

## **Law 31/2006, of 21 July**

Makes the fourth amendment to Decree-Law 423/91, of 30 October, transposing into Portuguese internal law the provisions of Directive 2004/80/EC, of the Council, of 29 April, on compensation to crime victims.

Under the terms of Article 161 c) of the Constitution, the Assembly of the Republic hereby decrees the following:

### **Article 1 Subject**

This law amends Decree-Law 423/91, of 30 October, previously amended by Laws nos. 10/96, of 23 March, and 136/99, of 28 August, and also by Decree-Law 62/2004, of 22 March, transposing into Portuguese internal law the provisions of Directive 2004/80/EC, of the Council, of 29 April, on compensation to crime victims.

### **Article 2 Amendment of Decree-Law 423/91, of 30 October**

Articles 1, 2, 4 and 5 of Decree-Law 423/91, of 30 October, amended by Laws nos. 10/96, of 23 March, and 136/99, of 28 August, and also by Decree-Law 62/2004, of 22 March, are hereby amended to read as follows:

#### **"Article 1 [...]**

1 - Victims of serious bodily harm resulting directly from intentional acts of violence carried out in Portuguese territory or on board Portuguese ships or aircraft, together with, in the event of death, persons granted alimony rights under the terms of Article 2009 (1) of the Civil Code and those that, under the terms of Law 7/2001, of 11 May, lived in a registered partnership (*união de facto*) with the victim, may apply for compensation from the State, even if they have not been or cannot be granted the status of civil party in criminal proceedings, when the following requirements are met:

- a) ...
- b) The harm has caused considerable disruption to the standard of living of the victim or, in the event of death, of the applicant;
- c) ...

2 - ...

3 - ...

4 - ...

5 - ...

6 - When the intentional act of violence constitutes a crime against sexual freedom and self-determination, fulfilment of the requirement set out in paragraph 1 a) may be waived if exceptional and duly substantiated circumstances so warrant.

### **Article 2 [...]**

1 - ...

2 - ...

3 - ...

4 - ...

5 - ...

6 - Compensation for lost profits shall be set with reference to the tax returns referred to in Article 5 (2) b).

7 - In the event of no compensation having been granted in criminal proceedings or elsewhere due to a fact solely attributable to the applicant, namely because he/she failed to submit an application for civil compensation or desisted from the same, the upper limit for compensation to be granted by the State shall be halved, save when exceptional and duly substantiated circumstances so warrant.

#### Article 4

[...]

1 - ...

2 - A minor at the date of the intentional act of violence may submit an application for State compensation up to one year after coming of age.

3 - If criminal proceedings have been brought, the time limits referred to in the preceding paragraphs may be extended and shall expire one year after the decision bringing such proceedings to a close.

4 - (Former para. 3)

5 - (Former para. 5).

#### Article 5

[...]

1 - ...

2 - The application shall be accompanied by all information usefully substantiating the claim, namely:

a) ...

b) Copy of the victim's tax return for the year prior to the facts and, in the event of death, that of the applicant;

c) ...

3 - ...

4 - ..."'

#### Article 3

Addendum to Decree-Law 423/91, of 30 October

Articles 12-A, 12-B, 12-C and 12D are hereby added to Decree-Law 423/91, of 30 October, previously amended by Laws nos. 10/96, of 23 March, and 136/99, of 28 August, and also by Decree-Law 62/2004, of 22 March, with the following wording:

"Article 12-A

Applicants habitually resident in another Member State of the European Union

1 - In the cases referred to in Article 1 (1), when the applicant is habitually resident in another Member State of the European Union and has submitted to the responsible authority of such State an application for compensation to be paid by the Portuguese State, the commission referred to in Article 6 shall:

- a) Receive the application transmitted by the responsible authority in the Member State where the victim is habitually resident;
- b) Acknowledge receipt of the application, within 10 days, by notifying the applicant and the responsible authority in the Member State where he/she is habitually resident and indicating the contact persons in the commission and the probable amount of time for a decision on the application;
- c) Document and process the application;
- d) Notify the applicant and the responsible authority in the Member State where the applicant is habitually resident of the Minister of Justice's decision on the granting of compensation.

2 - For the purposes of the provisions of point c) in the previous paragraph, the commission may, if necessary:

- a) Request the responsible authority of the Member State where the applicant is habitually resident to question the victim or any other person, namely a witness or expert witness, and to forward the minutes of such hearing;
- b) Question the applicant or any other person directly, by videoconference, requesting the responsible authority of the Member State where the applicant is habitually resident to assist with the necessary arrangements.

#### Article 12-B

#### Compensation to be granted by another Member State of the European Union

1 - In the event of a wilful violent crime having been committed in the territory of another Member State of the European Union, an application for compensation to be paid by such State may be submitted to the commission referred to in Article 6, provided that the applicant is habitually resident in Portugal.

2 - When the application has been submitted, the commission shall:

- a) Inform the applicant how to complete the compensation claim form and of the documentary evidence required;
- b) Transmit the form and the documents referred to in a) above, within 10 days, to the responsible authority of the Member State in whose territory the crime was committed;
- c) Assist the applicant in replying to requests for additional information from the responsible authority of the Member State in whose territory the crime was committed, conveying the replies, on the applicant's request, directly to such authority;
- d) On the request of the responsible authority of the Member State in whose territory the crime was committed, arrange for the questioning of the applicant or any other person, transmitting the minutes of such hearing to the said authority;
- e) Collaborate with the responsible authority of the Member State in whose territory the crime was committed whenever it opts to question the applicant or any other person directly, in accordance with the legislation of such State, namely by telephone or videoconference;

- f) Receive the decision on the compensation claim transmitted from the responsible authority in the Member State in whose territory the crime was committed.

3 - The commission shall not make any assessment of the claim.

4 - The compensation is neither awarded nor paid by the Portuguese State.

#### Article 12-C

##### Formalities in the transmission of applications

1 - The applications and decisions referred to in Articles 12-A and 12-B shall be transmitted using the standardized forms approved by decision of the European Commission, published in the Official Journal of the European Union.

2 - Legalization or any other equivalent formality shall be waived for the forms and documents presented under the terms of Articles 12-A and 12-B.

3 - The services requested and provided by the commission referred to in Article 6, on the basis of Articles 12-A and 12-B, shall not give rise to any claim for reimbursement of charges or expenses.

#### Article 12-D

##### Language in cross-border situations

1 - Without prejudice to the provisions of the following paragraph, the forms and other documents transmitted by the commission referred to in Article 6, for the purposes of the provisions of Articles 12-A and 12-B, shall be drawn up in one of the following languages:

- a) the official language of the Member State of the European Union to which the forms and documents are sent;
- b) another language of the same Member State, provided it corresponds to one of the languages of the community institutions;
- c) another language of the Community institutions which the said Member State has indicated it can accept, under the terms of Article 13 (1) b) of Directive 2004/80/EC, of the Council of 29 April.

2 - The full text of the decision and the minutes of the hearing, as referred to, respectively in paragraph 1 d) of Article 12-A and paragraph 2 d) of Article 12-B, may be transmitted in Portuguese or English.

3 - Without prejudice to the provisions of the following paragraphs, the commission may refuse to receive forms and documents transmitted for the purposes of the provisions of Articles 12-A and 12-B when they are not drawn up in Portuguese or English.

4 - The commission shall not refuse to receive the minutes of the hearing referred to in paragraph 2 of Article 12-A, provided it is drawn up in one of the languages of the community institutions.

5 - The commission shall not refuse to receive the decision referred to in paragraph 2 f) of Article 12-B, provided it is drawn up in a language provided for in the legislation of the Member State transmitting it."

#### Article 4

##### Republication

Decree-Law 423/91, of 30 October, with its revised wording, is republished as an annex to this law, forming an integral part hereof.

**Article 5**  
**Entry into force**

This law shall enter into force on the day following publication.

Approved on 25 May 2006.

The President of the Assembly of the Republic, Jaime Gama.

Promulgated on 6 July 2006.

Publish.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 10 July 2006.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.

**ANNEX**

Decree-Law 423/91, of 30 October

**Article 1**

Compensation by the State of the victims of violent crime

1 - Victims of serious bodily harm resulting directly from intentional acts of violence carried out in Portuguese territory or on board Portuguese ships or aircraft, together with, in the event of death, persons granted alimony rights under the terms of Article 2009 (1) of the Civil Code and those that, under the terms of Law 7/2001, of 11 May, lived in a registered partnership (*união de facto*) with the victim, may apply for compensation from the State, even if they have not been or cannot be granted the status of civil party in criminal proceedings, when the following requirements are met:

- a) the injury causes permanent incapacity, temporary and absolute incapacity for work during no less than 30 days or death;
- b) the harm has caused considerable disruption to the standard of living of the victim or, in the event of death, of the applicant;
- c) effective relief for the damage has not been obtained through enforcement of a conviction relating to the claim brought under the terms of Articles 71 to 84 of the Code of Criminal procedure or, if it may reasonably be expected that the offender and civilly liable parties will not compensate the damage, without it being possible to obtain effective and sufficient relief from another source.

2 - The right to compensation exists even if the identity of the person committing the intentional acts of violence is not known or if, for any other reason, such person cannot be prosecuted or convicted.

3 - Compensation may also be claimed by persons who voluntarily assisted the victim or collaborated with the authorities in preventing the offence, or in pursuing or detaining the offender, provided the requirements set out in points a) to c) of paragraph 1 are met.

4 - Compensation may be granted to the persons referred to in the preceding paragraph irrespective of whether compensation is awarded to the victims of the injury.

5 - The provisions of this Decree-Law shall not apply when the damage is caused by a terrestrial motor vehicle, or if the rules on accidents at work or on duty apply.

6 - When the intentional act of violence constitutes a crime against sexual freedom and self-determination, fulfilment of the requirement set out in paragraph 1 a) may be waived if exceptional and duly substantiated circumstances so warrant.

## Article 2

### Value of compensation

1 - The compensation payable by the State shall be limited to the material damages resulting from the injury and shall be fixed on the basis of equity, with an upper limit, for each injured person, corresponding to double the upper limit (*alçada*) for the appeal court (*relação*), for cases of death or serious bodily harm.

2 - In cases of the death or injury of several persons as a result of a single fact, the upper limit for the compensation payable by the State shall correspond to double the upper limit of the appeal court for each one of them, with a total upper limit of six times the upper limit for the appeal court.

3 - If the compensation is set in the form of an annual payment, the upper limit shall be a quarter of the upper limit of the appeal court for each injured party, and shall not exceed three quarters of the upper limit for the appeal court when there are several injured parties due to a single fact.

4 - Any sums received from another source, namely from the offender himself or from the social security authorities, shall be taken into consideration; however, with regard to private life or personal accident insurance, only to the extent required by equity.

5 - In the cases referred to in Article 1 (3), compensation shall also be payable for things of considerable value, with an upper limit corresponding to the upper limit for the appeal court.

6 - Compensation for lost profits shall be set with reference to the tax returns referred to in Article 5 (2) b).

7 - In the event of no compensation having been granted in criminal proceedings or elsewhere due to a fact solely attributable to the applicant, namely because he/she failed to submit an application for civil compensation or desisted from the same, the upper limit for compensation to be granted by the State shall be halved, save when exceptional and duly substantiated circumstances so warrant.

## Article 3

### Exclusion or reduction of compensation

State compensation may be reduced or excluded in view of the conduct of the victim or applicant before, during or after the facts, their relationship with the offender or his milieu or if such compensation proves contrary to the sense of justice or public policy.

## Article 4

### Lapse and interim payments

1 - On pain of lapse, applications for State compensation must be submitted within one year of the date of the fact.

2 - A minor at the date of the intentional act of violence may submit an application for State compensation up to one year after coming of age.

3 - If criminal proceedings have been brought, the time limits referred to in the preceding paragraphs may be extended and shall expire one year after the decision bringing such proceedings to a close.

4 - In any case, the Minister of Justice may exempt the applicant from the effects of lapse when justifiable moral or material circumstances prevented the submission of an application in good time.

5 - In urgent cases, interim payments on account of compensation to be set subsequently may be requested, of no more than one quarter of the upper limit.

## Article 5

### Applications and accompanying documents

1 - The granting of State compensation shall be dependent on an application from the persons referred to in Article 1 or from the Public Prosecutor's Office (*Ministério Públíco*).

2 - The application shall be accompanied by all information usefully substantiating the claim, namely:

- a) Indication of the sum claimed by way of compensation;
- b) Copy of the victim's tax return for the year prior to the facts and, in the event of death, that of the applicant;
- c) Indication of any sum already received, and of the persons or public or private organizations which might make payments covering all or part of the damage.

3 - If a compensation claim has been brought in criminal proceedings or elsewhere, in cases where permitted by law, the applicant shall indicate whether any compensation was granted, and how much.

4 - In the event of misrepresentation as to the claim referred to in the preceding paragraph, the State shall be entitled to reimbursement of any sum which may be paid to the applicants, which right it shall enforce through a civil action within one year of the date on which it learned of such misrepresentation.

## Article 6

### Powers and processing of claims

1 - Powers to grant compensation shall lie with the Minister of Justice.

2 - Applications shall be processed by a commission comprising a judicial magistrate appointed by the Supreme Judicial Council, who shall act as chair, a lawyer or trainee lawyer appointed by the Bar Association (*Ordem dos Advogados*) and by a senior member of Ministry of Justice staff, appointed by the Minister.

3 - Persons who have taken part in any proceedings arising from the fact which has given rise to the compensation claim may not be appointed to the commission.

## Article 7

### The commission's powers

1 - The commission referred to in the previous article shall take all the steps needed for the finding of facts, namely:

- a) Hear the applicants and the persons liable for the compensation;
- b) Request copies of denunciations and reports of criminal facts and any documents from criminal proceedings brought, including those where a final decision is pending;
- c) Request information on the professional, financial or social situation of the persons liable for relief of the damage from any individual or organization, and from any public services.

2 - With the authorization of the Minister of Justice, the commission may also request such information as it deems necessary from the tax authorities or banks, when the person responsible for the compensation refuses to provide such information and when there is good cause to believe that he/she has assets or resources which he/she is seeking to conceal.

3 - The information requested shall not be refused on the grounds of professional or banking secrecy.

4 - The information obtained under the preceding paragraphs shall not be used for any purposes other than the investigation of the claim, and shall not be disclosed.

#### Article 8 Time limits

1 - The finding of facts of the claim shall be completed within three months, save when an extension is granted by the Ministry of Justice, with good reason and on the basis of a duly justified proposal from the commission.

2 - When the finding of facts is completed, the case shall be forwarded to the Minister of Justice, accompanied by a recommendation as to the granting of compensation and the respective amount.

3 - Prior to completing the finding of facts, the commission may suggest to the Minister of Justice that interim relief be paid under the terms of paragraph 4 of Article 4.

#### Article 9 Subrogation

The State shall be subrogated in the rights of the injured parties against the persons committing the intentional acts of violence and persons with merely civil liability, to the extent of the compensation granted.

#### Article 10 Reimbursement

1 - When, subsequent to payment of interim relief or compensation, the victim obtains, on any grounds, relief or effective compensation for the damage suffered, the Minister of Justice, on the basis of the recommendation of the commission referred to in Article 6, shall claim reimbursement for all or part of the amounts received, the provisions of Article 2 (2) notwithstanding.

2 - The provisions of the previous paragraph shall apply to cases where interim relief is paid and it is later found that compensation is not payable due to failure to meet the requirements set out in Article 1.

3 - Judicial appeals may be brought under the general terms of the law against the decisions referred to in the preceding paragraphs.

#### Article 11 Misrepresentation

Any person who obtains or seeks to obtain compensation under the terms of this Decree-Law on the basis of information which he/she knows to be false or inaccurate shall be punishable by a prison sentence of up to 3 years or fine, without prejudice to the provisions of Article 5 (4).

#### Article 12 Territorial application

If the facts referred to in paragraph 1 have been committed abroad, the provisions of this Decree-Law shall apply when the injured person is a Portuguese national, provided he/she is not entitled to compensation from the State in whose territory the damage occurred.

#### Article 12-A

##### Applicants habitually resident in another Member State of the European Union

1 - In the cases referred to in Article 1 (1), when the applicant is habitually resident in another Member State of the European Union and has submitted to the responsible authority of such State an application for compensation to be paid by the Portuguese State, the commission referred to in Article 6 shall:

- e) Receive the application transmitted by the responsible authority in the Member State where the victim is habitually resident;
- f) Acknowledge receipt of the application, within 10 days, by notifying the applicant and the responsible authority in the Member State where he/she is habitually resident and indicating the contact persons in the commission and the probable amount of time for a decision on the application;
- g) Document and process the application;
- h) Notify the applicant and the responsible authority in the Member State where the applicant is habitually resident of the Minister of Justice's decision on the granting of compensation.

2 - For the purposes of the provisions of point c) in the previous paragraph, the commission may, if necessary:

- c) Request the responsible authority of the Member State where the applicant is habitually resident to question the victim or any other person, namely a witness or expert witness, and to forward the minutes of such hearing;
- d) Question the applicant or any other person directly, by videoconference, requesting the responsible authority of the Member State where the applicant is habitually resident to assist with the necessary arrangements.

#### Article 12-B

##### Compensation to be granted by another Member State of the European Union

1 - In the event of a wilful violent crime having been committed in the territory of another Member State of the European Union, an application for compensation to be paid by such State may be submitted to the commission referred to in Article 6, provided that the applicant is habitually resident in Portugal.

2 - When the application has been submitted, the commission shall:

- g) Inform the applicant how to complete the compensation claim form and of the documentary evidence required;
- h) Transmit the form and the documents referred to in a) above, within 10 days, to the responsible authority of the Member State in whose territory the crime was committed;
- i) Assist the applicant in replying to requests for additional information from the responsible authority of the Member State in whose territory the crime was committed, conveying the replies, on the applicant's request, directly to such authority;

- j) On the request of the responsible authority of the Member State in whose territory the crime was committed, arrange for the questioning of the applicant or any other person, transmitting the minutes of such hearing to the said authority;
- k) Collaborate with the responsible authority of the Member State in whose territory the crime was committed whenever it opts to question the applicant or any other person directly, in accordance with the legislation of such State, namely by telephone or videoconference;
- l) Receive the decision on the compensation claim transmitted from the responsible authority in the Member State in whose territory the crime was committed.

3 - The commission shall not make any assessment of the claim.

4 - The compensation is neither awarded nor paid by the Portuguese State.

#### Article 12-C

##### Formalities in the transmission of applications

1 - The applications and decisions referred to in Articles 12-A and 12-B shall be transmitted using the standardized forms approved by decision of the European Commission, published in the Official Journal of the European Union.

2 - Legalization or any other equivalent formality shall be waived for the forms and documents presented under the terms of Articles 12-A and 12-B.

3 - The services requested and provided by the commission referred to in Article 6, on the basis of Articles 12-A and 12-B, shall not give rise to any claim for reimbursement of charges or expenses.

#### Article 12-D

##### Language in cross-border situations

1 - Without prejudice to the provisions of the following paragraph, the forms and other documents transmitted by the commission referred to in Article 6, for the purposes of the provisions of Articles 12-A and 12-B, shall be drawn up in one of the following languages:

- d) the official language of the Member State of the European Union to which the forms and documents are sent;
- e) another language of the same Member State, provided it corresponds to one of the languages of the community institutions;
- f) another language of the Community institutions which the said Member State has indicated it can accept, under the terms of Article 13 (1) b) of Directive 2004/80/EC, of the Council of 29 April.

2 - The full text of the decision and the minutes of the hearing, as referred to, respectively in paragraph 1 d) of Article 12-A and paragraph 2 d) of Article 12-B, may be transmitted in Portuguese or English.

3 - Without prejudice to the provisions of the following paragraphs, the commission may refuse to receive forms and documents transmitted for the purposes of the provisions of Articles 12-A and 12-B when they are not drawn up in Portuguese or English.

4 - The commission shall not refuse to receive the minutes of the hearing referred to in paragraph 2 of Article 12-A, provided it is drawn up in one of the languages of the community institutions.

5 - The commission shall not refuse to receive the decision referred to in paragraph 2 f) of Article 12-B, provided it is drawn up in a language provided for in the legislation of the Member State transmitting it.

#### Article 13 Expenses

1 - Expenses deriving from execution of this Decree-Law shall be considered as justice expenses and borne by means of a special sum set aside annually in the Ministry of Justice budget, under the chapter "Offices of members of Government and supporting services".

2 - Until the corresponding sums are allocated in the State Budget, the expenses shall be borne by the Financial Management Office of the Ministry of Justice.

3 - In all convictions in criminal proceedings, the court shall sentence the defendant to pay a sum equivalent to 1% of the applicable justice charge, which shall be considered as General Court Revenues.

#### Article 14 Application over time

Lapse as provided for in Article 4 shall not be invoked in relation to facts committed after 1 January 1991, unless the compensation claim is submitted within six months of the date on which this Decree-Law enters into force.

#### Article 15 Exemption from prepaid fees and court costs; no charge for documents

1 - No prepaid fees or court costs are payable for application proceedings for State compensation.

2 - The documents needed for processing the claim are free of charge and shall expressly indicate that they are issued for the purposes of execution of the provisions of this Decree-Law.

#### Article 16 Amendment of Article 508 of the Civil Code

Article 508 of the Civil Code is hereby amended to read as follows (wording resulting from Decree-Law 59/2004, of 19 March):

##### "Article 508

[...]

1 - The upper limit for compensation payable in respect of a road accident, when the person liable is not at fault, shall correspond to the minimum insured sum for compulsory third party motor insurance.

2 - If the accident is caused by a vehicle used in public transport, the upper limit for compensation shall be the minimum insured sum for compulsory third party motor insurance for public transport vehicles.

3 - If the accident is caused by a vehicle used in rail transport, the upper limit for compensation shall be the minimum insured sum for compulsory third party insurance established for this situation in special legislation."

#### Article 17 Amendment of Article 82 of the Code of Criminal Procedure

Article 82 of the Code of Criminal Procedure is hereby amended to read as follows:

"Article 82

[...]

1 - ...

2 - However, the court, on its own initiative or on request, may set interim compensation on account of compensation to be set subsequently, if it has sufficient information, and confer on this the effect provided for in the following article.

3 - (Former paragraph 2.)"

Article 18

Regulations

The recruitment of personnel supporting the commission referred to in Article 6, remuneration of its members and also the respective premises and organizational arrangements shall be provided for in a regulatory decree.

Article 19

Entry into force

This Decree-Law, save for the provisions of the preceding article, shall enter into force on the date of publication of the regulatory decree referred to therein.