarly assessed if found necessary by a medical practitioner.

11. Where the victim has died otherwise than in consequence of the injury, the Board may make an award on the Emergency Relief Fund scale in respect of loss of wages incurred before death as a result of the injury if, in its opinion, hardship to dependants would otherwise
result, whether or not application for compensation in respect of the injury has been made before the death.

12. The Board will reduce the amount of compensation, or reject the application altogether, if having regard to the conduct of the victim (including his conduct before and after the events giving rise to the claim) and his character and way of life, it is inappropriate that he should be granted a full award or any award at all.

13. The Board will have discretion to make special arrangements for the administration of any money awarded as compensation.

14. The Board may increase the total compensation payable, with the exception of sub-paragraph (d) below, under the provisions of paragraph 10 in respect of the claim by up to a maximum of 100% -

(a) if, in the events giving rise to the claim, the victim suffered injury or death in -

( i ) effecting an arrest or attempted arrest of an offender or suspected offender; or

( ii ) preventing or attempting to prevent the commission of a crime; or

( iii ) giving help to any police officer or other person who is engaged in arresting or attempting to arrest an offender or suspected offender or preventing or attempting to prevent the commission of a crime; or

(b) if, subsequent to the events giving rise to the claim, the victim made exemplary efforts, in the face of personal embarrassment, inconvenience or danger, to assist the police in the arrest or prosecution of an offender or suspected offender; or

(c) if, in the event of a police-criminal shoot-out giving rise to the claim, the victim was injured or killed by bullets fired by a person other than the police (be it a criminal or an unknown party) and his conditions warrant a compassionate consideration. If the victim's conditions also fall under the provisions stipulated in sub-para. 14(a), the total compensation payable may be increased by up to a maximum of 200%, (applicable to incidents which occurred on or after 1st November 1994); or

(d) if the applicant is the victim of rape, in which case only the Injury Grant, the Interim Maintenance Grant and the Disability Grant payable in accordance with the Emergency Relief Fund Scale may be increased by up to 100%.

15. In any case of necessity and urgency the Board may order payment of funeral expenses on the Emergency Relief Fund scale to be made expeditiously to any person responsible for arranging the funeral of a victim whose death, the Board is satisfied resulted
from a crime of violence, the commission of such crime having been confirmed by the Commissioner of Police.
II MACAO
Lei n.º 6/98/M de 17 de Agosto Protecção às vítimas de crimes violentos

A Assembleia Legislativa decreta, nos termos da alínea c) do n.º 1 do artigo 30.º e das alíneas h) do n.º 2 e c) e h) do n.º 3 do artigo 31.º do Estatuto Orgânico de Macau, para valer como lei, o seguinte:

CAPÍTULO I
Direito a subsídio

Artigo 1.º

(Subsídio às vítimas de crimes violentos)

1. As vítimas de lesões corporais graves resultantes directamente de actos intencionais de violência praticados em Macau ou a bordo de navios ou aeronaves matriculados em Macau, bem como, no caso de morte, as pessoas a quem a lei civil conceda direito a alimentos, podem requerer ao Território a concessão de um subsídio, ainda que não se tenham constituído ou não possam constituir-se assistentes no processo penal, verificados os seguintes requisitos:

a) As vítimas encontrarem-se legalmente no Território ou a bordo do navio ou aeronave;

b) Da lesão ter resultado a morte, uma incapacidade permanente ou uma incapacidade temporária e absoluta para o trabalho de pelo menos 30 dias;

c) Ter o prejuízo provocado uma perturbação considerável do nível de vida da vítima ou das pessoas com direito a alimentos; e

d) Não terem obtido efectiva reparação do dano em execução de sentença condenatória relativa a pedido deduzido nos termos dos artigos 60.º a 74.º do Código de Processo Penal ou se for razoavelmente de prever que o delinquente e responsáveis civis não repararão o dano, sem que seja possível obter de outra fonte uma reparação efectiva e suficiente.

2. O direito ao subsídio mantém-se mesmo que não seja conhecida a identidade do autor dos actos intencionais de violência ou por outra razão ele não possa ser acusado ou condenado.

3. Podem igualmente requerer um subsídio as pessoas que voluntariamente tenham auxiliado a vítima ou colaborado com as autoridades na prevenção da infracção ou na perseguição ou detenção do delinquente, verificados os requisitos constantes das alíneas a) a d) do n.º 1.

4. A concessão do subsídio às pessoas referidas no número anterior não depende da concessão de subsídio às vítimas de lesão.

5. O disposto nos números anteriores aplica-se, com as devidas adaptações, aos danos não patrimoniais que, pela sua natureza e gravidade, mereçam a mesma tutela que os danos mencionados no n.º 1.
Artigo 2.º
(Montante do subsídio)

1. O subsídio é fixado em termos de equidade, tendo como limite máximo, por cada lesado, o montante correspondente a cinco vezes o valor do índice 1 000 da tabela indiciária da função pública, com ressalva do disposto no número seguinte.

2. As vítimas têm direito às prestações em espécie definidas no artigo 28.º do Decreto-Lei n.º 40/95/M, de 14 de Agosto, a suportar pelo Território, com os limites pecuniários máximos ali fixados.

3. Será tomada em consideração toda a importância recebida de outra fonte, nomeadamente do próprio delinquente ou da segurança social, todavia, com respeito a seguros privados de vida ou acidentes pessoais, só na medida em que a equidade o exija.

4. Poderá igualmente haver lugar a um subsídio por danos de valor elevado em coisas, tendo como limite máximo um quarto do valor previsto no n.º 1.

Artigo 3.º
(Exclusão ou redução do subsídio)

1. O subsídio poderá ser reduzido ou excluído tendo em conta a conduta da vítima ou do requerente antes, durante ou após a prática dos factos, as suas relações com o autor ou o seu meio, ou se se mostrar contrário ao sentimento de justiça ou à ordem pública, nomeadamente em virtude de ligação da vítima ou do requerente ao crime organizado.

2. Não será concedido subsídio quando a vítima for um membro do agregado familiar do autor ou pessoa que com ele coabite em condições análogas, salvo concorrendo circunstâncias excepcionais.

Artigo 4.º
(Concessão de provisões)

1. Em caso de urgência, pode ser requerida ao Governador a concessão de provisões por conta do subsídio a fixar posteriormente, de montante total não superior a um quarto do limite máximo.

2. A decisão é precedida de parecer da comissão referida no n.º 1 do artigo 17.º

CAPÍTULO II

Processo
Artigo 5.º

(Caducidade do pedido)

1. Sob pena de caducidade, o pedido de concessão do subsídio deve ser apresentado no prazo de um ano a contar da data do facto que lhe deu origem.

2. Se tiver sido instaurado processo criminal, o prazo referido no número anterior é prorrogado, expirando um ano após a decisão que lhe puser termo.

3. Em qualquer caso, pode o Governador, precedendo parecer da comissão referida no n.º 1 do artigo 17.º, relevar o requerente do efeito da caducidade, quando circunstâncias excepcionais tiverem obstado à apresentação do pedido em tempo útil.

Artigo 6.º

(Requerimento e documentos anexos)

1. A concessão do subsídio depende de requerimento das pessoas referidas no artigo 1.º ou do Ministério Público.

2. O requerimento, com descrição dos factos que fundamentam o pedido, é dirigido ao Governador e apresentado na secretaria do Ministério Público, devendo ser acompanhado de todos os elementos úteis justificativos, nomeadamente:

   a) Indicação do montante do subsídio pretendido;

   b) Comprovativos das despesas já efectuadas em consequência dos danos;

   c) Cópia da declaração fiscal de rendimentos relativa ao ano anterior à prática dos factos ou, na sua falta e sendo o caso, do último recibo do vencimento;

   d) Indicação de qualquer importância já recebida, bem como das pessoas ou entidades públicas ou privadas susceptíveis de, no todo ou em parte, virem a efectuar prestações relacionadas com o dano.

3. Se tiver sido deduzido pedido de indemnização no processo penal ou fora dele, nos casos em que a lei o admite, do requerimento deve constar se foi concedida qualquer indemnização e qual o seu montante.

4. Em caso de falsidade da informação a que se refere o número anterior, o Território tem direito ao reembolso da quantia eventualmente paga aos requerentes.

Artigo 7.º

(Competência para a concessão do subsídio)

A concessão do subsídio é da competência do Governador.

Artigo 8.º
Sem prejuízo do disposto no n.º 6 do artigo 11.º, a instrução do pedido compete ao Ministério Público, não podendo, contudo, nela participar os seus agentes que tenham intervindo em qualquer processo instaurado pelo facto que deu origem ao pedido de subsídio.

Artigo 9.º

(Diligências instrutórias)

1. O Ministério Público procede a todas as diligências úteis para a instrução do pedido e, nomeadamente:

a) Ouve os requerentes e os responsáveis pela indemnização;

b) Requisita cópias de denúncias e participações relativas aos factos criminosos e de quaisquer peças de processo penal instaurado, ainda que pendente de decisão final;

c) Requisita a qualquer pessoa, singular ou colectiva, e a quaisquer serviços públicos informações sobre a situação profissional, financeira ou social dos responsáveis pela reparação do dano.

2. Nos termos legais previstos, o Ministério Público pode ainda solicitar à administração fiscal as informações que repute necessárias, quando o responsável pela indemnização recuse fornecê-las e existam fundadas razões para supor que o mesmo dispõe de bens ou recursos que pretende ocultar.

3. As diligências instrutórias que consistam na tomada de declarações a qualquer pessoa cujos conhecimentos se mostrem úteis à instrução do pedido são reduzidas a escrito.

4. As informações obtidas dos números anteriores não podem ser utilizadas para fins diferentes dos previstos na presente lei, sendo a sua divulgação proibida e punida nos termos do artigo 189.º do Código Penal.

Artigo 10.º

(Prazo da instrução)

A instrução deve ser concluída no prazo de três meses, salvo prorrogação autorizada pelo procurador geral adjunto, por motivos atendíveis.

Artigo 11.º

(Parecer final)

1. Concluída a instrução, a comissão referida no n.º 1 do artigo 17.º emite parecer sobre a concessão do subsídio e respectivo montante, e envia o processo ao Governador, para decisão final.
2. O parecer é emitido no prazo de um mês a contar do recebimento do processo pela comissão, salvo ocorrendo o previsto no n.º 6, caso em que o prazo se conta a partir da conclusão da última diligência efectuada.

3. No parecer a que se refere o número anterior, será ponderada a circunstância de a vítima não ter deduzido pedido cível ou dele ter desistido, quando em razão disso resulte inviabilizada a sub-rogação a que se refere o artigo 14.º

4. A comissão designa relator para efeitos de elaboração de cada parecer.

5. As declarações de voto de vencido são integradas no parecer.

6. Antes da emissão do parecer, o presidente da comissão ou o relator, oficiosamente ou a solicitação de qualquer membro da comissão, ou a requerimento de qualquer interessado, procedem às diligências complementares que se revelem úteis à apreciação do pedido, as quais devem ser concluídas no prazo de um mês a contar do recebimento do processo.

7. Antes da decisão final, pode a comissão sugerir ao Governador a concessão de provisões, com o limite previsto no artigo 4.º

Artigo 12.º

(Notificações)

No âmbito dos processos relativos à concessão dos subsídios, as notificações são efectuadas nos termos previstos no artigo 69.º do Código do Procedimento Administrativo.

Artigo 13.º

(Isenção de preparos e custas e gratuitidade de documentos)

1. Os processos para concessão dos subsídios previstos na presente lei são isentos de preparos e custas.

2. Os documentos necessários à instrução dos pedidos são gratuitos e deles deve constar expressamente que são emitidos para execução do disposto na presente lei.

CAPÍTULO III

Direitos do Território

Artigo 14.º

(Sub-rogação)

O Território fica sub-rogado nos direitos dos lesados contra o autor dos actos intencionais de violência e contra pessoas com responsabilidade meramente civil, até ao limite do subsídio concedido, acrescido de juros legais.

Artigo 15.º
(Reembolso)

1. Quando a vítima, posteriormente ao pagamento de provisões ou do subsídio, obtiver, a qualquer título, uma reparação ou uma indemnização efectiva do dano sofrido, deve o Governador, ouvida a comissão, exigir o reembolso, total ou parcial, das importâncias recebidas, com ressalva do disposto no n.º 3 do artigo 2.º

2. O disposto no número anterior aplica-se ao caso em que, tendo sido entregues provisões, se averiguar ulteriormente que o subsídio não foi concedido por falta dos requisitos referidos no artigo 1.º

CAPÍTULO IV

Comissão*

Artigo 16.º

(Sede)

A comissão tem sede em instalações facultadas pela Direcção dos Serviços de Justiça.

Artigo 17.º

(Constituição e funcionamento da comissão)

1. A comissão é constituída por duas personalidades de reconhecido mérito designadas pelo Governador, por um advogado designado pela Associação dos Advogados, pelo director dos Serviços de Justiça e pelo presidente do Instituto de Acção Social de Macau.

2. A comissão é nomeada por despacho do Governador, publicado no Boletim Oficial, obtida a designação referida no número anterior, e exerce as suas funções com independência.

3. Os membros da comissão elegem entre si os respectivos presidente e vice-presidente, por um período de três anos.

4. Quando não haja presidente nem vice-presidente ou quando ambos se encontrem impedidos, a reunião da comissão é convocada e presidida pelo director dos Serviços de Justiça, procedendo-se, no primeiro caso, à eleição dos mesmos.

5. Os membros da comissão não podem participar na apreciação de assuntos em relação aos quais se encontrem impedidos, nomeadamente por terem intervindo em qualquer processo instaurado pelo facto que deu origem ao pedido de subsídio.

6. A comissão reúne estando presentes a maioria dos seus membros e delibera por maioria.

Artigo 18.º

(Exercício das funções)
1. Os membros designados da comissão exercem as respectivas funções por um período de três anos, renovável nos termos do n.º 2 do artigo 17.º, e mantêm-se em funções até serem substituídos.

2. Os membros da comissão que forem funcionários ou agentes exercem as respectivas funções sem prejuízo das correspondentes ao lugar de origem, mas o serviço da comissão é prioritário relativamente a este.

**Artigo 19.º**

*(Nomeação de membros suplentes)*

1. No despacho de nomeação dos membros efectivos da comissão são também designados os respectivos membros suplentes.

2. Os membros suplentes participam nos trabalhos da comissão em lugar dos membros efectivos que lhes caiba substituir:
   a) Nas situações previstas no n.º 5 do artigo 17.º;
   b) Nos casos de impedimento definitivo ou prolongado;
   c) Quando seja previamente conhecida a indisponibilidade do membro efectivo.

3. Verificada também no respectivo membro suplente alguma das circunstâncias previstas no número anterior e não havendo quórum, é designado um novo membro ad hoc, nos termos do n.º 2 do artigo 17.º

4. Os substitutos do presidente e do vice-presidente não assumem os respectivos cargos na comissão.

**Artigo 20.º**

*(Remunerações)*

1. Os membros da comissão têm direito a uma senha de presença por cada sessão em que participem, de montante a fixar por despacho do Governador, que também determinará a forma de remuneração dos relatores dos processos, podendo ser estabelecido um limite máximo por processo.

2. Os membros da comissão que forem funcionários ou agentes mantêm os vencimentos, benefícios e regalias correspondentes ao lugar de origem.

**Artigo 21.º**

*(Apoio à comissão)*

1. A Direcção dos Serviços de Justiça designa um funcionário para secretariar a comissão, ao qual é devida uma compensação pecuniária correspondente a 50% do valor do índice 100 da tabela indiciária da função pública.
2. A Direcção dos Serviços de Justiça presta à comissão todo o apoio necessário ao seu funcionamento.

3. O apoio à comissão é prioritário relativamente ao restante expediente.

**CAPÍTULO V**

Disposições finais e transitórias

Artigo 22.º

*(Legislação aplicável)*

Em tudo o que não contrarie o disposto na presente lei, a actividade processual do Ministério Público e da comissão regular-se-á, com as necessárias adaptações, pelas disposições e princípios gerais relativos aos processos civis de jurisdição voluntária.

Artigo 23.º

*(Informações falsas)*

Quem obtiver ou tentar obter um subsídio nos termos da presente lei com base em informações que sabe serem falsas ou inexactas é punido com prisão até três anos ou multa, sem prejuízo do disposto no n.º 4 do artigo 6.º

Artigo 24.º

*(Encargos)*

1. Os encargos resultantes da execução da presente lei serão considerados gastos de justiça e suportados por verba especial inscrita no orçamento do Cofre de Justiça e dos Registos e Notariado.

2. Em todas as sentenças de condenação em processo criminal, o tribunal condenará o arguido a pagar uma quantia de 500 a 1 000 patacas, a qual será considerada receita própria do Cofre de Justiça e dos Registos e Notariado.

Artigo 25.º

*(Recurso)*

Das decisões do Governador previstas na presente lei cabe recurso contencioso, nos termos gerais.

Artigo 26.º

*(Situações de pretérito)*
1. O disposto na presente lei aplica-se aos casos ocorridos nos cinco anos anteriores à data da sua entrada em vigor, desde que dos actos intencionais de violência tenha resultado a morte ou uma incapacidade permanente não inferior a 50%.

2. Sob pena de caducidade, o requerimento deve ser apresentado até seis meses após a entrada em vigor da presente lei, salvo se continuar em curso processo criminal por esses mesmos factos, caso em que é aplicável o disposto no n.º 2 do artigo 5.º
III PHILIPPINES
Section 1. Creation and Composition of the Board. - There is hereby created a Board of Claims under the Department of Justice, hereinafter referred to as the Board, to be composed of one (1) chairman and two (2) members to be appointed by the Secretary of the said department.

Section 2. Powers and Functions of the Board. - The Board shall have the following powers and functions:

(a) to receive, evaluate, process and investigate application for claims under this Act;

(b) to conduct an independent administrative hearing and resolve application for claims, grant or deny the same;

(c) to deputize appropriate government agencies in order to effectively implement its functions; and

(d) to promulgate rules and regulations in order to carry out the objectives of this Act.

Section 3. Who may File Claims. - The following may file claims for compensation before the Board:

(a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;

(b) any person who was unjustly detained and released without being charged;

(c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the court; and

(d) any person who is a victim of violent crimes. For purposes of this Act, violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelly or barbarity.

Section 4. Award Ceiling. - For victims of unjust imprisonment or detention, the compensation shall be based on the number of months of imprisonment or detention and every fraction thereof shall be considered one month; Provided, however, That in no case shall such compensation exceed One Thousand pesos (P1,000.00) per month.

In all other cases, the maximum amount for which the Board may approve a claim shall not exceed Ten thousand pesos (P10,000.00) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or
other expenses directly related to injury, whichever is lower. This is without prejudice to the
right of the claimant to seek other remedies under existing laws.

Section 5. When to File Claims. - Any person entitled to compensation under this Act must,
within six (6) months after being released from imprisonment or detention, or from the date
the victim suffered damage or injury, file his claim with the Department, otherwise, he is
deemed to have waived the same. Except as provided for in this Act, no waiver of claim
whatsoever is valid.

Section 6. Filing of Claims by Heirs. - In case of death or incapacity of any person entitled to
any award under this Act, the claim may be filed by his heirs, in the following order: by his
surviving spouse, children, natural parents, brother and/or sister.

Section 7. Resolution of Claims. - The Board shall resolve the claim within thirty (30)
working days after filing of the application.

The Board shall adopt an expeditious and inexpensive procedure for the claimants to follow in
order to secure their claims under this Act.

Section 8. Appeal. - Any aggrieved claimant may appeal, within fifteen (15) days from receipt
of the resolution of the Board, to the Secretary of Justice whose decision shall be final and
executory.

Section 9. Funding. - For purposes of this Act, the initial amount of Ten million pesos
(P10,000,000.00) is hereby authorized to be appropriated from the funds of the National
Treasury not otherwise appropriated.

The subsequent annual funding shall also partly come from one percent (1%) of the net
income of the Philippine Amusement and Gaming Corporation and one percent (1%) of the
proceeds and sales and other disposition and military camps in Metro Manila by the Bases
Conversion and Development Authority.

The proceeds from any contract relating to the depiction of a crime in a movie, book,
newspaper, magazine, radio or television production, or live entertainment, of any kind, or in
any other form of commercial exploitation of any convict's story, recollection, opinion and
emotions with regard to the offense committed shall not be released to convict in a criminal
case or his heirs, agents, assignees or successors-in-interest until full compensation for
damages suffered by or awarded to, the victim, his heirs or successors-in-interest is paid or
arranged for, and the state is able to collect/assess fines and costs and any other amounts due
it in case of a conviction by final judgment. Such damages shall include, but shall not be
limited to, judicial awards, funeral expenses, medical expenses, lost earning and the like.

To ensure the continuity of the funding requirements under this Act, the amount of Five pesos
(P5.00) shall be set aside from each filing fee in every civil case filed with the court, the total
proceeds of which shall constitute the Victim Compensation Fund to be administered by the
Department of Justice.

Section 10. Repealing Clause. - All laws, executive orders and executive issuances
inconsistent with this Act are hereby deemed repealed or modified accordingly.
Section 11. *Separability Clause.* - If, for any reason, any section or provision of this Act shall be declared unconstitutional or invalid, no other section or provision shall be affected thereby.

Section 12. *Effectivity Clause.* - This Act shall take effect after its publication in two (2) newspapers of general circulation.
IV- TAIWAN
Law Governing Protection of victims of Criminal Acts

Promulgated on May 27, 1998 by Presidential Decree, No. Hua-Tzung-(I)-Yi-8700104500

Article 1 This Law is enacted for the purpose of protecting the family member(s) of deceased victims or the seriously injured victims of a criminal act, safeguarding the rights and interests of the people as a whole, and enhancing the security of society.

Article 2 Protection of victims of criminal acts shall be governed by this Law. However, if it is otherwise provided for in other law, such other provisions shall prevail.

Article 3 The following terms as used in this Law are defined as follows:

1. Criminal act shall mean the willful or neglectful act committed by any person within the territory of the Republic of China, or on board a Republic of China registered vessel/warship or aircraft outside the territory of the Republic of China, which act had resulted in fatal or bodily injury to other person(s) and is imposed with criminal punishment under the laws of the Republic of China, and includes the acts which are not punishable under Paragraph 1, Article 18; Paragraph 1, Article 19 and the forepart of Paragraph 1, Article 24 of the Criminal Code of the Republic of China.

2. Compensation to crime victims shall mean the pecuniary compensation payable by the Nation in accordance with this Law to the family member(s) of deceased victim(s) or seriously injured victim(s) of a criminal act for their losses.

Article 4 Family member(s) of a deceased victim or a seriously injured victim of a criminal act shall be entitled to apply for payment of the compensation to crime victim(s). The compensation to crime victim(s) shall be paid by the Public Prosecutors Division of a district court or its branch court from the following funding sources:

1. The funds budgeted by the Ministry of Justice.
2. A sum of funds set aside from the total amount of proceeds derived from selling the work made by prisoners in jail.
3. The proceeds of crime gained by the criminal(s) as a result of his/her(their) criminal act, or the proceeds derived from confiscation or selling the property of such criminal(s).

Article 5 The categories of compensation to crime victims and the persons entitled to receive such compensation are defined as follows:

1. Compensation to family member(s) of a deceased victim shall be payable to the family member(s) of a deceased victim of a criminal act;
2. Compensation to seriously injured victim shall be payable to the seriously injured victim of a criminal act. The compensation set forth in the preceding Paragraph shall be paid in a lump sum, or instalments at the request of the applicant.

Article 6 The priority of entitlement to receive the compensation to family member(s) of a deceased victim shall be determined in accordance with the following sequential order:

1. Parents, spouse, sons and daughters;
2. Grandparents;
3. Grand sons and daughters;
4. Brothers and sisters.
Family member(s) of a deceased victim set forth in Items 2, 3 and 4 of the preceding Paragraph who apply for payment of the compensation set out in Item 3, Paragraph 1, Article 9 of this Law shall be limited to those who rely on the maintenance and support of the deceased victim.

Article 7 Where a seriously injured victim of a criminal act is unable to claim for payment of the compensation he deserves, the claim may be made on his/her behalf by his/her relatives under the priority order set out in Paragraph 1 of the preceding Article.

Article 8 In any of the following events, the family member(s) of a deceased victim shall not be entitled to claim the payment of the compensation:
1. Where he/she caused, with intent or by fault, the death of the victim;
2. Where before the death of the victim, he/she caused, intentionally, the death of another family member(s) of the deceased victim who was entitled to claim the compensation in a prior or the same preferential order; or
3. Where after the death of the victim, he/she caused, intentionally the death of another family number(s) of the deceased victim who was entitled to claim the compensation in a prior or the same preferential order.

Article 9 Categories of compensation and the maximum amount of compensation payable under each category shall be as follows:
1. For the medical treatment costs incurred by an injured victim in the maximum amount not exceeding New Taiwan Dollar Four Hundred Thousand (NT$400,000).
2. For the funeral costs incurred from the death of a victim in the maximum amount not exceeding New Taiwan Dollar Three Hundred Thousand (NT$300,000).
3. For the statutory dependent maintenance obligation which cannot be fulfilled by a victim after his/her death in the maximum amount not exceeding New Taiwan Dollar One Million (NT$1,000,000).
4. For the lost or reduced work ability or the increased living expenses of a seriously injured victim in the maximum amount not exceeding New Taiwan Dollar One Million (NT$1,000,000). The family member(s) of a deceased victim of a criminal act shall be entitled to claim the payment of the compensation set forth in Items 1 through 3 of the preceding Paragraph; while the seriously injured victim of a criminal act shall be entitled to claim the payment of compensation set forth in Item 1 and Item 4 of the preceding Paragraph.
Where there are more than one family member(s) of a deceased victim who are entitled to claim the compensation, each member may file his/her own application for payment of the compensation, with the amount distributable to each of them to be decided within the ceiling set forth in the applicable Items under Paragraph 1 of this Article.
Where the family member(s) of a deceased victim applied to receive the compensation set forth in Item 3 of Paragraph 1 of this Article is a minor, then the compensation payable to him/her may be deposited with a criminal act victim protection organization on trust custody for monthly payment by installments or by the interest accrued thereon.

Article 10 No compensation will be paid for the whole or a part of the loss suffered by a victim of criminal act under any of the following circumstances:
1. Where the cause of harm to the victim is also attributable to the victim himself/herself; or
2. Where, after taking into consideration the relationship between the victim or his/her family member(s) and the person who committed the criminal act and other relevant factors, it is believed, according to the general concept acceptable to the social public, that payment of a compensation is inappropriate.
Article 11 In case the applicant who files a claim for compensation under this Law has already received the social insurance benefit, the indemnity for damages or any other pecuniary payment(s) payable to him/her under any other law for the harm he/she suffered from a criminal act, the sum of such other payments received by him/her shall be deducted from the amount of compensation to crime victims payable to him/her under this Law.

Article 12 After payment of the compensation to crime victims under this Law, the Nation shall have the right to claim against the criminal(s) involved or other person(s) who is(are) liable for indemnification of the victim for their reimbursement in amount not exceeding the compensation to crime victim paid by the Nation. The right to claim reimbursement set out in the preceding Paragraph shall be exercised by the public prosecutor concerned. The right to claim reimbursement set out in Paragraph of this Article shall become extinguished if not exercised within two (2) years. In case the name and whereabouts of the criminal(s) involved or any other person(s) liable for indemnification is(are) unknown at the time of payment of the compensation hereunder, the aforesaid period for exercising the right to claim shall not begin until the criminal(s) or the other person(s) liable for indemnification is (are) identified.

Article 13 Under any of the following circumstances, the compensation to crime victim paid hereunder shall be refunded by the receiver thereof:

1. Where any deducted part of the provisions of Article 11 of this Law shall apply or where a repeated compensation claim by the same receiver is discovered, then a refund in an amount equal to the sum of compensation received or to be received by him/her under another compensation claim shall be made accordingly;
2. Where the receiver is verified to be a person not entitled to claim the payment of compensation to crime victims, then the compensation he/she has received hereunder shall be refunded in full; or
3. Where the receiver is found to have claimed the compensation to crime victims in a deceptive or improper manner, then he/she shall refund in full the compensation paid to him/her hereunder and shall be liable for making a payment of the interest accrued thereon from the date of his/her receipt of such compensation.

Article 14 A Public Prosecutors Division of district court or its branch court(s) shall have a Committee for Compensation to Victims of Criminal Acts (hereinafter referred to as the "Committee") which shall be in charge of screening and making decisions on compensation cases and other relevant matters.
The Public Prosecutors Division of a high court or its branch court(s) shall have a Review Committee for Compensation to victims of Criminal Acts (hereinafter referred to as the "Review Committee") which shall direct and supervise the Committee in respect of matters pertaining to compensation to crime victims and shall receive and make decisions on the appeals against the original decisions made by the Committees.
A Review Committee and a Committee shall both have a chairman which role shall be played concurrently by the Chief Prosecutor of the Public Prosecutors Division of a high court or its branch court(s), and the Chief Prosecutor of the Public Prosecutors Division of a district court or its branch court(s) respectively; and shall have six(6) to ten(10) members which rolls shall be played concurrently by the public prosecutors and other experts, specialized in the field of law, medical science or other relevant academic fields to be selected and recommended by the Chief Prosecutor(s) concerned and approved by the Ministry of Justice.
The role of staff personnel, if any, to be required by the Committees and the Review
Committees shall be played concurrently by the existing staff personnel of the Public Prosecutors Division concerned.

Article 15 Any person claiming the payment of compensation to crime victims under this Law shall file an application in writing with the Committee in the locality where the criminal act at issue was committed. Under any of the following circumstances, the competent committee to accept a compensation claim shall be designated by the Review Committee in the Place where the Central Government is located:
1. Where the place of commitment of the criminal act at issue is unknown;
2. Where there is a dispute on the issue as to which Committee is competent to accept the compensation claim at issue; or
3. Where the Committee eligible to accept a compensation claim is not available.

Article 16 No claim set forth in the preceding Article shall be filled after the elapse of two (2) years or more from the time the victim's loss of the criminal act at issue becomes known to the applicant, or after the elapse of five (5) years from the time of commitment of the victim's loss of the criminal act at issue.

Article 17 The Committee shall examine the compensation claim, make reference to the investigation results made by the appropriate judicial authority and subsequently make its decision in writing on the compensation claim within three (3) months from the date of its receipt of the written compensation application.

Article 18 An applicant who disagrees with the decision made by the Committee may, within 30 days after his/her receipt of the written decision, file to the Review Committee a written appeal for reconsideration stating therein the reason for such appeal. In the event the committee fails to make its decision within the 30-day period set forth in the preceding Paragraph, the original application may, within 30 days after the expiration of said period, file a written application with the Review Committee for its direct decision. The provisions of the preceding Article shall apply mutatis mutandis when the Review Committee is making its decision on an appeal for reconsideration or making a direct decision.

Article 19 In case an applicant disagrees with the review decision or a direct decision made by the Review Committee; or the Review Committee fails to make its decision within the period set forth in Article 17 hereof, then the original applicant may file a administrative lawsuit within 30 days after receipt of a review/direct decision or after the expiration of the aforesaid period.

Article 20 If it is deemed necessary in the course of investigation, the Review and the Committee or a Committee may require, by a notice, the applicant and the interested party(parties) to appear at the place of investigation to make appropriate statements, to present evidentiary documents or other necessary information, or to be diagnosed by a physician. In addition thereto, the Review Committee and Committee may also request the relevant authority(authorities) or organization(s) to provide necessary assistance. In case the applicant, without good cause shown, refuses to appear at the place of investigation, to make statements, to present supporting documents or other necessary information, or to take the diagnostic examination by a physician, the Review Committee and the Committee concerned may dismiss the applicant's appeal or application or make a decision by default.
Article 21 If an applicant is in urgent need after having been injured by a criminal act, the Review Committee and the Committee concerned may, before making a decision on the compensation claim case, make a decision for payment of a provisional compensation. No appeal for reconsideration or administrative lawsuit may be filed against a decision regarding a provisional compensation.

Article 22 The amount of a provisional compensation shall not exceed New Taiwan Dollar Four Hundred Thousand (NT$400,000). When a decision is made on the payment of compensation to a crime victim, such compensation shall be made after deducting there from the prepaid provisional compensation, if any. In case the amount of the prepaid provisional compensation in more than the total amount of compensation payable, or if the compensation claim is dismissed, then the Committee concerned shall demand, by an order, the refund of the difference thereof or the whole compensation by the receiver.

Article 23 The Ministry of Justice may, in order to meet the changes in the current conditions, recommend the Executive Yuan to make adjustments of the maximum amounts fixed in the Items under Paragraph 1, Article 9 and/or the amount fixed in the preceding Article of this Law.

Article 24 Drawing of the compensation to crime victims or the provisional compensation payable hereunder shall be effected within two(2) years from the date on which such compensation is available for payment.

Article 25 The written decision to be made by a Committee in accordance with the provision of Article 13 or Paragraph 2, Article 22 hereof for a refund of the compensation paid shall be the title of compulsory execution. The compensation refundable under the preceding Paragraph shall be refunded in a preferential order over the repayment of an ordinary debt. The provisions of Article 17, Paragraph 1 of Article 18 and Article 19 hereof shall apply mutatis mutandis when the decision for refund of compensation made under Paragraph 1 of this Article is challenged.

Article 26 The right to receive a compensation to crime victims or a provisional compensation shall not be subject to any attachment, assignment nor provided as collateral.

Article 27 In order to safeguard the exercise ability of the right to claim set forth in Article 12 of this Law, the public prosecutor concerned may apply to the court for a ruling of provisional attachment of the property of the criminal involved or any other person(s) liable for indemnification of damages resulting from such criminal act. The provisions set out in Part VII-Precautionary Proceedings of The Code of Civil Procedure shall apply when the public prosecutor concerned is filing an application under the preceding Paragraph, except the provisions of Article 523, Paragraph 2 through of Article 526 and Article 531 of The Code of Civil Procedure.

Article 28 In the event a victim or person as described in Article 6 of this Law has instituted an action against the injurer, through a legal procedure other than the ancillary civil action with criminal procedure, claiming the indemnification of damages provided for in the various Items of Paragraph 1, Article 9 hereof, he/she shall be exempted temporarily from the court costs arising from such lawsuit.
In case the plaintiff set forth in the preceding Paragraph is incapable of furnishing a security for a provisional attachment, a letter if guaranty to be issued by the criminal act victim protection institution may be provided in substitution for the pecuniary security, except in the case where his/her success in the pending action is obviously out of expectation.

Article 29 In order to assist criminal act victims or their family member(s) to rehabilitate their normal living, the Ministry of Justice and the Ministry of the Interior shall work jointly to establish a criminal act victim protection institution. The criminal act victim protection institution shall be organized in the form of a foundation operating under the direction and supervision of the Ministry of Justice, and shall obtain a prior approval from the Ministry of Justice before applying for incorporation registration. The details of its organization, scope of functions and administrative rules shall be prescribed in its articles of incorporation subject to the provision of this Law. The operating funds required by the criminal act victim protection institution shall come from the following sources:

1. The budgets to be formulated by the Ministry of Justice and the Ministry of the Interior; and
2. The donations from individual natural persons and/or private and/or public organizations.

Article 30 Subject to its manpower and material resources and based on the actual requirements, the criminal act victim protection institution shall carry out the following activities:

1. Assisting the victims to receive emergent physical and mental rehabilitation, and proper settlement;
2. Assisting the victims in the process of judicial investigation, and in the course of or after the conclusion of trial;
3. Assisting the victims in applying for compensation, social relief/aid and in making civil claims;
4. Assisting the victims in investigating the property of the persons committing the criminal acts at issue and of the persons liable for indemnification of the damages arising from such criminal acts;
5. Assisting in the safeguarding of victims;
6. Assisting the victims in obtaining medical treatment to cure their physical and mental injuries and rehabilitating their normal living,
7. Promoting and publicizing the protection of victims of criminal acts; and
8. Providing other assistance.

Article 31 For making service of documents and instructions, the relevant provisions of The Code of Civil Procedure shall apply mutatis mutandis.

Article 32 This Law shall not apply to the people of mainland China who suffer injuries of harm from criminal acts committed by other persons within the territory of mainland China.

Article 33 This Law shall be applicable to victims having foreign nationality on a reciprocal basis.

Article 34 An application for payment of compensation under this Law shall be acceptable only if the criminal act at issue or the results thereof have occurred after the enforcement of this Law.

Article 35 The Enforcement Rules of this Law shall be prescribed by the Ministry of Justice.
Article 36 The effective date of this Law shall be determined by the Executive Yuan.
TITRE IV – OCÉANIE
I AUSTRALIE
I. A LIENS VERS LES LÉGISLATIONS DES ÉTATS AUSTRALIEN

Les liens suivants sont ceux des lois applicables dans les états australiens. Afin de donner un exemple de législation australienne nous avons fait figurer la loi de dans ces annexes.

Australian Capital Territory
Victims of Crime (Financial Assistance) 1983

New South Wales
Victims Support and Rehabilitation Act 1996

Northern Territory
Crimes (Victims Assistance) Act

Queensland
Criminal Offence Victims Act 1995

South Australia
Victims of Crime Act 2001

Tasmania
Criminal Injuries Compensation Act 1976
Victoria
Victims of Crime Assistance Act 1996

Western Australia
Criminal Injuries Compensation Act 2003

I.B EXEMPLE DE LÉGISLATION AUSTRALIENNE : LE VICTORIA

Victims of Crime Assistance Act 1996

The Parliament of Victoria enacts as follows:

PART 1--PRELIMINARY

1. Purpose
The purpose of this Act is to provide assistance to victims of crime.

2. Commencement
(1) This Part comes into operation on the day on which this Act receives the Royal Assent.

(2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a
day or days to be proclaimed.

(3) If a provision referred to in sub-section (2) does not come into operation before 1 July
1997, it comes into operation on that day.

3. Definitions
s. 3

(1) In this Act--

"act of violence" means a criminal act or a series of related criminal acts, whether committed
by one or more persons, that has--
(a) occurred in Victoria; and

(b) directly resulted in injury or death to one or more persons, irrespective of where the injury or death occurs;

"close family member", in relation to a deceased primary victim of an act of violence, means a person who had a genuine personal relationship with the victim at the time of the victim's death and who is--

(a) the spouse of the victim; or

(b) a parent, guardian or step-parent of the victim; or

(c) a child or step-child of the victim or some other child of whom the victim is the guardian; or

(d) a brother, sister, step-brother or step-sister of the victim;

"criminal act" means an act or omission constituting a relevant offence or that would constitute a relevant offence if the person had not been incapable of being criminally responsible for it on account of--

(a) age, mental impairment or other legal incapacity preventing him or her from having a required fault element; or

(b) the existence of any other lawful defence;

"dependant", in relation to a deceased primary victim of an act of violence, means--

(a) an individual who was wholly or substantially dependent on the victim's income at the time of the victim's death or who would have been but for the incapacity of the victim due to the injury from which he or she died; or

(b) a child of the victim born after the victim's death who would have been a dependant of the victim under paragraph (a) if he or she had been born before the victim's death;

"guardian", in relation to a victim or applicant, (except in section 25(3) and (4)) does not include the Secretary within the meaning of the Children and Young Persons Act 1989, a guardian appointed or taking over office as guardian under the Guardianship and Administration Board Act 1986 or any other government agency;

"injury" means--

(a) actual physical bodily harm; or

(b) mental illness or disorder, whether or not flowing from nervous shock; or

(c) pregnancy; or
(d) any combination of matters referred to in paragraphs (a), (b) and (c) arising from an act of violence--

but does not include injury arising from loss of or damage to property;

"medical expenses" includes dental, optometry, physiotherapy, psychology treatment, hospital and ambulance expenses;

"medical report" means a written statement made by a medical expert on medical matters and includes any document which the medical expert intends should be read with the statement;

s. 3

"member", in relation to the Tribunal, means the magistrate or acting magistrate constituting the Tribunal;

"practice directions" means practice directions, statements or notes issued under section 58(1);

"registrar", in relation to the Tribunal, includes the principal registrar of the Tribunal;

"relevant offence" means--

(a) an offence, punishable on conviction by imprisonment, that involves an assault on, or injury or a threat of injury to, a person; or

(b) an offence against Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the Crimes Act 1958 or any corresponding previous enactment (sexual offences) or an offence at common law of rape or assault with intent to rape; or

(c) an offence against section 21A(1) of the Crimes Act 1958 (stalking), section 63 of that Act (child stealing) or section 63A of that Act (kidnapping) or any corresponding previous enactment; or

(d) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraph (a), (b) or (c);

"the rules" means rules of the Tribunal jointly made by the Chief Magistrate together with 2 or more Deputy Chief Magistrates;

"Tribunal" means Victims of Crime Assistance Tribunal established by Part 3;

"victim" means primary victim, secondary victim or related victim of an act of violence, as the case requires.

(2) Notwithstanding the definition of "injury" in sub-section (1), if, in respect of an application under this Act by a primary victim or a secondary victim, the Tribunal is satisfied on medical evidence that treatment or counselling is required as a result of trauma associated
with an act of violence, the person concerned is deemed for the purposes of this Act to be suffering an injury.

4. Related criminal acts

s. 4

(1) Subject to this section, a criminal act is related to another criminal act for the purposes of this Act if--

(a) they were committed against the same person and they--

(i) occurred at approximately the same time; or

(ii) occurred over a period of time and were committed by the same person or group of persons; or

(iii) share some other common factor--

unless the Tribunal considers that, having regard to the particular circumstances of those acts, they ought not to be treated as related criminal acts; or

(b) they contribute to the injury or death on which the application to the Tribunal is based unless the Tribunal considers that, having regard to the particular circumstances of those acts, they ought not to be treated as related criminal acts; or

(c) the Tribunal considers that they ought to be treated as related criminal acts.

(2) For the purposes of this Act, a criminal act in respect of which an award of assistance has been made under this Act is not related to another criminal act occurring after the award was made.

(3) A criminal act may be related to another criminal act even though charges for offences arising out of those criminal acts are tried or heard separately.

(4) For the purposes of this Act, a series of related criminal acts, whether committed by one or more persons, constitutes a single act of violence.

5. Effect of death

s. 5

Despite any provision of any Act or rule of law to the contrary, on the death of a primary victim of an act of violence, any right of that victim to receive assistance of any kind under this Act does not survive for the benefit of his or her estate.

6. Objective of Act

The objective of this Act is to provide a scheme whereby victims of crime will be provided with assistance to help them recover from the act of violence to which they have been
subjected. The scheme provided by this Act is intended to complement other services provided by government to victims of crime.

s. 6
PART 2--ELIGIBILITY FOR ASSISTANCE
Division 1--Primary Victims

7. Who is a primary victim?

s. 7
(1) A primary victim of an act of violence is a person who is injured or dies as a direct result of an act of violence committed against him or her.

(2) A person is also a primary victim of an act of violence if he or she is injured or dies as a direct result of--

(a) trying to arrest someone whom he or she believes on reasonable grounds has committed an act of violence; or

(b) trying to prevent the commission of an act of violence; or

(c) trying to aid or rescue someone whom he or she believes on reasonable grounds is a victim of an act of violence--

whether or not an act of violence is actually committed.

8. Assistance available to primary victims

(1) A primary victim may be awarded by the Tribunal assistance of up to $60 000.

(2) The amount awarded to a primary victim may be made up of amounts--

(a) for expenses actually incurred, or reasonably likely to be incurred, by the primary victim for reasonable counselling services;

(b) for medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the primary victim as a direct result of the act of violence;

(c) of up to $20 000 for loss of earnings suffered, or reasonably likely to be suffered, by the primary victim as a direct result of the act of violence;

(d) for expenses incurred by the primary victim through loss of or damage to clothing worn at the time of the commission of the act of violence.

(3) In exceptional circumstances, there may also be included in the amount awarded to a primary victim within the limit set by sub-section (1) an amount for other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the primary victim to assist his or her recovery from the act of violence.
(4) Except as provided by sub-section (2)(d) in the case of clothing, assistance may not be awarded to a primary victim for expense incurred through loss of or damage to property.

Division 2--Secondary Victims

9. Who is a secondary victim?

s. 9

(1) A secondary victim of an act of violence is a person who is present at the scene of an act of violence and who is injured as a direct result of witnessing that act.

(2) A person is also a secondary victim of an act of violence if he or she is injured as a direct result of subsequently becoming aware of an act of violence and--

(a) he or she is the parent or guardian of the primary victim of the act of violence; and

(b) the primary victim of the act of violence was under the age of 18 years at the time of the commission of that act.

(3) A person is not a secondary victim of an act of violence by virtue of sub-section (2) if he or she committed, and is criminally responsible for, that act of violence.

10. Assistance available to secondary victims

s. 10

(1) A secondary victim may be awarded by the Tribunal assistance of up to $50 000.

(2) The amount awarded to a secondary victim may be made up of amounts--

(a) for expenses actually incurred, or reasonably likely to be incurred, by the secondary victim for reasonable counselling services;

(b) for medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the secondary victim as a direct result of witnessing, or becoming aware of, the act of violence.

(3) In exceptional circumstances, there may also be included in the amount awarded to a secondary victim within the limit set by sub-section (1) an amount of up to $20 000 for loss of earnings suffered, or reasonably likely to be suffered, by the secondary victim as a direct result of witnessing, or becoming aware of, the act of violence.

Division 3--Related Victim

11. Who is a related victim?

(1) A related victim of an act of violence is a person who, at the time of the occurrence of the act of violence--

(a) was a close family member of; or
(b) was a dependant of; or

(c) had an intimate personal relationship with--

a primary victim of that act who died as a direct result of that act.

(2) A person is not a related victim of an act of violence if he or she committed, and is criminally responsible for, that act of violence.

12. Related victim pool

s. 12

The total maximum cumulative amount that may be awarded to all the related victims of any one primary victim is $100,000 less any amount awarded for the funeral expenses of the primary victim in accordance with Division 4.

13. Assistance available to any one related victim

(1) Within the limit set by section 12, a related victim may be awarded by the Tribunal assistance of up to $50,000.

(2) The amount awarded to a related victim may be made up of amounts--

(a) for expenses actually incurred, or reasonably likely to be incurred, by the related victim for reasonable counselling services;

(b) for medical expenses or funeral expenses actually and reasonably incurred, or reasonably likely to be incurred, by the related victim as a direct result of the death of the primary victim;

(c) for distress experienced, or reasonably likely to be experienced, by the related victim as a direct result of the death of the primary victim;

(d) for loss of money that, but for the death of the primary victim, the related victim would have been reasonably likely to receive from the primary victim during a period of up to 2 years after that death;

(e) for other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the related victim as a direct result of that death.

(3) Assistance may not be awarded to a related victim for expense incurred through loss of or damage to property.

s. 14

14. Subsequent applications by related victims

A person cannot apply for assistance as a related victim of an act of violence if an award of assistance has been made under this Act to, or for the benefit of, another related victim of that act of violence.
Division 4--Assistance for Funeral Expenses

15. Assistance available to person incurring funeral expenses for primary victim

A person who has incurred funeral expenses as a direct result of the death of a primary victim of an act of violence and who is not a related victim of that act may be awarded by the Tribunal assistance for the funeral expenses actually and reasonably incurred by that person.

Division 5--Limits on Assistance

16. Other entitlements to be taken into account

In determining whether or not to make an award or the amount of any award to be made, the Tribunal--

(a) must take into account--

(i) any damages that the applicant has recovered at common law; and

(ii) any compensation, assistance or payments of any other kind that the applicant has received--

for the loss, expense or other matter for which assistance is sought from the Tribunal; and

(b) may take into account--

s. 17

(i) any compensation, assistance or payments of any kind under any scheme, whether statutory or non-statutory, including that managed by the Transport Accident Commission and the Victorian WorkCover Authority and that established by the Police Assistance Compensation Act 1968 and any predecessor of any such schemes; and

(ii) any payments under any insurance policy (including life and health insurance) or superannuation scheme--

that the applicant has not received but is entitled to receive, or would be entitled to receive if he or she applied for it or them, for the loss, expense or other matter for which assistance is sought from the Tribunal.

17. Loss of earnings

Assistance for loss of earnings awarded by the Tribunal is for earnings lost by the primary or secondary victim as a direct result of total or partial incapacity for work during a period of up to 2 years after the occurrence of the act of violence.

18. Applicant can only apply in one capacity

s. 18

A person is only eligible to apply for, or receive, assistance in respect of a single act of violence in one capacity only.
PART 3--VICTIMS OF CRIME ASSISTANCE TRIBUNAL
   Division 1--The Tribunal

19. Establishments

s. 19

(1) The Victims of Crime Assistance Tribunal is established.

(2) The Tribunal consists of the Chief Magistrate and all other persons who hold the office of
    magistrate under section 7 of the Magistrates' Court Act 1989 or acting magistrate under
    section 9 of that Act.

20. Functions, powers and duties of Tribunal

The Tribunal has the functions, powers and duties conferred on it by this Act.

21. Composition of Tribunal

(1) The Tribunal is to be constituted by a single member for the purpose of the exercise of its
    functions, powers and duties with respect to any matter.

(2) The Tribunal may operate concurrently in more than one division.

(3) The Chief Magistrate is responsible for the arrangement of the business of the Tribunal
    and may give directions for the arrangement of that business and the constitution of the
    Tribunal for the purpose of any particular business.

22. Validity of proceedings

A decision of the Tribunal is not invalid only because of a defect or irregularity in, or in
connection with, the assignment of a magistrate or acting magistrate to constitute the Tribunal
for the purpose of any particular business.

23. Tribunal staff

s. 23

Subject to the Public Sector Management Act 1992, there may be appointed--

(a) a principal registrar of the Tribunal; and

(b) registrars of the Tribunal; and

(c) deputy registrars of the Tribunal; and

(d) as many other staff as are necessary for the effective operation of the Tribunal.

24. Delegation
The Chief Magistrate may, for and on behalf of the Tribunal, by instrument, delegate to the principal registrar or a registrar or deputy registrar of the Tribunal any power conferred on the Tribunal by or under this or any other Act, other than--

(a) the power to hear or determine an application; and

(b) this power of delegation.

Division 2--Applications

25. Who may apply to the Tribunal?

(1) An application may be made to the Tribunal by a primary victim, a secondary victim or a related victim of an act of violence.

(2) An application may also be made to the Tribunal in accordance with Division 4 of Part 2 by a person who has incurred funeral expenses.

(3) If the person entitled to make an application is a child, the application may be made on the child's behalf by a parent or guardian of the child or another person whom the Tribunal considers to be appropriate.

(4) If the person entitled to make an application is a represented person within the meaning of the Guardianship and Administration Board Act 1986, the application may be made on the represented person's behalf by the guardian or administrator appointed under that Act.

(5) If in any other case the Tribunal considers that the person entitled to make an application needs assistance in doing so, the application may be made on the person's behalf by any person whom the Tribunal considers to be appropriate.

(6) For the purposes of this Act, a person is still the applicant where an application is made on his or her behalf by another person in accordance with this section.

In section 25(3) "guardian" does not have the limited meaning given by section 3.

In section 25(4) "guardian" does not have the limited meaning given by section 3.

26. Form of application

s. 26

An application--

(a) must be in writing in or to the effect of the form prescribed by the rules or, if no form is so prescribed, required by any practice directions; and

(b) must be accompanied by any documentary evidence (such as medical certificates or statements of earnings) indicated in the form as being required to accompany the application; and
(c) must contain an authorisation for the Tribunal to obtain any other evidence or any document that the Tribunal considers that it requires in order to enable it to determine the application; and

(d) must state whether the applicant wishes the Tribunal to conduct a hearing or determine the application without conducting a hearing; and

(e) must be verified by the applicant, or the person making the application on behalf of the applicant, by a statutory declaration.

27. What application must set out

s. 27

(1) An application must set out--

(a) the circumstances in which the injury or death occurred, including the date, time and place of the alleged criminal act;

(b) whether the applicant is claiming as a primary, secondary or related victim or as a person who has incurred funeral expenses;

(c) the nature of the injury or the cause of death;

(d) whether the applicant has made a report to the police;

(e) whether criminal proceedings arising out of the alleged criminal act have been commenced;

(f) the amount and type of assistance sought;

(g) whether the applicant has made any other application for assistance under this Act in respect of the same act of violence;

(h) whether the applicant has applied for damages, compensation, assistance or payments of any kind under any other schemes whether statutory or non-statutory, including that managed by the Transport Accident Commission and the Victorian WorkCover Authority and that established by the Police Assistance Compensation Act 1968 and any predecessor of any such schemes;

(i) details of any relevant insurance cover (including life and health insurance) or superannuation benefit entitlements held by the applicant and, in the case of an applicant who is a related victim, by the deceased primary victim;

(j) any other matter required by the rules, or any practice directions, to be set out in the application.

(2) If an applicant has applied for damages, compensation, assistance or payments of any kind under another scheme (whether statutory or non-statutory), the applicant must provide the Tribunal with any authorisation necessary for the Tribunal to be provided by the body
managing that scheme with information about the application and decisions made in respect of it.

28. **Where application is to be sent**

s. 28

An application must be lodged with, or posted to, a registrar of the Tribunal.

29. **Time for making application**

(1) An application must be made within 2 years after the occurrence of the act of violence or, in the case of an application by a related victim or a person who has incurred funeral expenses, within 2 years after the death of the primary victim.

(2) The Tribunal must refuse to accept an application made out of time unless it considers that, in the particular circumstances, the application ought to be accepted.

(3) In determining whether to accept an application made out of time, the Tribunal must have regard to--

(a) the age of the applicant at the time of the occurrence of the act of violence;

(b) whether the applicant is intellectually disabled within the meaning of the *Intellectually Disabled Persons' Services Act 1986* or mentally ill within the meaning of the *Mental Health Act 1986*;

(c) whether the person who committed, or is alleged by the applicant to have committed, the act of violence was in a position of power, influence or trust in relation to the applicant;

(d) the physical or psychological effect of the act of violence on the applicant;

(e) whether the delay in making the application threatens the capacity of the Tribunal to make a fair decision;

(f) whether the applicant was a child at the time of the occurrence of the act of violence and the application was made within a reasonable time after he or she reached the age of 18;

(g) all other circumstances that it considers relevant.

(4) The Tribunal must not accept an application made out of time only because the applicant was unaware of this Act or of the *Criminal Injuries Compensation Act 1983* or the *Criminal Injuries Compensation Act 1972* or of the time within which applications must be made under any such Act.

30. **Information to be given by related victim applicants**

s. 30
(1) Within 21 days after making an application or any longer period fixed by the Tribunal during that period or during any such longer period previously fixed by the Tribunal, an applicant who is a related victim must notify the Tribunal in accordance with the rules of--

(a) every other person whom the applicant believes may be a related victim of the act of violence; and

(b) every other person whom the applicant believes may allege that he or she is a related victim of the act of violence; and

(c) any person whom the applicant believes may apply in accordance with Division 4 of Part 2.

Penalty: 50 penalty units.

(2) It is sufficient compliance with sub-section (1) if, in circumstances in which the applicant knows of the existence of a person or class of persons of whom he or she would be required to give notice under that sub-section but does not know their name or address, the applicant notifies the Tribunal of all matters within his or her knowledge that may enable the Tribunal to ascertain their name and address.

(3) If a court finds a person guilty of, or convicts a person of, an offence against sub-section (1), it may, in addition to any other penalty that it imposes, make an order directing the offender to refund to the State an amount equal to the whole or any specified part of any assistance awarded to the offender as a related victim on the application out of which the offence arose or forfeit any entitlement to any such amount that has not yet been paid to the offender.

s. 30

(4) The court may require an amount that is to be refunded under sub-section (3) to be refunded--

(a) wholly as a lump sum; or

(b) partly as a lump sum and partly by instalments; or

(c) wholly by instalments.

(5) Any money that is not refunded as required by an order under this section may be recovered as a debt due to the State.

**Division 3--Procedure and Powers of Tribunal**

**31. Standard of proof**

s. 31

Any question of fact to be decided by the Tribunal on, or in relation to, an application under this Act is to be decided on the balance of probabilities.
32. Duty to act fairly and expeditiously

In all matters before it the Tribunal must act--

(a) fairly; and

(b) according to the substantial merits of the case; and

(c) with as much expedition as the requirements of this Act and a proper determination of the matter permit.

33. Determination without hearing

(1) The Tribunal may determine an application, or make a decision in relation to an application, without conducting a hearing if the applicant has stated in the application a wish for the Tribunal to do so.

(2) If it does so, it must notify the applicant of its decision including details of--

(a) the amount, if any, of assistance awarded; and

(b) the purpose or purposes for which the assistance is awarded; and

(c) any conditions to which the award is subject; and

(d) the person or persons to whom assistance is payable; and

(e) any other order made by the Tribunal.

34. Fixing time and place for hearing

s. 34

(1) If the Tribunal decides to conduct a hearing of an application, it must fix a time and place for the hearing and give the applicant reasonable notice of it.

(2) The Tribunal may give notice of the time and place for the hearing to any other person whom the Tribunal considers to have a legitimate interest in the matter.

(3) The Tribunal must not under sub-section (2) give notice of the time and place for the hearing to the person who committed, or is alleged to have committed, the act of violence without first giving the applicant an opportunity to be heard on the issue of whether or not that notice should be given.

35. Who is entitled to appear at hearing?

(1) The applicant and any other person or body that, in the Tribunal's opinion, has a substantial interest in a matter is entitled to appear and be heard by the Tribunal on the hearing of the matter.
(2) An officer of the Tribunal assisting the Tribunal with respect to a matter or a legal practitioner engaged by the Tribunal to assist it with respect to a matter is entitled to appear and be heard by the Tribunal on the hearing of the matter.

(3) The State is entitled to appear and be heard by the Tribunal on the hearing of a matter if the State considers that it has a legitimate interest in the matter.

(4) A person or body that is entitled to appear and be heard by the Tribunal on the hearing of a matter is a party to the matter.

36. How may a party appear?

s. 36

(1) A party may appear personally or by a legal practitioner or, with the leave of the Tribunal, by any other representative.

(2) Without limiting sub-section (1)--

(a) a party that is a body corporate may appear by an officer of the body authorised in writing by the body corporate to appear on its behalf;

(b) a party that is a firm may appear by a partner of the firm or by an employee of the firm authorised in writing by the firm to appear on its behalf;

(c) a party that is the State may appear by a member of staff within the meaning of the Public Sector Management Act 1992 authorised in writing by the State to appear on its behalf.

37. Evidence

(1) The Tribunal has the powers conferred by sections 14, 15, 16, 20 and 20A of the Evidence Act 1958 on a board appointed by the Governor in Council.

(2) The Tribunal may, on its own initiative or on the application of a party to a proceeding, direct that alternative arrangements be made for the giving of evidence by a witness.

(3) Without limiting sub-section (2), any of the following alternative arrangements may be directed to be made:

(a) permitting the evidence to be given from a place other than the room in which the Tribunal is sitting by means of closed-circuit television or other facilities that enable communication between that place and the room in which the Tribunal is sitting;

(b) using screens to remove the person by whom the act of violence was committed or alleged to have been committed from the witness’ direct line of vision;

(c) permitting a person to be beside the witness while he or she is giving evidence for the purpose of providing emotional support to him or her;

(d) requiring counsel to be seated while examining or cross-examining the witness.
(4) Any place outside the room in which the Tribunal is sitting where a witness is permitted to give evidence under this section is to be taken to be part of the room in which the Tribunal is sitting while the witness is there for the purpose of giving evidence.

(5) The Tribunal may, at any time in the course of the proceeding, vary or revoke a direction made under sub-section (2) on its own initiative or on the application of a party to the proceeding.

38. Procedure of Tribunal

s. 38

(1) On the hearing of a matter, the Tribunal--

(a) is not required to conduct itself in a formal manner;

(b) is not bound by rules or practice as to evidence but may inform itself in relation to the matter in any manner that it thinks fit;

(c) must give a party to the matter a reasonable opportunity to--

(i) call or give evidence;

(ii) examine, cross-examine or re-examine witnesses;

(iii) make submissions to the Tribunal.

(2) After hearing and determining an application (including an application for variation under section 60), the Tribunal must notify the applicant of its decision including details of--

(a) the amount, if any, of assistance awarded; and

(b) the purpose or purposes for which the assistance is awarded; and

(c) any conditions to which the award is subject; and

(d) the person or persons to whom assistance is payable; and

(e) any other order made by the Tribunal.

(3) Subject to this Act and the rules and to any guidelines issued under section 45(1) or practice directions, the procedure of the Tribunal is in its discretion.

39. Investigative powers of Tribunal

s. 39

(1) The Tribunal may, if it determines that it requires further information to enable it to determine an application--
(a) authorise a person to make any enquiry or carry out any investigation on behalf of the Tribunal necessary to furnish the Tribunal with the further information that it requires; or

(b) order the preparation and submission to the Tribunal of a medical report or counselling report; or

(c) order the applicant to lodge with the Tribunal, within the period specified in the order, an additional statement containing particulars of matters specified in the order or any documents specified in the order.

(2) A person authorised under sub-section (1)(a) may be--

(a) a member of staff referred to in section 23; or

(b) a legal practitioner engaged by the Tribunal to assist it with respect to an application; or

(c) if the State has appeared on the hearing of a matter, a person authorised to appear before the Tribunal on behalf of the State.

(3) Without limiting sub-section (1), the Tribunal may authorise a person under sub-section (1)(a) to exercise any power conferred on a registrar by section 40.

s. 39

(4) If, in connection with the preparation of a medical report or counselling report ordered to be prepared under sub-section (1)(b), an applicant refuses or fails without reasonable excuse to comply with a request to submit to an examination by a medical expert or to receive counselling services, the Tribunal may under section 41 adjourn consideration of the application until the examination or counselling takes place or refuse the application.

(5) The Tribunal must bear the costs of, and incidental to, an examination or provision of counselling services referred to in sub-section (4).

(6) The Tribunal may exercise its power under sub-section (1)(b) whether or not a medical or counselling report has been submitted to it by the applicant or any other party.

(7) If an applicant refuses or fails without reasonable excuse to comply with an order under sub-section (1)(c), the Tribunal may under section 41 adjourn consideration of the application until the order is complied with or refuse the application.

40. Power of registrar to obtain information

s. 40

(1) A registrar may, in relation to an application for assistance--

(a) inspect any court register; or
(b) by notice in writing require a person, within a specified period of time, to provide to the registrar any information or produce to the registrar any documents relevant to the application.

(2) A person to whom a notice is given under sub-section (1)(b) may be--

(a) a person employed or engaged to provide services to--

(i) a government department; or

(ii) a body providing health services; or

(iii) any other body of any kind whatsoever; or

(b) the Chief Commissioner of Police; or

(c) any other person whatsoever.

(3) The registrar may extend or further extend the period specified in the notice under sub-section (1)(b) for compliance with the requirement.

(4) A person to whom a notice is given under sub-section (1)(b) must comply with the notice.

Penalty: 10 penalty units.

41. Power to adjourn

s. 41

(1) The Tribunal may order an adjournment of the consideration of an application--

(a) to such times and places; and

(b) for such purposes; and

(c) on such terms as to costs or otherwise--

as it considers necessary or just in the circumstances.

(2) Without limiting sub-section (1), purposes for which the Tribunal may adjourn consideration of an application include pending the determination of civil or criminal proceedings arising out of the commission of the act of violence that have been commenced or are about to commence or could be commenced by the applicant.

(3) An order under this section may be made on the application of a party or on the Tribunal's own initiative.

42. Hearings open to public unless Tribunal directs otherwise
(1) A hearing conducted by the Tribunal in relation to a matter is to be open to the public unless the Tribunal directs--

(a) that the whole or any part of the hearing is to be closed to members of the public; or

(b) that only persons or classes of persons specified by it may be present during the whole or any part of the hearing.

(2) A direction under this section may be given on the application of a party or on the Tribunal's own initiative.

(3) The Tribunal must give a direction under this section if an application for the giving of the direction is made by--

(a) an applicant who is a primary victim of an act of violence and who the Tribunal is satisfied is a person--

(i) whose injury resulted from an offence referred to in paragraph (b) of the definition of "relevant offence" in section 3; or

(ii) who is a child; or

(iii) with impaired mental functioning; or

(b) an applicant who the Tribunal is satisfied is likely--

(i) to suffer distress; or

(ii) to feel intimidated or be stressed--

if the direction is not given.

43. Tribunal may restrict publication of material

s. 43

(1) The Tribunal may, if satisfied that it is in the public interest to do so, order--

(a) that the whole or any specified part of the evidence given at a hearing; or

(b) that the content of all or any specified documents produced to the Tribunal; or

(c) that any information likely to lead to the identification of a party or another person who has appeared at a hearing--

must not be published except in the manner and to the persons specified in the order.

(2) An order under this section may be made on the application of a party or on the Tribunal's own initiative.
(3) A person must not publish or cause to be published any material in contravention of an order under this section.

Penalty: 500 penalty units in the case of a body corporate; 100 penalty units or imprisonment for 2 years in any other case.

44. Procedural directions

s. 44

(1) The Tribunal may give directions as to the procedure to be followed at, or in connection with, the hearing of a matter.

(2) The Tribunal may at any time vary or revoke a direction given under this section.

(3) A direction under this section may be given, varied or revoked on the application of a party or on the Tribunal's own initiative.

(4) A direction under this section must not be inconsistent with any provision made by this Act or the rules or with any guidelines issued under section 45(1) or any practice directions.

45. Guidelines

(1) The Chief Magistrate may issue guidelines for the Tribunal as to the procedure to be followed at, or in connection with, the hearing of matters generally or any specified class or classes of matters.

(2) Guidelines issued under sub-section (1) must not be inconsistent with any provision made by this Act or the rules or with any practice directions.

46. Scale of costs

s. 46

(1) The Governor in Council may, by Order published in the Government Gazette, prescribe a scale of costs applicable with respect to applications to the Tribunal for assistance under this Act.

(2) A scale of costs under sub-section (1) may prescribe--

(a) costs payable to a legal practitioner acting for an applicant for assistance under this Act;

(b) allowances and expenses payable to witnesses in proceedings in the Tribunal or persons required to produce documents to the Tribunal;

(c) amounts payable in respect of the provision by a medical expert or counselling service provider in connection with an application to the Tribunal of any service including the conduct of an examination and the preparation of a report;

(d) amounts payable in respect of funeral expenses.
47. Payment of expenses to person entitled

(1) In this section--

"creditor" means a person entitled to take proceedings for the recovery of expenses and includes a legal practitioner who has paid expenses on behalf of a client;

"expenses" means expenses for a treatment or other service provided in respect of which assistance is payable under this Act but does not include costs referred to in section 48;

"reasonable", in relation to expenses, means reasonable having regard to the treatment or other service provided.

(2) The Tribunal may order that assistance in respect of expenses be paid to the creditor.

(3) If the Tribunal believes that the amount of expenses is reasonable and orders payment to the creditor under sub-section (2), the creditor may recover from the debtor the difference between the amount ordered and the amount of the expenses.

(4) If the Tribunal believes that the amount of expenses is not reasonable, it may make an order determining the amount it considers reasonable.

(5) If the Tribunal makes an order under sub-section (4) in respect of expenses--

s. 47

(a) assistance payable in respect of the expenses must not exceed 80% of the amount determined by the Tribunal;

(b) if the expenses have not been paid--

(i) unless the creditor is a legal practitioner who has paid the full amount of the expenses on behalf of a client, the creditor is not entitled to recover more than the amount determined by the Tribunal;

(ii) if the creditor is a legal practitioner who has paid the full amount of the expenses on behalf of a client, the difference between the amount determined by the Tribunal and the amount paid may be recovered by the legal practitioner on behalf of the client as a civil debt recoverable summarily from the person to whom payment was made;

(iii) the creditor is not prevented by this Act from recovering the balance of the amount determined by the Tribunal remaining after a payment ordered by the Tribunal;

(c) if the expenses have been paid, the amount of payment in excess of the amount determined by the Tribunal is recoverable as a civil debt recoverable summarily from the person to whom payment was made.

48. Costs

s. 48
(1) The costs of, and incidental to, all proceedings in the Tribunal are in the discretion of the Tribunal and it has full power to determine by whom, to whom and to what extent the costs are to be paid.

(2) Sub-section (1) is subject to this section and to--

(a) any scale of costs under section 46(1); and

(b) the rules; and

(c) any practice directions.

(3) A related victim of an act of violence must bear his or her own costs in respect of proceedings before the Tribunal unless the Tribunal considers that, having regard to the particular circumstances, it ought to allow all or any part of those costs.

(4) A legal practitioner acting for an applicant for assistance under this Act is not entitled--

(a) to recover from the applicant any costs in respect of proceedings before the Tribunal; or

(b) to claim a lien in respect of any such costs on any sum payable as assistance under this Act; or

(c) to deduct any such costs from any such sum--

except to the extent to which the costs have been allowed as between the legal practitioner and the client by the Tribunal on the application of the legal practitioner or of the client.

(5) Except as allowed by the Tribunal, a person must not charge for the making of an application to the Tribunal or for appearing on behalf of an applicant.

(6) Sub-sections (4) and (5) have effect despite anything to the contrary in the Legal Practice Act 1996.

49. Complaints about service providers

s. 49

(1) The Tribunal may cause a complaint about the costs charged by a legal practitioner in connection with an application to the Tribunal to be made in accordance with Division 2 of Part 5 of the Legal Practice Act 1996 if it considers the amount charged to be grossly excessive.

(2) The Tribunal may cause a complaint to be made to the Health Services Commissioner or a relevant regulatory body about the amount charged by a medical expert or counselling service provider for the provision in connection with an application to the Tribunal of any service if it considers the amount charged to be grossly excessive.

Division 4--Awards

50. Making of awards
(1) The Tribunal may award assistance to an applicant if satisfied--

(a) that an act of violence has occurred; and

(b) that the applicant is a primary victim, secondary victim or related victim of that act of violence or a person who has incurred funeral expenses as a direct result of the death of such a primary victim; and

(c) that the applicant is eligible to receive the assistance.

(2) An award of assistance may be made subject to any conditions specified by the Tribunal in the order making the award.

(3) Without limiting sub-section (2), the Tribunal may specify the following as conditions:

(a) that the person to whom, or for whose benefit, the award is made repay the whole or any part of the amount of the award in specified circumstances;

(b) in the case of an award that is payable to a person for the benefit of another person, conditions--

(i) as to the payment of the assistance to or for the benefit of that other person; or

(ii) as to the holding of the whole or any part of the assistance on trust for that other person.

(4) The Tribunal may award assistance in respect of an act of violence even though no person has been charged with, or found guilty or convicted of, an offence arising out of the commission of that act of violence.

51. Assignment of rights to the State

s. 51

(1) The person to whom, or for whose benefit, an award of assistance is made under this Act may, on or before the making of the award, assign to the State their right to recover from any other person, by civil proceedings, damages or compensation in respect of the injury or death to which the award relates.

(2) Money recovered by the State in the exercise of a right assigned to it in accordance with sub-section (1) must be dealt with as follows:

(a) an amount equal to the expended amount, or the total money recovered if it is less than the expended amount, must be paid into the Consolidated Fund; and

(b) the balance, if any, must be paid to the assignor.

(3) In sub-section (2) "the expended amount" is the total of--

(a) the amount of assistance awarded to the assignor under this Act; and
(b) all costs and expenses incurred by the Tribunal in connection with the determination of the application for assistance and the making of the award; and

(c) all costs and expenses incurred by the Administrative Appeals Tribunal on a review of a decision made by the Tribunal in connection with the application for assistance; and

(d) all costs incurred by the State in connection with the exercise of the assigned right.

52. **Mandatory refusal of application**

s. 52

The Tribunal must refuse to make an award of assistance if--

(a) it is satisfied that--

(i) the act of violence was not reported to the police within a reasonable time; or

(ii) the applicant failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed--

unless the Tribunal considers that special circumstances brought about that result; or

(b) the application is made in collusion with the person who committed or is alleged to have committed the act of violence; or

(c) an earlier application for assistance by the applicant in any capacity arising from the same act of violence has been made, whether or not the earlier application has been determined; or

(d) in the case of an application by a related victim of an act of violence, an award of assistance has been made under this Act to, or for the benefit of, another related victim of that act of violence.

53. **Reasonable time for reporting act of violence**

s. 53

In considering whether the act of violence was reported to the police within a reasonable time, the Tribunal may have regard to any matters that it considers relevant including--

(a) the age of the victim at the time of the occurrence of the act of violence;

(b) whether the victim is intellectually disabled within the meaning of the **Intellectually Disabled Persons' Services Act 1986** or mentally ill within the meaning of the **Mental Health Act 1986**;

(c) whether the person who committed, or is alleged to have committed, the act of violence was in a position of power, influence or trust in relation to the victim;
(d) whether the victim was threatened or intimidated by the person who committed, or is alleged to have committed, the act of violence or any other person;

(e) the nature of the injury alleged to have been suffered by the victim.

54. Matters to which Tribunal must have regard

s. 54

In determining whether or not to make an award of assistance or the amount of assistance to award, the Tribunal must have regard to the following:

(a) the character, behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence;

(b) in the case of an application by a related victim--

(i) the character or behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) of the deceased primary victim of the act of violence;

(ii) any obligations owed to the applicant and any other related victim applicants by the deceased primary victim of the act of violence;

(iii) the financial resources (including earning capacity) and financial needs of the applicant and any other related victim applicants;

(iv) if the related victim is a close family member of, or had an intimate personal relationship with, the deceased primary victim of the act of violence, the nature of the relationship between them;

(c) whether the applicant provoked the commission of the act of violence and, if so, the extent to which the act of violence was in proportion to that provocation;

(d) any condition or disposition of the applicant which directly or indirectly contributed to his or her injury or death;

(e) whether the person by whom the act of violence was committed or alleged to have been committed will benefit directly or indirectly from the award;

(f) any other circumstances that it considers relevant.

55. Form of payment

s. 55

(1) Subject to this section, an award of assistance--

(a) may be made payable in whole or in part--
(i) to the applicant; or
(ii) to any other person for the benefit of the applicant;

(b) may be paid--

(i) wholly as a lump sum; or
(ii) partly as a lump sum and partly by instalments; or
(iii) wholly by instalments.

(2) Amounts awarded to a victim for expenses not yet incurred are only payable on the submission of an invoice or receipt relating to the particular expense.

(3) The Tribunal may specify terms and conditions to be complied with before any instalment is paid.

(4) The Tribunal may order that the whole or any part of an award of assistance not be paid until after the expiry of the period limited by the Administrative Appeals Tribunal Act 1984 for applying under section 59 of this Act for a review of the Tribunal's decision and, if an application for review is made, until after the decision of the Tribunal on the application for review comes into operation.

(5) Any assistance not paid to, or for the benefit of, a person within 6 years after the awarding of that assistance ceases to be payable unless it is then being held by the Tribunal on trust for that person.

56. Interim awards

s. 56

(1) Pending the final determination of an application for assistance, the Tribunal may make an interim award of assistance in any circumstances that it considers appropriate.

(2) The Tribunal must not make an interim award unless it is satisfied that the applicant will be, or is likely to be, entitled to receive assistance when the application is finally determined.

(3) If an interim award is made but the application for assistance is subsequently dismissed, the amount of the interim award becomes a debt due to the State by the applicant.

(4) If, on finally determining the application, the Tribunal decides to award assistance to the applicant, it must deduct the amount of any interim award from the amount of assistance that it would otherwise have awarded.

(5) Sections 50(2) and (3) and 55 apply to an interim award in the same way that they apply to a final award.
s. 57

(1) The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules for or with respect to--

(a) forms;

(b) the procedure to be followed in making applications to the Tribunal and in respect of proceedings under this Act;

(c) the service of notices, applications, orders and other documents for the purposes of this Act;

(d) generally, any matter relating to the practice and procedure of the Tribunal.

(2) The power of the Chief Magistrate together with 2 or more Deputy Chief Magistrates to jointly make rules is subject to the rules being disallowed by a House of the Parliament in accordance with section 23 of the Subordinate Legislation Act 1994.

58. Practice directions

(1) The Chief Magistrate may from time to time issue practice directions, statements or notes for the Tribunal relating to proceedings generally or any specified class or classes of proceedings, including the exercise by the Tribunal of its discretion in relation to the costs of, and incidental to, any such proceedings.

(2) Practice directions, statements or notes issued under sub-section (1) must not be inconsistent with any provision made by this Act or the rules.

s. 58

PART 4--REVIEW, VARIATION AND REFUNDS

Division 1--AAT Review

59. AAT review of Tribunal decisions

s. 59

An application may be made to the Administrative Appeals Tribunal for review of a final decision of the Tribunal--

(a) refusing to make an award of assistance on an application under Division 2 of Part 3;

(b) determining the amount of assistance on an application under Division 2 of Part 3;

(c) refusing to vary an award under section 60;

(d) determining the amount of assistance on an application for variation under section 60;

(e) determining under section 62(2) that a person is required to make a refund, or determining the amount of that refund.
Division 2--Variation of Award

60. Variation of award

(1) The Tribunal may, on the application of the person to whom, or for whose benefit, an award of assistance was made, vary the award (including an award that has been previously varied) in any manner that the Tribunal thinks fit, whether as to the terms of the award or by increasing or decreasing the amount of assistance awarded or in some other way.

(2) The Tribunal must not make an order for variation of an award if the application for variation is made more than 6 years after the making of the original award unless the person to whom, or for whose benefit, the award was made is still under 18 years of age at the end of that period of 6 years in which case an application may be made at any time up until he or she turns 18.

(3) In considering an application for variation the Tribunal must have regard to--

(a) any fresh evidence that has become available since the award was made or last varied;

(b) any change of circumstances that has occurred since the award was made or last varied or that is likely to occur;

(c) any payments received by or payable to the person to whom, or for whose benefit, an award of assistance was made in respect of the injury or death since the award was made or last varied;

(d) anything else that the Tribunal thinks is relevant.

(4) In exercising its power under this section, the Tribunal must do so in accordance with the other provisions of this Act relating to the payment of, or the amount of, assistance.

Division 3--Refunds

61. Pursuing other remedies

s. 61

Except as otherwise provided by this Act, the making of an award of assistance does not affect the right of a person to recover from any other person, by civil proceedings or otherwise, any damages, compensation, assistance or payments of any kind.

62. Refund of award

s. 62

(1) If a person to whom, or for whose benefit, an award is made receives after the making of the award any damages, compensation, assistance or payments of any kind not taken into account by the Tribunal under section 16 on making the award but which the Tribunal would have been required by that section to take account of if received before then, the person must refund--
(a) the amount of the assistance paid to him or her under this Act, if it is equal to or less than the amount of the damages, compensation, assistance or other payments subsequently received; or

(b) the amount of the damages, compensation, assistance or other payments subsequently received, if the amount of the assistance paid to him or her under this Act is greater.

(2) Despite sub-section (1), if the damages, compensation, assistance or other payments subsequently received were received from a person other than the person by whom the act of violence was committed or alleged to have been committed or another person on that person's behalf, a requirement to refund only arises if the Tribunal requires the person to whom, or for whose benefit, the award was made, to do so.

(3) If an award is varied under section 60 or on a review under section 59 by decreasing the amount of assistance, the person to whom, or for whose benefit, the award was made must refund the amount by which the assistance paid to him or her under this Act is decreased.

(4) Any money that is not refunded as required by this section may be recovered as a debt due to the State.

s. 62

PART 5--MISCELLANEOUS

63. Protection of members, advocates and witnesses

s. 63

(1) A member of the Tribunal has, in the exercise of powers or performance of duties as a member, the same protection and immunity as a judge of the Supreme Court.

(2) A legal practitioner or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by the Evidence Act 1958 as applied to the Tribunal by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

64. Contempt of Tribunal

(1) A person must not--

(a) hinder or obstruct a member of the Tribunal in the exercise of the powers or the performance of the functions of the member under this Act;

(b) interrupt any proceedings of the Tribunal;
(c) use insulting language towards a member of the Tribunal when the member is exercising powers or performing functions under this Act;

(d) create a disturbance or take part in creating a disturbance in or near a place where the Tribunal is sitting;

(e) do any other thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 50 penalty units.

(2) Nothing in sub-section (1) limits or takes away any power conferred on the Tribunal by, or exercisable in relation to the Tribunal by virtue of, section 37(1).

65. Inadmissibility of evidence in other proceedings

s. 65

(1) Evidence of anything said on the hearing of, or of any document prepared solely for the purpose of, an application is not admissible in any civil or criminal proceeding in a court or tribunal or in any other legal proceeding within the meaning of the Evidence Act 1958 except--

(a) a proceeding before the Tribunal or arising out of a proceeding before the Tribunal; or

(b) a proceeding for an offence against this Act; or

(c) a proceeding for an offence against section 81, 82, 83 or 83A of the Crimes Act 1958 (fraud) or for an offence of conspiracy to commit, incitement to commit or attempting to commit any such offence; or

(d) a proceeding for an offence against section 314(1) of the Crimes Act 1958 (perjury) or for any other offence that involves an interference with the due administration of justice; or

(e) with the consent of the person to whom the words or document principally refers or relates.

(2) A court, tribunal or person acting judicially within the meaning of the Evidence Act 1958 may rule as admissible in a proceeding before them any matter inadmissible because of sub-section (1) if satisfied, on the application of a party to the proceeding, that it is in the interests of justice to do so.

66. Fraud

s. 66

A person must not--

(a) obtain or attempt to obtain fraudulently any assistance under this Act, whether for himself or herself or any other person, and whether or not in collusion with any other person; or
(b) knowingly assist any other person to obtain fraudulently any assistance under this Act.

Penalty: 120 penalty units or imprisonment for 12 months or both.

67. False or misleading information

(1) A person must not in, or in relation to, an application for assistance give information that is false or misleading in a material particular.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(2) In a proceeding for an offence against sub-section (1) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds--

(a) in the case of false information--that the information was true; or

(b) in the case of misleading information--that the information was not misleading.

68. Annual report

(1) Before 30 September in each year the Tribunal must submit a report to the Minister on the performance by the Tribunal of its functions, powers and duties during the year ending on the previous 30 June.

(2) The Minister must cause each report under sub-section (1) to be laid before each House of the Parliament within 7 sitting days of that House after it is received by the Minister.

69. Payments to and from Consolidated Fund

s. 69

(1) The costs and expenses of establishing, maintaining and administering the Tribunal together with the amounts of assistance ordered by the Tribunal or, on a review under section 59, by the Administrative Appeals Tribunal to be paid under this Act and costs and expenses awarded to applicants shall be paid out of the Consolidated Fund which is, by this sub-section, accordingly appropriated to the necessary extent.

(2) If the Tribunal or, on a review under section 59, the Administrative Appeals Tribunal makes an award of assistance under this Act, it must cause an order in writing to be drawn up and given to the person to whom the award is made.

(3) Money is only payable out of the Consolidated Fund in satisfaction of an award of assistance on presentation of a written order of the Tribunal or the Administrative Appeals Tribunal, as the case requires.

(4) All money refunded under this Act or, subject to section 51, otherwise paid to or recovered by the State in accordance with this Act must be paid into the Consolidated Fund.

70. Investment of trust money
(1) The whole or any part of any money held by the Tribunal on trust for a person may, except where otherwise provided by this or any other Act, whether already in a state of investment or not, be invested--

(a) on deposit with a bank within the meaning of the Banking Act 1959 of the Commonwealth or a bank constituted by a law of a State or of the Commonwealth; or

(b) in the manner in which trust money may be invested by a trustee under the Trustee Act 1958.

(2) All income derived from the investment of money under sub-section (1) must be paid to the person beneficially entitled to the invested money.

71. Supreme Court--limitation of jurisdiction
s. 71

It is the intention of sections 47, 48 and 63 to alter or vary section 85 of the Constitution Act 1975.

72. Regulations

The Governor in Council may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

73. Repeal of Criminal Injuries Compensation Act 1983


The Criminal Injuries Compensation Act 1983 is repealed.

74. Compensation under Sentencing Act 1991 for pain and suffering


(1) In section 86 of the Sentencing Act 1991--

(a) in sub-section (1)--

(i) after "property" (where first occurring) insert "or pain and suffering";

(ii) after "damaged)" insert "or for the pain and suffering";

(b) in sub-section (5)(a) after "practicable" insert "(and, in the case of an application for compensation for pain and suffering, no later than 6 months)".

(2) In section 86 of the Sentencing Act 1991, after sub-section (9) insert--
"(9A) A court must not exercise the powers conferred by this section to order an offender to pay compensation for pain and suffering without giving the offender a reasonable opportunity to be heard on the application.

(9B) On deciding to grant or refuse an application for compensation for pain and suffering, the court must--

(a) state in writing the reasons for its decision; and

(b) cause those reasons to be entered in the records of the court.

(9C) The failure of a court to comply with sub-section (9B) does not invalidate the decision made by it on the application."

(3) In section 86(10) of the Sentencing Act 1991, after "damage" insert "to property or to recover damages for pain and suffering".

75. New Division 2A inserted in Part 4 of Sentencing Act 1991

s. 75

After Division 2 of Part 4 of the Sentencing Act 1991 insert--

"Division 2A--Recovery of Assistance paid under Victims of Crime Assistance Act 1996"

"87A. Recovery of assistance paid under Victims of Crime Assistance Act 1996"

(1) If--

(a) a court finds a person guilty of, or convict a person of, a relevant offence within the meaning of the Victims of Crime Assistance Act 1996; and

(b) an award of assistance was made under that Act in respect of an injury or death that directly resulted from that offence--

the court may, on the application of the State, order the offender to pay to the State an amount equal to the whole or any specified part of the assistance awarded together with the whole or any specified part of any costs awarded in respect of the application for assistance.

(2) An application may only be made under sub-section (1) within the period of 6 months after the day on which the person was found guilty or convicted of the relevant offence.

s. 75

(3) A court may require an amount payable under sub-section (1) to be paid--

(a) wholly as a lump sum; or

(b) partly as a lump sum and partly by instalments; or

(c) wholly by instalments."
(4) A court must not make an order under sub-section (1) without giving the offender a reasonable opportunity to be heard on the application for the order and without having regard to--

(a) his or her financial resources (including earning capacity) and financial needs; and

(b) any obligations owed by him or her to any other person; and

(c) any other circumstances that the court considers relevant.

(5) A court is not prevented from making an order under sub-section (1) only because it has been unable to find out the financial circumstances of the offender.

s. 75

(6) An offender may appear on the hearing of an application under sub-section (1) personally or by a legal practitioner or, with the leave of the court, by any other representative.

(7) The court may at any time, on the application of the State or of the offender, vary an order made under sub-section (1) (including an order that has been previously varied) in any manner that the court thinks fit.

(8) Nothing in this section limits section 86 and a court must give priority to an application made under that section in relation to the same finding of guilt or conviction and, accordingly, may defer the determination of an application under sub-section (1).

87B. Enforcement of order under section 87A

(1) An order under section 87A(1) must be taken to be a judgment debt due by the offender to the State and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

(2) All money paid to, or recovered by, the State under this Division must be paid into the Consolidated Fund.

76. Transitional provisions

s. 76

(1) Schedule 1 contains transitional provisions.

(2) Schedule 1 does not affect or take away from the Interpretation of Legislation Act 1984.

SCHEDULE 1

Section 76

TRANSITIONAL PROVISIONS

Sch. 1

1. Definitions
In this Schedule--

"commencement day" means the day on which section 19 comes into operation;

"former Act" means the Criminal Injuries Compensation Act 1983 as in force immediately before its repeal;

"former Tribunal" means a Crimes Compensation Tribunal appointed under the former Act;

"new Tribunal" means the Victims of Crime Assistance Tribunal established by Part 3 of this Act.

2. Abolition of former Tribunals

On the commencement day--

(a) each former Tribunal is abolished and the person appointed to be the Tribunal goes out of office as the Tribunal;

(b) all rights, property and assets that, immediately before that day, were vested in a former Tribunal are, by force of this clause, vested in the new Tribunal;

(c) all debts, liabilities and obligations of a former Tribunal existing immediately before that day become, by force of this clause, debts, liabilities and obligations of the new Tribunal;

(d) the new Tribunal is, by force of this clause, substituted as a party to any proceeding pending in any court or tribunal to which a former Tribunal was a party immediately before that day;

(e) the new Tribunal is, by force of this clause, substituted as a party to any contract or arrangement entered into by or on behalf of a former Tribunal as a party and in force immediately before that day;

(f) subject to this Act, any reference to a former Tribunal in any Act (other than this Act) or in any subordinate instrument within the meaning of the Interpretation of Legislation Act 1984 must, on and from that day, be construed as a reference to the new Tribunal, unless the context otherwise requires.

3. Staff of former Tribunal

Sch. 1

A person who, immediately before the commencement day, was a registrar or deputy registrar of a former Tribunal or of the former Tribunals becomes, on and from that day but subject to the Public Sector Management Act 1992, a registrar or deputy registrar of the new Tribunal, as the case requires.

4. Pending applications or matters
(1) An application that had been made under section 7, 25, 27 or 29 of the former Act, or a matter that was before a former Tribunal under section 28, 31 or 32 of that Act, but had not been finally determined as at the commencement day must continue to be dealt with in accordance with the former Act as if that Act had not been repealed.

(2) Subject to sub-clause (3), an application or matter referred to in sub-clause (1) is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose--

(a) the new Tribunal has all the powers, functions and duties of the former Tribunal under the former Act; and

(b) anything done in relation to the application or matter by the former Tribunal before the commencement day is deemed to have been done by the new Tribunal; and

(c) the new Tribunal may have regard to any record of the former Tribunal relating to the application or matter.

(3) If a former Tribunal had decided to conduct a hearing of an application or matter and before the commencement day evidence on any question of fact material to the application or matter had been given to the former Tribunal at a hearing, the former Tribunal must continue to deal with that application or matter in accordance with the former Act until it is finally determined.

(4) For the purpose of sub-section (3) and despite anything to the contrary in this Act, a former Tribunal continues to exist until all applications or matters referred to in sub-clause (3) have been finally determined.

(5) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of a former Tribunal or the new Tribunal made under this clause after the commencement day in respect of an application or matter referred to in sub-clause (1).

(6) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (5).

Sch. 1

(7) If any difficulty arises in relation to an application or matter because of the operation of this clause, the Chief Magistrate may make any order that he or she considers appropriate to resolve the difficulty.

(8) The Chief Magistrate may make an order under sub-clause (7) on the application of a party to the proceeding or matter or on his or her own initiative.

5. Applications in respect of acts before the commencement day

(1) Subject to this Act, an application may be made by a person under this Act in respect of an act of violence that occurred before the commencement day provided that no application by that person in the same capacity had been made under section 7 of the former Act or any corresponding previous enactment in respect of that act of violence before that day.
Subject to sub-clause (3), an application cannot be made under this Act in respect of an act of violence that occurred before the commencement day by a person--

(a) who would not have been entitled to make an application under section 7 of the former Act or any corresponding previous enactment in respect of that act of violence had this Act not been enacted; or

(b) who would not have been entitled to make an application under this Act in respect of that act of violence had it occurred on or after that day.

Sub-clause (2) does not exclude an application in respect of an injury that is an injury as defined in this Act but was not an injury as defined in the former Act or any corresponding previous enactment.

Without limiting sub-clause (1) and despite sub-clause (2), an application may be made under this Act in respect of an injury (as defined in the former Act) that occurred within 1 year before the commencement day by a person who--

(a) would have been entitled to make an application under section 7 of the former Act in respect of that injury had this Act not been enacted but who would not have been entitled to make an application under this Act in respect of that injury had the act of violence occurred on or after that day; and

(b) had not made an application under the former Act in respect of that injury before that day.

6. Applications under former Act by persons who would be secondary victims under this Act

Sch. 1

Despite its repeal, an application may be made under section 7 of the former Act on or after the commencement day in respect of an injury (as defined in that Act) that occurred within 1 year before that day by a person who--

(a) would have been entitled to make an application under this Act as a secondary victim of an act of violence that resulted in that injury and in the death of the primary victim of that act had that act occurred on or after that day; and

(b) had not made an application under the former Act in respect of that injury before that day.

An application referred to in sub-clause (1) is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose it has all the powers, functions and duties of the former Tribunal under the former Act.

Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal made under this clause after the commencement day in respect of an application referred to in sub-clause (1).

Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

7. Variation of old awards
(1) Despite its repeal, section 25 of the former Act continues to apply with respect to orders for compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.

(2) An application under section 25 of the former Act made on or after the commencement day is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose the new Tribunal has all the powers, functions and duties of a former Tribunal under the former Act.

(3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 25 of the former Act refusing to vary an award or determining the amount of compensation on an application for variation of an award.

(4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

Sch. 1

8. Recovery from offender

(1) Despite its repeal, section 27 of the former Act continues to apply with respect to orders for the payment of compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.

(2) An application under section 27 of the former Act made on or after the commencement day is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose the new Tribunal has all the powers, functions and duties of a former Tribunal under the former Act.

(3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 27 of the former Act to make an order under section 27.

(4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

9. Refund of old awards

(1) Despite its repeal, section 28 of the former Act continues to apply with respect to awards of compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.

(2) The new Tribunal, for the purpose of determining under section 28(3) of the former Act that a person is required to make a refund or the amount of that refund, has all the powers, functions and duties of a former Tribunal under the former Act.

(3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 28 of the former Act determining that a person is required to make a refund or determining the amount of such a refund.

(4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).
10. **Recovery of old awards between dependants**

**Sch. 1**

(1) Despite its repeal, section 29 of the former Act continues to apply with respect to awards of compensation made under the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.

(2) An application under section 29 of the former Act made on or after the commencement day is to be dealt with by the new Tribunal in accordance with the former Act and for that purpose the new Tribunal has all the powers, functions and duties of a former Tribunal under the former Act.

(3) Despite its repeal, section 26 of the former Act continues to apply with respect to decisions of the new Tribunal under section 29 of the former Act refusing to vary an award or determining the amount of compensation on an application for variation of an award.

(4) Division 1 of Part 4 does not apply to a decision referred to in sub-clause (3).

11. **Enforcement of old costs orders**

Despite its repeal, section 32(2) of the former Act continues to apply with respect to orders made under section 32(1) of the former Act by a former Tribunal or, in accordance with clause 4 or 6, by the new Tribunal.

12. **Money held by former Tribunal**

Any money held by a former Tribunal immediately before the commencement day on trust for any person under the former Act must, on and from that day, be held by the new Tribunal on trust for the same purpose and on the same terms.

13. **Final annual report of former Tribunal**

(1) Before 30 September 1997 the new Tribunal must submit a report to the Minister on the performance by the former Tribunals of their functions, powers and duties during the year ending on 30 June 1997.

(2) The Minister must cause the report under sub-clause (1) to be laid before each House of the Parliament within 7 sitting days of that House after it is received by the Minister.

14. **Application of former Act and regulations**

**Sch. 1**

If a provision of the former Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision:

(a) any other provision of the former Act necessary to give effect to that continued provision; and
(b) any regulation made under the former Act for the purposes of that continued provision.
II NOUVELLE ZÉLANDE
Lien de l’Accident Compensation Corporation où le lecteur trouvera les informations nécessaires.

http://www.acc.co.nz/