

**THE LAW ON THE COMPENSATION OF DAMAGES THAT OCCURED DUE TO TERROR
AND THE FIGHT AGAINST TEROR
LAW NO: 5233**

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Objective

ARTICLE 1: The objective of this law is to lay down the principles and procedures for the compensation of material damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror.

Scope

ARTICLE 2: This law regulates the principles and procedures regarding the compensation - by way of friendly settlement - of material damages suffered by natural persons and legal entities of private law, as a result of the acts falling under Articles 1, 3 and 4 of the Anti Terror Law no 3713 or due to the activities conducted under the fight against terrorism.

This law does not apply to:

- a) The damages compensated by the state by way of awarding land or houses or in any other way.
- b) The damages compensated due to a court decision or in accordance with Articles 30-31 of the Code no 4353, Concerning The Service of Finance Proxy Head Law Counselor and Cases l Public Directorate, Prosecution of Government Trials Procedures and Changes on Central and Town Staff,
- c) The damages compensated in accordance with the final judgment of the ECHR taken in line with Article 41 of the Convention for **the Protection of Human Rights** and Fundamental Freedoms for violation of the articles of the convention or its additional protocols or the damages paid in accordance with the provisions of the Convention by way of friendly settlement.
- d) The damages which occurred due to reasons other than terrorism, such as economic and social reasons, and the damages which occurred due to displacement of persons on their own will.
- e) The damages occurred due to deliberate acts of the persons themselves.
- f) The damages suffered by persons on account of their act of aiding and abetting in terror incidents or due to crimes falling under Articles 1, 3 and 4 of the Anti Terror Law provided that they have been convicted of such crimes.

No procedures in accordance with this Law shall be initiated for those who have a criminal investigation pending against them, concerning offences indicated in the (f) clause of the second paragraph, until the investigation is concluded.

Definitions

ARTICLE 3: For the purposes of this law, the following shall mean:

Commission: Damage Assessment Commissions

Ministry: Ministry of Interior

Minister: Minister of Interior

Damage Assessment Commissions

ARTICLE 4: Damage Assessment Commissions shall be established in provinces within a period of ten days upon applications made under this law.

The Commission shall be composed of one chair and six members. The chairman of the Commission shall be the deputy governor designated by the governor; and the members shall be appointed by the governor from among the public employees working in that particular province and be experts on finance, public works and settlement, agriculture and rural affairs, health, industry and commerce; and a lawyer appointed from among bar members by the managing board of the bar.

The commission shall convene with absolute majority and the decisions shall be taken with the absolute majority of the number of participants in the meeting. The working principles and procedures of the Commission shall be regulated by a regulation.

Duties of the commission

ARTICLE 5: The duties of the commission consist of the following:

- a) a) To determine if there is a damage falling under the scope of this law upon the application of the persons who suffered a damage or their inheritors,
- b) b) To prepare the drafts of friendly settlement agreements which include the amount of in cash or in kind payment made according to articles 9 or 10 and calculated by deducting the following;
 - the aid provided by projects run by the public institutions and bodies or professional organizations in the status of public institutions,
 - the wreckage or other aids that the applicant can utilize,
 - the compensations paid by insurance companies or by public organizations and institutions and social security institutions according to the relevant legislation, and
 - expenses paid for medical treatment and funeral and aid provided by the Social Assistance and Solidarity Incentive Fund.
- c) To prepare a disagreement protocol and send a copy to the concerned person and the Ministry, in case the friendly settlement draft is not approved or if it is deemed to be unacceptable in accordance with paragraph two of article 12.
- d) To prepare the minutes of the decision and send a copy to the concerned person and the Ministry, in case it is determined that the applicant had not suffered a damage falling under the scope of this Law.

The duration, format, examination and finalization of the application

ARTICLE 6: The necessary procedures shall be initiated when an application is made to the relevant provincial or district governor by the sufferers or their inheritors or their authorized representatives within 60 days following the day the incident causing the damage comes to their notice and in any event within a year following the occurrence of the incident. Applications lodged after the mentioned periods shall not be accepted.

The commission has to finalize every application by the sufferers in six months as of the day the application is made. This period can be extended for three months if considered necessary by the governor.

The commission can request any kind of information and assistance of relevance to the application from the relevant public organizations and institutions, and can appoint as an expert an employee who is working in one these public organizations and institutions. The commission can appoint experts required and request their opinions on the subject.

The chairperson and members of the commission cannot attend to meetings concerning the damages involving themselves, their spouse or relatives by blood and in-laws up to the 3 degree (this degree included).

The secretariat service of the commission is executed by the Special Provincial Administrations.

The experts appointed by the commission will, for each day, receive a payment of (500) index number times the monthly salary coefficient for the public employee. These payments are not subject to any tax or deduction other than the stamp tax.

The commissions' expenses shall be met from the Ministry's budget.

The application which is made within the period for filing a suit shall seize periods of filing suit in accordance with the general provisions until the final decision is notified to the concerned party.

Damages to be compensated

ARTICLE 7: The damages to be compensated by this Law through peaceful settlement are as follows:

- a) All damages given to the animals, trees, - products and other movable and immovable properties.
- b) Damages resulting from injury, physical disability and death and the expenses made for medical treatment and funerals.
- c) Material damages due to the reason that people could not reach their assets because of the activities carried out under the fight against terrorism.

Determining of damages

ARTICLE 8: The damages mentioned in the 7th article shall be determined - in accordance with the economic conditions of the day and the principle of equality - by the commission directly or by way of appointing an expert, based on the declaration of the applicant and by taking into account the information and documents at the judicial, administrative and military offices that explain how the incident occurred and the precautions taken by the applicant, as well as whether there exists any negligence or deficiency on the part of the sufferer.

On the determination of the damage concerning the immovables, the principles of Law No 2942 on Expropriation dated 4/11/1983 shall be implemented by analogy.

Payments in case of injury, disability and death

ARTICLE 9: In case of injury, disability and death, the amount calculated by multiplying the (7000) index number with the monthly salary coefficient for the public employee will be paid in cash. This amount

- a) a) May be paid in accordance with the degree of injury but not to be higher than six times the amount.
- b) b) May be increased from four up to twenty four times for those whose inability to work is determined as level three by the authorized health institutions,
- c) c) May be increased from twenty five up to forty eight times for those whose inability to work is determined as level two by the authorized health institutions,
- d) d) May be increased from forty nine up to seventy two times for those whose inability to work is determined as level one by the authorized health institutions,
- e) e) May be increased up to 50 times when the payment is to be made to the inheritors of the persons deceased.

The amount that will be the basis for the cash payment shall be calculated on the index number and the coefficient valid at the date of approval of the payment by the relevant governor or the Minister.

In the transfer of the cash payment, the amount of which is determined in accordance with paragraph 1 (e), to the inheritors the provisions on heritage of the Turkish Civil Code No 4721 shall apply.

The Board of Ministers is authorized to increase the index number by up to %30 or to decrease it to the legal threshold.

No recourse shall be made to the State for payments made by real persons or legal entities of private law to the applicants, due to the damages falling under this Law.

The principles and procedures applicable to the form and amount of the cash payment, and to the determination of disability level shall be set out in a regulation.

The type of compensation

ARTICLE 10: The damages indicated in article 7 (a) and (c), shall be compensated either in kind or in cash. In the compensation of these damages, in kind payment shall be given priority depending on resources. The execution of in kind payment can be carried out in the framework of individual or general projects.

The principles and procedures concerning in kind compensation shall be set out in a regulation.

Amounts to be deducted

ARTICLE 11: The amounts determined in accordance with article 5 (b) shall be deducted from the total gross value calculated on the date of deduction in accordance with articles 8 and 9.

The principles and procedures concerning the calculation of deductions shall be set out in a regulation.

Friendly settlement for compensation of damages

ARTICLE 12: The commission shall determine - either directly or by an expert witness - the net amount that will be compensated by way of friendly settlement taking in consideration the following:

- - the damage determined according to article 8,
- - the amount of cash payment to be made in case of injury, disability or death according to article 9,
- - the type of payment to be made according to article 10, and
- - the amount to be deducted according to article 11.

The commission will send the draft friendly settlement agreement that will be prepared in accordance with these principles with an invitation to the right owner.

The invitation shall state that the right owner has to appear to sign the friendly settlement agreement or should send a representative within 20 days, otherwise this shall be interpreted as the rejection of the draft friendly settlement agreement; in such case his/her right to file a lawsuit for compensation shall be reserved.

If the right owner or his/her representative accepts the draft friendly settlement agreement upon invitation, the draft shall be signed by the right owner or his/her representative and the head of the commission.

If the friendly settlement is not approved and if the conditions in the second paragraph is not approved a disagreement protocol will be prepared and a copy of it will be sent to the concerned person and the Ministry.

On the disagreement of friendly settlement the concerned reserve the right to apply to the courts.

Compensation of the damage

ARTICLE 13: After the signing of the friendly settlement agreement and upon the approval of the governor, the damage specified in the agreement shall be compensated –according to the type of payment- from an appropriation set aside from the Ministry’s budget.

The Ministry may decide that in cash or in kind payments exceeding twenty billion Turkish Liras shall be subject to the approval of the Minister. This amount shall be increased annually in accordance with article 298 of the Law No 213 concerning Tax Procedures.

Concerning payments, the States’ right to recourse against the responsible persons shall be reserved in accordance with the general provisions.

Inspection and liability

ARTICLE 14: The commissions shall be inspected by the Ministry.

The regulations concerning the offenses committed against the government officials shall be applicable to persons, who have been commissioned to determine damages, and who are faced with offenses in relation to their duties or during the determination of the damages; and regulations concerning offences committed by government officials shall be applicable to such persons committing an offense while performing their duties.

Exemptions and immunities

ARTICLE 15: In the implementation of this law, all applications, notices, documents issued, transactions carried out by officials and the notary as well as all donations and aid provided for the purposes stipulated in this Law shall be exempt from any tax, duties and fees.

Concerning aid and donations to be made so as to be used for the purposes specified in this law, the amount that can be deducted from the income and corporate tax shall be set out in the relevant legislation.

Notification

ARTICLE 16: Provisions of the Law No 7201 concerning Notifications shall apply to any notification made for the purposes of this Law herewith. It is necessary that the notification is made by a public officer.

Regulation

ARTICLE 17: The principles and procedures concerning the Commissions duties, the procedures to be followed concerning applications made to the Commission, the assessment of damages to life, integrity of the body and to property, the calculation of the net amount to be compensated by way of friendly settlement, the type and amount of in cash payment, and the principles and procedures concerning the identification of the level of disability and other matters shall be regulated through a Regulation prepared - within two months as of the publication of this Law - by the Ministry and shall be put into effect by the Board of Ministers.

Provisional Article 1: This Law shall also be applicable to the material losses of real persons and legal persons of private law who suffered losses -due to acts committed between 19.7.1987 and the date on which this law came into force - and which fall under the scope of Articles 1, 3 and 4 of the Anti Terror Law No 3713, as well as to losses due to activities carried out within the scope of the fight against terrorism during the aforementioned period, provided that they make an application to the office of the provincial or district governor within a year following the publication of this Law.

Applications based on this article shall be concluded within 2 years starting from the date of application.

Provisional Article 2:

A public officer, who suffered during his/her civil service a damage in the period from 19.7.1987 until this Law became operational - or his/her inheritor(s), may have received a compensation in accordance with the relevant legislation. The criteria used when calculating this compensation may be different than the one used in this law. If the compensation received is higher than the one calculated according to this law, the difference shall not be reclaimed, however if the received amount is lower than the one calculated according to this law, then the difference shall be paid along with its legal interest, provided that an application is lodged to the provincial or district governor within one year following the publication of this law.

Applications based on this article shall be concluded within a year, at the latest, starting from the date of application.

Execution

ARTICLE 17: This Law shall become operational on the date it is issued.

ARTICLE 18: This Law shall be executed by the Board of Ministers.