

Chapter 15

Methods of Ascertainment of Personal Damage in Estonia

Marika Väli

Abstract This chapter illustrates the historical, judicial and juridical framework of personal injury assessment and compensation in Estonia, describing the expert's qualification and competences and detailing the ascertainment methodology and criteria of evaluation utilised for identifying, describing and estimating any personal injury, its temporary and permanent consequences and the causal value/link between the event and the injury and between the injury and the impairment/disability.

15.1 Historical, Judicial and Juridical Overview

Disability is an abnormality in an anatomical, physiological or mental structure or function of a person which, in conjunction with different relational and environmental restrictions, prevents participation in social life on equal bases with the others.

Until the year 2000, disability was estimated on the basis of disability categories but now disability is determined by the percentages. The percentage of loss of capacity may be 10–100, but it always ends with the number zero. A pension is paid if the percentage of incapacity for work is more than 40.

In 2000 a new law came into force, the “Social Benefits for Disabled Persons Act”. This act determines payment of social grants to people whose disability does not allow them to fully cope with daily life and who require personal assistance [1].

The state pays social benefits to disabled persons if they have additional expenses because of their disability, e.g. they are in need of assistance, care or medical rehabilitation, or the additional expenses are related to transport, employment or studies.

M. Väli (✉)

Estonian Forensic Science Institute, University of Tartu, Ülikooli 18, 50090 Tartu, Estonia
e-mail: Marika.Vali@eeki.ee

The aim of granting social benefits to disabled persons is to support the ability of disabled persons to cope independently, social integration and equal opportunities through partial compensation for the additional expenses caused by the disability.

Permanent incapacity for work is an injury or illness in relation to work, profession and service or the result of a nuclear disaster, traffic accident or violent crime.

Permanent incapacity for work is divided into total incapacity for work (due to an injury or illness, the person is not able to work in order to support themselves) (100 % loss of capacity for work) and partial incapacity for work (due to an injury or illness, the person is not able to perform the work suitable for them in the amount corresponding to the general national standard for working time) (10–90 % loss of capacity for work). In case of temporary incapacity for work (illness, injury, etc.), the attending physician (family physician or medical specialist) will draw up a certificate of temporary incapacity for work for the person.

On a legal basis, only permanent incapacity for work is determined.

15.2 Identification and Description of Medicolegal Expert's Qualifications

Permanent incapacity for work is certified by the expert commission or expert doctor of the Social Insurance Board. Its members have been trained in the field of loss of capacity determination and they are recognised experts in their field.

The forensic medical doctor determines permanent incapacity for work if determination of health damage severity is necessary.

The competence of forensic medical doctors is regulated by the professional standards approved by the Law and National Defence Council on 11 December 2006. Professional standards III, IV and V have been established for forensic pathologists. The purpose of the system of professional standards is to motivate experts to participate in in-service training, in order to ensure the consistency of their qualifications.

Professional standards are evaluated once every 4 years and the basis for the evaluation is the in-service score system as well as a report on practical activities.

The requirements of the ISO 17025 and ISO 9001 standards are the in-service curriculum of the Faculty of Medicine of the University of Tartu, the 4-year training curriculum of the experts of the Institute and the annual expert training plan of the Institute.

15.3 Ascertainment Methodology

Permanent incapacity for work is established on the basis of the state of health of the person by assessing the impact of the health disorder on their capacity for work. Until 2009, persons visited their attending physicians with an application for examination; the physicians would then submit the application to the Pension Board along with a description of the state of health of the applicant.

The Social Insurance Board will conduct the examination for permanent incapacity for work, engaging medical experts [2, 3].

The examination for permanent incapacity for work may be applied for:

1. By persons of working age, i.e. from 16 years of age until the pensionable age provided in the State Pension Insurance Act
2. By way of exception after attaining the pensionable age or at a younger age than 16 years of age, if the health of the person has been harmed as the result of an occupational disease, work injury, performing the duties of police service, border guard service, rescue service or other such duties of employment, a nuclear disaster, traffic accident or violent crime

In Estonia, occupational diseases are diagnosed in the Centre of Occupational Diseases and Health where physicians with the respective training work. If the patient disagrees with the decision, they are able to request by judicial process that a forensic medical examination be conducted. The forensic medical doctor must verify whether the illness in question constitutes an occupational disease and at which employer the disease was contracted. An occupational disease can serve as a basis for permanent incapacity for work if a connection is established between the occupational disease and the complications, after-effects, illness or the intensification or aggravation of the illness arising therefrom and the permanent incapacity for work.

A forensic medical examination is prescribed first in case of injuries, occupational accidents or illnesses that have been caused as the result of violent crime, sexual offences or traffic accidents. The forensic physician will identify the mechanism of formation of the injuries, the time at which the injuries were inflicted and the severity of the injuries. If an incapacity for work has been caused as a result thereof, the patient may demand that their percentage of loss of capacity for work be established by means of filing a civil action.

Illnesses not caused by accidents or regular employment are established by the attending physician who will submit any documents to the Social Insurance Board. The Social Insurance Board will determine the cause-and-effect relationship between the illness or the later intensification, aggravation, complications or after-effects thereof and the permanent incapacity for work.

The person must fill in a standard format application for the examination for the establishment of permanent incapacity for work. In the application, the person will fill in the data of their family physician or the medical specialist treating them who have the data concerning their state of health that are required in order to establish

permanent incapacity for work. The person must have visited the aforesaid doctor within the 3 months preceding the submission of the application.

If required, the person will submit additional documents for the establishment of the reason for permanent incapacity for work along with the application for examination.

The Social Insurance Board will make an inquiry in the Health Information System in order to receive a description of the state of health of the person.

The examination for permanent incapacity for work will be made on the basis of the documents; the applicant will not need to meet the persons conducting the examination.

The Social Insurance Board will formalise a decision concerning the results of the examination for permanent incapacity for work of which the applicant and the physician indicated in the application for examination who submitted the description of the person's state of health will be notified.

Permanent incapacity for work to the extent of 40–100 % grants a person the right to apply for a pension for incapacity for work.

The percentage of loss of capacity for work may be established for a period of 6 months, 1 year, 2 years, 3 years, 5 years or until attaining the pensionable age (but for no longer than 5 years).

15.3.1 Collection of Circumstantial and Clinical Data

The Social Insurance Board shall ask for information on the applicant's state of health from the doctor whose particulars are provided in the application for examination.

If necessary, the applicant provides additional documentation for the application for the examination for establishing permanent incapacity for work:

1. In the case of work injury—work injury report
2. In the case of occupational disease—occupational diseases report
3. In the case of injury sustained while performing the duties of employment of the police force or of illness related to the performance of duties—documentation certifying illness or physical harm (work injury report, occupational diseases report, findings of health check or health certificate, etc.)
4. In the case of injury sustained while performing the duties of employment of the border guard or of illness related to the performance of duties—documentation certifying illness or physical harm (work injury report, occupational diseases report, findings of health check or health certificate, etc.)
5. In the case of injury sustained while performing the duties of employment of the rescue service or of illness related to the performance of duties—documentation certifying illness or physical harm (work injury report, occupational diseases report, findings of health check or health certificate, etc.)

6. In the case of injury sustained while performing the duties of employment or of illness related to the performance of duties—documentation certifying illness or physical harm (work injury report, occupational diseases report, findings of health check or health certificate, etc.)
7. In the case of injury or illness as a result of nuclear disaster, nuclear test or an accident in a nuclear power station—medical documentation to show the cause-and-effect relationship between the nuclear disaster, nuclear test or an accident in a nuclear power station and the injury or illness
8. In the case of injury or illness as a result of a traffic accident—police certificate on said traffic accident
9. In the case of injury or illness as a result of a crime of violence—court judgement or preliminary investigation and authority's certificate of criminal matter

The person conducting the proceedings have to describe the circumstances in which the injuries were inflicted, including traffic accidents, in the part pertaining to preliminary data in the examination ruling. If this is not sufficient for identifying the mechanism of formation of the injuries, the time at which the injuries were inflicted or any other matters, it is always possible to request for additional data from the person conducting the proceedings. The forensic physician will attempt to find the answers to the aforesaid questions, above all on the basis of medical records. There are also a few cases per year where the forensic physician conducts the examination with road traffic experts, i.e. we attempt to identify the mechanism of formation of the injuries by comparing the damage to the vehicle and to the person.

15.3.2 Medical Case History

The physician must indicate the purpose of the description of the state of health.

If the purpose of the examination is the establishment of permanent incapacity for work, the physician will fill in the form of the description of the state of health if the person has visited the physician within the last 3 months before the submission of the application for examination.

The data of the last examination of the person will be described by organ systems. For every organ system, the description of the functional condition thereof without compensations (without using technical aids or medicinal products) and with compensations (using technical aids or medicinal products) will be provided. After that, the prognosis concerning recovery and life will be provided.

The person's diagnoses will be indicated in order of importance, whereas only the diagnoses in relation to health disorders that may be expected to cause permanent incapacity for work or disability will be indicated.

When indicating the diagnoses, the clinical diagnosis will be used as the basis, also indicating the code thereof in the International Classification of Diseases. The course of the illness/illnesses and the prognosis concerning any changes in the

functional capacity will be indicated. If possible, the severity of the functional impairment corresponding to the diagnosis will be marked with every clinical diagnosis and the frequency of chronic pain and balance disorders will be assessed. Any examinations and consultation decisions that verify the current functional condition of the person will also be indicated.

The physician will submit the form of the description of the state of health along with the required documents describing the state of health to the Social Insurance Board.

If the data presented in the description of the state of health or the appended documents are insufficient for the examination, the Social Insurance Board will request a supplemented description of the state of health or further data or documents from the physician.

15.3.3 Systematic Clinical and Medicolegal Visit

Examination for establishing permanent incapacity for work shall be carried out on the basis of documents and the applicant does not have to meet the persons carrying out the examination. Medicolegal examination is made usually in the Forensic Science Institute.

Systemic clinical visits and medicolegal visits are different by nature. In case of both visits, the medical history is recorded and the objective examination of the patient is conducted. As forensic physicians cannot conduct further examinations of the patient or draw up a referral to have the patient undergo further examinations (laboratory analyses, radiologic examinations, etc.), the examination conducted by the forensic physician consists, above all, in recording the general condition and objective status of the patient. The forensic physician uses the data of the further examinations conducted by the attending physicians and consults the physicians who conducted the examinations, if required.

15.3.4 Additional Investigations

Additional instrumental investigation will be made if necessary.

If a forensic medical doctor considers that additional investigations are necessary, then he/she needs to send the patient to the hospital (by law in Estonia, a forensic medical doctor does not have the right to refer the patient to another clinical doctor).

The forensic physician uses the data of the further examinations conducted by the attending physicians and consults the physicians who conducted the examinations, if required.

Forensic medical examination is usually made in the Estonian Forensic Science Institute. If necessary, the forensic medical doctor visits the patient at home. In this

case the medical history is recorded and the objective examination of the patient is conducted. Local examination of the injured area and determination of the connection between an injury and incapacity for work is the responsibility of a forensic medical doctor.

15.4 Evaluation Criteria

Until 2009, persons visited their attending physicians with an application for examination; the physicians would then submit the application to the Pension Board along with a description of the state of health of the applicant.

The percentage of loss of capacity for work may be established for a period of 6 months, 1 year, 2 years, 3 years, 5 years or until attaining the pensionable age (but for no longer than 5 years).

The examination for permanent incapacity for work may be applied for:

1. By persons of working age, i.e. from 16 years of age until the pensionable age provided in the State Pension Insurance Act;
2. By way of exception after attaining the pensionable age or at a younger age than 16 years of age if the health of the person has been harmed as the result of an occupational disease, work injury, performing the duties of police service, border guard service, rescue service or other such duties of employment, a nuclear disaster, traffic accident or violent crime, or if the person is applying for a pension on the basis of an agreement entered into between the Republic of Estonia and another state.

The examination for permanent incapacity for work will be made on the basis of the documents; the applicant will not need to meet the persons conducting the examination.

The Social Insurance Board will formalise a decision concerning the results of the examination for permanent incapacity for work of which the applicant and the physician indicated in the application for examination who submitted the description of the person's state of health will be notified.

Permanent incapacity for work to the extent of 40–100 % grants a person the right to apply for a pension for incapacity for work.

15.4.1 *Temporary Impairment*

In case of temporary incapacity for work (illness, injury, etc.), the attending physician (family physician or medical specialist) will draw up a certificate of temporary incapacity for work for the person. The certificate of temporary incapacity for work releases the person from the obligation of performing their duties of employment. The types of certificate of temporary incapacity for work are the

following: certificate for sick leave, certificate for maternity leave, certificate for adoption leave and certificate for care leave.

The certificate of temporary incapacity for work must be submitted to the employer who will submit it to the Estonian Health Insurance Fund along with a referral and any required appendices [5].

Benefit for temporary incapacity for work is a monetary benefit paid by the Health Insurance Fund to the insured person on the basis of a certificate of temporary incapacity for work.

15.4.2 Permanent Impairment

Permanent incapacity for work is injury or illness pertaining to work, profession, service, nuclear accident, traffic accident or as a result of violent crime. Permanent incapacity for work is divided into:

- Complete incapacity for work—as a consequence of illness or injury, the person is not capable to earn subsistence through work (loss of capacity for work 100 %).
- Partial incapacity for work—as a consequence of illness or injury, the person is not able to perform suitable work in the scope corresponding to the general national norms of working time (loss of capacity for work 10–90 %).

15.4.3 Other Non-pecuniary Losses

Based on the age of the person, i.e. children (children up to 16 years of age), persons aged 16 years until attaining pensionable age and persons of pensionable age, the degree of severity of disability and the additional expenses arising from the disability will be determined on different grounds.

For children (children up to 16 years of age) and persons of pensionable age, the degree of severity of disability will be determined as follows, proceeding from the need for personal assistance, guidance or supervision:

- Profound, if the person requires constant personal assistance, guidance or supervision 24 h a day
- Severe, if the person requires personal assistance, guidance or supervision in every 24 h period
- Moderate, if the person requires regular personal assistance or guidance outside of their place of residence at least once a week

For persons of working age (persons aged 16 years until attaining pensionable age), the degree of severity of disability will be determined as follows, proceeding from restrictions on participation in daily activity and social life:

- Profound, if the person's daily activity or participation in social life is wholly restricted
- Severe, if the person's daily activity or participation in social life is restricted
- Moderate, if the person has difficulties in their daily activity or participation in social life

The additional expenses arising from the disability of a person of working age constitute expenses on medicinal products, transport, maintenance of medical devices, self-care and household, use of the means of communication, clothing and footwear not financed from the health insurance and other state budget funds, to be made at least once a month in order to reduce the restrictions caused by the disability [6].

Social benefits for disabled persons are paid to persons for whom moderate, severe or profound disability has been established in order to partially compensate for the additional expenses caused by the disability. The degree of severity of the disability may change as the result of rehabilitation, usage of medical devices, adjusting the living environment or other circumstances.

The state pays social benefits to a disabled person if the person incurs additional expenses due to their disability, e.g. if they require medical devices, care, rehabilitation, or if the additional expenses are related to transport, employment or studying.

The additional expenses arising from the disability of a person of working age are established, taking into consideration their needs (medicinal products, transport, medical devices, special needs concerning clothing and footwear, increased self-care and household expenses, means of communication) and the degree of their uncompensated functional impairment.

The state compensates for the expenses on psychological care incurred by victims of an offence and their family members, if required. In 2007, the Victim Support Act entered into force. One of the objectives of the Act is compensating for the expenses on psychological care incurred by victims of an offence and their family members, if required.

The legislation for compensating for the expenses on psychological care was above all created in order to aid the faster psychological rehabilitation of persons who have fallen victim to less severe criminal offences and misdemeanours (e.g. cases of domestic violence) and for improving the social coping of the family members of victims of violent crime and other criminal offences.

The commencement of misdemeanour or criminal proceedings concerning the offence is the prerequisite for receiving the compensation for the expenses on psychological care. For the purposes of the Act, psychological care services are psychological counselling, psychotherapy or support group services. The expenses on psychological care are paid by the Social Insurance Board.

References

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