

## **Translation from Finnish**

### **Legally binding only in Finnish and Swedish**

### **Ministry of Justice, Finland**

## **Damages Act**

*(412/1974; amendments up to 1051/2010 included)*

By decision of Parliament, the following is enacted:

### **Chapter 1**

#### **Scope of application of the Act**

##### **Section 1**

The provisions of this Act apply to compensation for damage. However, unless otherwise provided in this Act or another act, this Act does not apply to contractual liability or liability under another act.

### **Chapter 2**

#### **Liability of the party causing damage**

##### **Section 1**

A party who intentionally or through negligence causes damage to another is liable for damages, unless otherwise provided in this Act.

Damages may be adjusted if the liability is deemed unreasonably onerous in view of the financial status of the party causing damage and the party suffering damage and other circumstances. However, if the damage was caused intentionally, full damages shall be awarded unless, for special reasons, it is deemed reasonable to reduce the damages.

##### **Section 2**

If damage has been caused by a party under 18 years of age, the party is liable for damages in an amount that is deemed reasonable in view of their age and maturity, the nature of the act, the

financial status of the party causing damage and the party suffering damage, and other circumstances.

### **Section 3**

Where a party with a mental illness, mental deficiency or mental disturbance or disturbance of consciousness has caused damage, the party is liable for damages up to an amount that is deemed reasonable in view of their condition, the nature of the act, the financial status of the party causing damage and the party suffering damage, and other circumstances. However, a temporary, self-inflicted mental disturbance or disturbance of consciousness of the party causing damage shall not in itself be deemed a reason for reducing the party's liability for damages.

## **Chapter 3**

### **Liability of employers and public sector entities**

#### **Section 1**

The employer is liable for damages if the damage has been caused by an employee through an error or omission at work. A party that assigns work to an independent entrepreneur who is deemed comparable to an employee in view of the permanent nature of the assignment, the nature of the work and other circumstances is also deemed an employer.

The provisions of subsection 1 on an employer apply correspondingly to the State, a municipality and another public sector entity or institution when damage has arisen through an error or omission of an employee of the entity or a person in a public-service employment relationship or a comparable employment relationship to the entity in activities that are not deemed to constitute exercise of public authority.

If a party is performing a specific statutory task or a specific task on the order of an authority, as elected to a position of trust or at the request of another in employment-like circumstances without being an independent entrepreneur and causes damage through an error or omission while performing the task, the party on whose behalf the task was being performed is liable for damages. If a student in an educational institution causes damage through an error or omission while performing work related to the education, or if a patient being treated in a care institution

causes damage in a comparable manner while undergoing work therapy, the party on whose behalf the work was being performed is likewise liable for damages. (1423/1991)

## **Section 2**

A public sector entity is liable for damages if the damage has been caused through an error or omission in the exercise of public authority. The same liability for damages also applies to other entities that perform a public duty under an act, a decree or an authorisation given in an act.

However, the liability of the entity as referred to in subsection 1 only arises if the reasonable requirements set for the performance of the activity or duty, in view of its nature and purpose, have not been met.

## **Section 3 (857/1978)**

*Section 3 was repealed by Act 857/1978.*

## **Section 4**

If a party suffering damage due to an erroneous decision of the State or a municipal authority has failed to request a review of the decision without a valid reason, the party is not entitled to damages from the State or the municipality for damage that could have been avoided by requesting a review.

## **Section 5**

No action for damages may be brought for damage arisen from a decision of the Government, a ministry, the Prime Minister's Office, a court or a judge, unless the decision has been amended or overturned or unless the party who made the error has been found guilty of an offence in public office or obligated to pay damages. Where a review of a decision of an administrative authority has been requested from the Government, the Supreme Administrative Court or the Supreme Court of Office, no action for damages may be brought for damage caused by the decision in so far as the decision has been finally upheld.

## **Section 6**

If the liability for damages referred to in this chapter is deemed manifestly unreasonable or if, in view of the extent of the damage and other circumstances, there is a special reason for this, the damages may be adjusted.

## **Section 7 (1051/2010)**

*Section 7 was repealed by Act 1051/2010.*

## **Chapter 4**

### **Liability of employees and public officials**

#### **Section 1**

Where an employee has caused damage through an error or omission while at work, the employee is liable for damages in an amount that is deemed reasonable in view of the extent of the damage, the nature of the act, the position of the party causing the damage, the needs of the party suffering the damage, and other circumstances. If the conduct of the employee was only slightly negligent, no damages shall be awarded. The same applies if damage is caused by an independent entrepreneur referred to in chapter 3, section 1, subsection 1. If a student in an educational institution causes damage while performing work related to the education, the student is liable for damages in accordance with the grounds laid down in this section. The same applies to liability for damages in the case of damage caused by a patient being treated in a care institution while undergoing work therapy or by a prisoner while performing prison work. (1423/1991)

If the damage has been caused intentionally, full damages shall be awarded unless, for special reasons, it is considered reasonable to reduce the damages.

Separate provisions are issued on damages in cases where an employee has caused damage to the employer while at work. (1423/1991)

## **Section 2**

A public official is liable for damages where the public official has caused damage through an error or omission in public office in accordance with the grounds laid down in section 1 of this chapter. (1423/1991)

A party who is at the service of the State by virtue of an assignment issued under the Conscription Act (452/1950) or other equivalent assignment is liable in the same manner as a public official. The provisions of chapter 2 apply to the award of damages to the State for damage to or loss of property given for the personal use of a conscript or a person in non-military service, where the damage or loss is not proven to have caused while on duty. (373/1979)

A party subject to the provisions on military offences and in charge of the safety of a vessel or aircraft used by the State is not liable for damages to the State in a case where the party has, through negligence, caused damage to the vessel or aircraft while operating or steering it, unless charges are brought against the party for the act in question or if the party is not sentenced to punishment for the act or is only sentenced to a disciplinary punishment or a fine. (1423/1991)

The grounds laid down in section 1 apply to damages in a case where a person elected to a position of trust in a public sector entity has caused damage in this position of trust. The same grounds also apply if another party, without being in an employment relationship referred to in this chapter to an entity referred to in chapter 3, section 2, causes damage in the exercise of public authority. (1423/1991)

*The Conscription Act 452/1950 was repealed by the Conscription Act 1438/2007.*

## **Section 3 (1423/1991)**

A party liable for damages referred to in this chapter may be obligated to pay to the party who is liable for damages under chapter 3 what this party has paid to the party suffering damage in accordance with chapter 3 and chapter 6, section 2, subject to, however, only the grounds laid down in section 1 of this chapter.

## **Chapter 5**

### **Compensable damage**

#### **Section 1 (509/2004)**

Damages comprise compensation for a personal injury and property damage and, under the conditions laid down in sections 4a and 6, for anguish. Where the damage has been caused by an act punishable under the law or in the exercise of public authority, or where there are very serious reasons for this in other cases, damages also comprise compensation for economic loss that is not connected to a personal injury or property damage.

#### **Section 2 (509/2004)**

A party suffering personal injury is entitled to damages for the following:

- 1) the necessary medical costs and other necessary costs;
- 2) loss of income;
- 3) pain and suffering and other temporary harm;
- 4) permanent harm.

#### **Section 2a (509/2004)**

Damages for loss of income are determined based on an estimate of the earned income that the party suffering damage would have received without the incident. Earned income that the party suffering damage has received or could have received regardless of the incident or that the party is estimated to receive in the future, taking into account their ability to work, education, previous activities, possibilities for retraining, age, housing conditions and other comparable circumstances, shall be deducted from this.

## **Section 2b (509/2004)**

If the party who has permanently lost their ability to work due to a personal injury had not reached the age of 18 at the time of the injury, the earned income that the party would have received without the incident shall be estimated by taking into account their personal characteristics and educational and professional plans. Unless otherwise proven, the amount of earned income is deemed to be:

- 1) an amount corresponding to the average earned income subject to state tax of persons aged from 18 to 22 and living in Finland, where the party suffering damage has reached the age of 18;
- 2) an amount corresponding to the average earned income of full-time wage-earners aged from 23 to 34 and living in Finland, where the party suffering damage has reached the age of 23;
- 3) an amount corresponding to the average earned income of full-time wage-earners aged from 35 to 64 and living in Finland, where the party suffering damage has reached the age of 35;
- 4) an amount of old-age pension to which the party suffering damage would have been entitled under the Employees Pensions Act (395/1961) on the basis of the earned income referred to in subsections 1–3, where the party suffering damage has reached the age of 65.

The amounts of earned income referred to in subsection 1, paragraphs 1–3 are confirmed annually by government decree.

*The Employees Pensions Act 395/1961 was repealed by the Act on the Implementation of the Employees Pensions Act 396/2006, see the Employees Pensions Act 395/2006.*

## **Section 2c (509/2004)**

Damages for pain and suffering and other temporary harm are determined taking into account, in particular, the nature and severity of the personal injury, the nature and duration of the treatment required due to the injury, and the duration of the harm.

Damages for permanent harm are determined taking into account the nature and severity of the personal injury and the age of the party suffering injury. If the personal injury remarkably

weakens the quality of life of the party suffering injury, this may also be taken into account as a factor increasing the amount of damages.

### **Section 2d (509/2004)**

The parents, children and spouse of a party suffering personal injury and another comparable person particularly close to the party are, for a special reason, entitled to reasonable compensation for the necessary expenses and loss of income caused to them from caring for the party suffering personal injury. The same applies to compensation for expenses for other measures resulting from the injury, if they are conducive to promoting the recovery or rehabilitation of the party suffering personal injury. Compensation is paid at most until the state of health of the party suffering personal injury has stabilised after the incident.

### **Section 3 (509/2004)**

Anyone looking after the burial of a person who has been killed is entitled to reasonable compensation for the burial costs. The parents, children and spouse of the killed person and another comparable person particularly close to the killed person are also entitled to reasonable compensation for the costs related to the burial incurred to them.

### **Section 4 (509/2004)**

If a person liable for maintenance or a person who has otherwise looked after the maintenance of another person has been killed, the person who is entitled to maintenance or to child support or alimony or was otherwise dependent on the killed person for maintenance is entitled to damages for loss of maintenance.

Damages for loss of maintenance are determined taking into account the extent to which the person entitled to damages would have probably received maintenance from the killed person and what the person entitled to damages reasonably needs for their maintenance, considering the person's opportunities to support themselves by gainful employment, and other circumstances.

For a special reason, the value of household work may be equated with maintenance.



### **Section 4a (61/1999)**

The parents, children and spouse of a killed person and another comparable person particularly close to the killed person are entitled to damages for anguish arising from the death, if the death was caused intentionally or through gross negligence and if awarding damages is deemed reasonable in view of the close relationship between the killed person and the person seeking the damages, the nature of the act, and other circumstances.

*Subsection 2 was repealed by Act 509/2004.*

### **Section 4b (509/2004)**

If the death of a person was caused intentionally or through gross negligence, the parents, children and spouse of the killed person and another comparable person particularly close to the killed person are entitled to compensation for the necessary medical costs, other necessary costs and loss of income arising from a personal injury caused by the death.

### **Section 5**

Damages for property damage shall cover the costs of repair of the damaged object, the other costs arising from the damage and the reduction in value or the value of a destroyed or lost object, and loss of income and maintenance.

### **Section 6 (509/2004)**

A party is entitled to damages for anguish arising from a violation where:

- 1) the party's liberty, peace, honour or private life has been violated by an act punishable under the law;
- 2) the party has been discriminated against by an act punishable under the law;
- 3) the party's personal integrity has been severely violated intentionally or through gross negligence;

4) the party's human dignity has been severely violated intentionally or through gross negligence in another manner comparable to the violations referred to in paragraphs 1–3.

Damages shall be determined based on the anguish that the violation is conducive to causing, particularly in view of the nature of the violation, the status of the violated party, the relationship between the violator and the violated party as well as the publicity of the violation.

### **Section 7 (509/2004)**

Damages for future loss of income or future loss of maintenance payable due to a personal injury are ordered to be paid as recurring payments. However, damages may be ordered to be paid in full or in part as a lump sum, if this is necessary, in view of the financial status of the party liable for damages, to secure the receivable of the party suffering damage, or if this is appropriate in view of the amount of the damages.

Damages for pain and suffering and other temporary harm or for permanent harm are ordered to be paid as a lump sum. However, damages for permanent harm may be ordered to be paid in full or in part as recurring payments, if this is appropriate in view of the circumstances of the party suffering damage, the amount of the damages and the financial status of the party liable for damages.

Damages for anguish are ordered to be paid as a lump sum.

### **Section 8 (509/2004)**

If the circumstances on which damages payable under section 2, 2d, 4 or 4b were based essentially change after the damages were awarded by judgment or agreed upon, the amount or payment method of the damages may be amended. However, the amount of lump-sum damages cannot be reduced under this section.

An amendment to damages payable as recurring payments may, for a special reason, be ordered to enter into force retroactively; starting, however, no earlier than on the date on which the action for amending the damages became pending.

## **Chapter 6**

### **Allocation of liability**

#### **Section 1**

If the party suffering damage has contributed to the damage or if another circumstance external to the act causing the damage has also contributed to the damage, the damages may be adjusted as is reasonable.

#### **Section 2**

Where the damage has been caused by two or more parties or where two or more parties are otherwise liable for damages based on the same damage, their liability is joint and several. However, a party whom a court has not ordered to pay full damages is only liable for the awarded amount, and a party who is liable in accordance with the grounds laid down in chapter 4, section 1, subsection 1 is only liable for the amount that cannot be obtained from the party liable under chapter 3.

#### **Section 3**

The amount of damages payable shall be allocated between those liable for damages as is deemed reasonable in view of the degree of guilt attributable to each party liable, any benefit gained from the incident, and other circumstances.

A party who has paid damages beyond their allocated share has the right to recover from each other party liable for damages the amount paid on behalf of that party. If one of the parties liable for damages is manifestly insolvent or if the whereabouts of a liable party are unknown, each other liable party shall pay their share of the shortfall.

## **Chapter 7**

### **Miscellaneous provisions**

#### **Section 1**

Where a term in an employment contract or other agreement or a provision in rules of service or other comparable provision increases the liability for damages of an employee or a public official arising from this Act, the term or provision is void.

#### **Section 2 (733/2003)**

*Section 2 was repealed by Act 733/2003.*

#### **Section 3 (509/2004)**

If the party suffering damage dies before damages are claimed, the right to damages for pain and suffering, other temporary harm, permanent harm and anguish shall lapse.

#### **Section 4 (144/2009)**

*Section 4 was repealed by Act 144/2009.*

#### **Section 5 (1423/1991)**

When considering an action for damages referred to in chapter 3 or 4 of this Act, a party whose liability for damages is determined in accordance with the provisions of the said chapters but who has not been summoned as a defendant in the matter shall be given an opportunity to be heard in the matter.

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This Act enters into force on 1 September 1974. This Act repeals chapter 9 of the Criminal Code and section 47, subsections 2 and 5 of the Military Criminal Code (71/1919), as amended by Act 155/1944, and section 49 of the last-mentioned Act.

Where there is a reference in an act or a decree to a provision replaced by a provision of this Act, the provision of this Act applies.

Damages for damage caused before the entry into force of this Act is governed by the previous Act.