Attachment No. 4 A – legal remedies for the injured

**Compensation in Polish law, among others for persons injured**

|  |  |  |  |
| --- | --- | --- | --- |
| **Civil law** | **Criminal law** | **Act on State Compensation** | **Executive Criminal Code and the Ordinance of the Minister of Justice of 29.09.2015 on the Crime Victims and the Post-penitentiary Fund** |
| **Essence of the benefit** |
| Under the Civil Code, the victim may be compensated for the following:– damages suffered (for material and personal damages, and personal damages consisting in negative feelings and physical and mental suffering), and– harm suffered. The compensation for material damage includes both the losses incurred (*damnum emergens*) and the lost profits (*lucrum cessans*) (Article 361 of the Civil Code).Personal damage shall be compensated only if it is a consequence of an infringement of the injured party's personal rights (health, dignity, name); it is then referred to as harm. Harm may result only from violations in the sphere of human personality (Article 24 of the Civil Code, Article 446, 448 of the Civil Code). On the other hand, material damage may be a consequence of events directly affecting the property and the injured party (Article 444 of the Civil Code).  | Pursuant to the Criminal Code, the victim may obtain compensation for the damage suffered (for material and personal damage) and the harm suffered. The criminal court shall award damages on the basis of civil law. The extent of the compensation awarded may therefore be the same as that based on the Civil Code.Only if it is very difficult to determine the amount of compensation, the court may order vindictive damages of up to PLN 200,000 in favour of the injured person or the immediate family member in case of the injured person's death (Article 46 § 1 and 2 of the Criminal Code). The award of damages or vindictive damages does not prevent the outstanding part of the claim from being brought before a civil court (Article 46 § 3 of the Criminal Code) | Compensation is awarded in accordance with the act. Compensation does not amount to indemnity within the meaning of the Civil Code. The scope of both benefits is not the same. Compensation shall only be granted in respect of:– the injured person's death (the immediate family member defined in the Act shall then be entitled), or– the injured person suffering severe damage to health, disturbance of the functioning of a bodily organ or health disorder, lasting more than 7 days. The situations in which compensation may be granted are therefore considerably reduced compared to those in which indemnity may be granted on the basis of the Civil Code and the Criminal Code. Compensation includes:1) lost earnings or other means of subsistence (but not lost benefits as in the case of indemnity under the Civil Code),2) costs related to medical treatment and rehabilitation (but not compensation for personal damage as in the case of indemnity under the Civil Code),3. funeral expensesThe compensation is subsidiary in nature to that provided for under the Civil Code and the Criminal Code. It is granted if the victim cannot obtain benefits included in the compensation from the offender or other sources indicated directly in the Act (i.e. insurance or social welfare funds).  | The benefit from the Victims Fund does not constitute indemnity within the meaning of the Civil Code, nor compensation within the meaning of the State Compensation Act. It is a form of financial assistance (and not only) provided to injured persons according to their current needs and not necessarily related to the damage caused by the crime. Due to the consequences of the crime, financial assistance may be granted to injured persons from the Fund, including to cover the costs:– related to psychotherapy or psychological assistance,– medical treatment– related to education,– legal assistance and translation,– training and courses improving qualifications,– temporary accommodationand many other cases, e.g.:– (see separate details on the functioning of the Fund).  |
| **Investigation** |
| In order to obtain compensation in civil proceedings, a claim must be filed in accordance with formal requirements and within a specified period of time (prior to the expiration of the limitation period). The limitation period for damages claims shall be 10 years. The claim must be paid for. The amount of the fee depends on the amount of the claim. The public prosecutor may request the initiation of proceedings in any case, as well as take part in any proceedings which are already under way, if the prosecutor deems it necessary to protect the rule of law, citizens' rights or the public interest.  | The system of claiming compensation in the course of criminal proceedings has been significantly simplified due to amendments introduced to the Penal Code by the Act of 20.02.2015 amending the Penal Code and certain other acts (effective from 1.07.2015). The main changes consisted in:– forfeiting the possibility for the victim to submit a separate civil action in the course of criminal proceedings,– introducing the possibility lodging a claim for compensation,– extending the deadline for submitting a request for compensation (compared to the deadline for submitting a civil action). At the same time, the possibility of awarding damages ex officio has been maintained.Civil action was associated with the need to meet numerous formal requirements specified in the Code of Civil Procedure, to prove an evidence initiative in an adversarial litigation concerning a claim, and also with the risk of incurring costs of litigation resulting from a dismissed civil action. Claims for compensation may be made in any form and for any offence. The claim may be filed until the court proceedings before the court of first instance are closed. The claim obliges the court to award compensation or vindictive damages if it is not possible to assess the compensation in criminal proceedings.The claim may be lodged by both the injured person and by the prosecutor.  | The claim for compensation shall be submitted either to the subsidiary authority of the state in which the person resides permanently or to the competent deciding authority. The prosecutor is the subsidiary authority in Poland and the court is the deciding authority.If the offence was committed on the territory of an EU State other than the state of residence of the injured person, the injured, either directly or through an subsidiary authority, shall forward the claim for compensation to the competent deciding authority of the State where the offence has been committed. In Poland, the court is the authority deciding about compensation. Public prosecutor in Poland, apart from the transmission of claims for compensation, also:– interviews persons designated by authorities deciding about compensation in other EU countries– provides, in cooperation with the persons eligible for compensation, additional information and documents to the authorities deciding in EU states necessary to obtain the benefit. A Polish court with jurisdiction to award compensation may request the subsidiary authority in another EU country to provide additional information and documents and to interview persons. The subsidiary and deciding authorities shall transmit between each other the correspondence concerning the claim for compensation and a copy of the decision on the matter.  | Assistance from the Fund shall be provided to injured persons at their request, upon presentation of documents proving the fact of being injured by the offence (e.g. offence notification, decision to initiate proceedings). Assistance from the Fund shall also be of a subsidiary nature, i.e. granted to the extent that the victim cannot obtain benefits from other sources (from insurance or the National Health Fund). However, where the victim would have to wait for funds from other sources for a longer period of time, aid shall be granted from the Fund.  |