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## NON-MATERIAL DAMAGES DUE TO WRONGFUL CONVICTION AND UNLAWFUL IMPRISONMENT IN COURT PRACTICE

**ABSTRACT:** The right to compensation for damages, due to a wrongful conviction or unlawful imprisonment, should necessarily eliminate the consequences of violating the right to freedom guaranteed by the Constitution. This right corresponds to the obligation of the state to pay for the damage because the wrongful action is undertaken by state officials. It is quite obvious that this is a *sui generis* right. If a harmful action is committed by a state official, the state is always responsible, regardless of guilt, therefore objectively, if it is proven that the illegal action of the official caused damage. An unlawful imprisonment and wrongful conviction result in a violation of human dignity or honor. In a community, the injured party is recognized as someone who was in prison, as someone who was convicted – their reputation suffers as well. Mental pain, due to an unlawful conviction or imprisonment, represents a unique type of damage that includes all harmful consequences of an intangible nature related to the person of the injured party and resulting from an unlawful imprisonment. For this damage, a single amount of compensation is awarded.

**KEYWORDS:** non-material damages, liberty, wrongful conviction, unlawful imprisonment

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## 1. Introduction

The right to freedom is one of the basic human rights and, as such, belongs to the category of absolute subjective rights, and belongs to an individual from birth to death. The right to freedom works *erga omnes* and everyone is obliged to respect the personal rights of the individual. In case of violation of this right, the right holder can seek legal protection.

Throughout history, the right to freedom and the protection of freedom have developed through the institute of state power, through the realization of the right to prevent the illegal deprivation of an individual's freedom by the state.

The conditions under which a person can be deprived of liberty are prescribed by criminal laws, i.e., criminal procedural codes, so it is about the institute of criminal law. There are, however, situations in which the imprisonment covers the area of civil law, and then it is mostly an unlawful imprisonment. The first monograph in SFRY on unjustified imprisonment was *Compensation for Wrongful Conviction and Unlawful Imprisonment* (1979) by Professor Momčilo Grubač.

Unlawful imprisonment is not illegal imprisonment, because the individual was deprived of liberty in the manner and according to the procedure prescribed by law, but the reasons for which he was deprived of liberty later ceased or were removed. Given that the right to freedom is threatened during a certain period, the right to compensation for damages is acquired, and then imprisonment from a criminal law institute turns into an institute of civil law – the right to compensation for damages.

In addition to damages due to unlawful imprisonment, damages due to wrongful conviction will also be considered. These two institutes can exist in parallel, but they can also exist individually, or independently of each other.

In this article, the author will look at the criminal law aspect of imprisonment, and then the legal institute of civil law - compensation for damages, and the right to compensation for damages due to unjustified conviction and unjustified imprisonment – will be analyzed.

The article will also include comparative legal regulations with an emphasis on the procedure and the way in which countries in the surrounding area provide legal protection to a person unlawfully deprived of liberty.

## **2. Comparative Law Review**

According to the usual classifications, modern legal systems can be divided into the European or continental legal system originating from Roman law, and the Anglo-Saxon or the common law legal system. In this section, we will examine the law of Hungary, a member state of the European Union which had to harmonize its legislation with the legislation of other members, and which belongs to the European-continental legal system. The following section will examine the U.S. legal system, as a representative of the Anglo-Saxon legal system.

### **2.1. Compensation for non-material damages due to unlawful imprisonment and wrongful conviction in the Hungarian legal system**

The Constitution of the Republic of Hungary, which entered into force on January 1, 2012, the first paragraph of Article 1 states: “Inviolable and inalienable basic human rights should be respected. Protection of those rights is the primary obligation of the state”.

Further, the Constitution in the first paragraph of Article 4 proclaims that everyone has the right to freedom and personal security and that no one can be deprived of liberty, except in cases prescribed by law and in accordance with the procedure prescribed by law (paragraph 2), that every suspect and person deprived of liberty he must be released or he must be brought before the court without delay, have a hearing, and the decision on detention must be properly explained (paragraph 3). Paragraph 4 of the same article guarantees the right of a person who has been unlawfully or illegally deprived of liberty to compensation for damages.

The Law on Criminal Procedure of the Republic of Hungary, which was adopted in 2017 and entered into force in 2018, recognizes compensation for damages due to unlawful imprisonment and wrongful conviction and contains the conditions for exercising this right, as well as the procedure under which this right is exercised, and also contains provisions on the exclusion of the right to compensation for damages. These provisions are found in Chapter 107 under the heading “Compensation for unlawful restriction of liberty”.

The law recognizes the defendant’s right to compensation for damages if his or her freedom is unlawfully restricted, i.e., in the course of criminal proceedings or as a result of such proceedings. The compensation serves exclusively as compensation for the damage caused by the very existence and duration of the restriction, i.e., imprisonment (Bakonji, 2019: 245).

According to the Criminal Procedure Law, the right to compensation for damages belongs to a person who was deprived of his liberty if:

-the prosecutor’s office suspended the proceedings or the investigative body did so for the reason that the committed action does not constitute a criminal offense, because the criminal offense was not committed by the suspect, or that the criminal offense cannot be proven;

-established the existence of reasons that exclude the criminality of the perpetrator, i.e. the criminality of the executive action, or based on the existing evidence, it could not be determined that the suspect committed a criminal offense, and due to the statute of limitations for punishment, or the action was already legally adjudicated;

-the court legally acquitted the defendant, suspended the proceedings with a final decision, or established the defendant’s guilt with a final verdict, but he or she was given a suspended sentence, or no prison sentence was imposed, or he or she was sentenced to a prison sentence for a shorter period of time than the period of detention (Criminal Procedure Act of the Republic of Hungary, Article 845).

There are two ways to exercise the right to compensation for damages due to unlawful imprisonment and wrongful conviction, and the right to choose is given to the injured person. These are the abbreviated procedures for compensation of damages and litigation for compensa-

tion of damages (Criminal Procedure Act of the Republic of Hungary, Article 848). The claim for damages is submitted against the state, which is represented in the proceedings by the Ministry of Justice of the Republic of Hungary.

The procedure for compensation must be initiated within a time limit that is preclusive and is one year from the day when the injured party became aware of the decision which is the basis for exercising the right to compensation. Also, the heir of the injured party is allowed to continue the litigation if the person who was unlawfully deprived of liberty or wrongfully convicted dies during the procedure for compensation of damages. In that situation, the heir must continue the litigation within six months.

In the abbreviated procedure, the amount of monetary compensation is limited by the amount calculated in the manner determined by the decree of the Government of the Republic of Hungary. The abbreviated procedure ends with the conclusion of an agreement between the applicant and the Minister of Justice, provided that the injured party's request is accepted, and the injured party is satisfied with the offer. The monetary amount is paid within fifteen days from the date of the conclusion of the agreement.

The government decree prescribes a form – a request for compensation for damages, and it is submitted to the court, which submits it to the Minister of Justice without a discussion on the merits, together with the appropriate files of the criminal case. The stipulated deadline for deciding on the merits of the request in the abbreviated procedure is two months.

If the claim for damages, submitted in the abbreviated procedure, is rejected, the injured party can initiate civil proceedings for damages with a written submission submitted to the Minister of Justice. The injured party must do so within two months after the rejection of the request, after which the Minister of Justice forwards the request to the competent court.

In civil proceedings for damages, compensation for damages and sick pay for suffered non-property damage can be requested. In this procedure, the provisions of the Law on Civil Procedure are applied with deviations provided by the law.

If a person, who was unlawfully deprived of liberty and wrongfully convicted, does not want to submit a request in a summary procedure for compensation of damages, he has the right to file a lawsuit for compensation of damages to the court before which the criminal proceedings were conducted, which forwards the lawsuit to the civil court.

## **2.2. Anglo-Saxon Legal System**

Unlike the continental legal system, the Anglo-Saxon or the common law system arose independently of the tradition of Roman law, i.e., based on the tradition of English common law and special court decisions known as precedents (case law) (David, Brierley, 1985: 307). The UK and U.S. legal systems are based on case law.

In the case of wrongful imprisonment and wrongful conviction, there are two types of compensation in the U.S. law. The injured party can exercise his right to compensation in court proceedings, but in that case, he or she must prove the guilt of the civil servant, or the right to assistance paid from a special state fund.

Depending on the delictual basis on which the obligation to compensate damages is based, in the American legal system, we distinguish between false arrest, false imprisonment, and especially malicious prosecution.

False arrest is defined as an illegal restriction of personal freedom, without the consent of the victim, including placement in prison or other closed space, detention in a patrol car, or ordering the person to remain in the police station.

In the case of false imprisonment, it is likely that there is a legal reason for the arrest, but in the pre-criminal proceedings, the rights of the injured party were violated, because of which the further action of the civil servant who carries out the imprisonment becomes illegal.

There is a two-phase procedure for exercising the right to compensation. The right to compensation is exercised by filing a lawsuit in court, but before that, a report must be submitted to the police commission. The deadline for filing a lawsuit is one year from the day the damage occurred. An injured party who proves that he or she was illegally

arrested or unjustifiably deprived of his liberty is awarded reasonable monetary compensation for loss of time, physical injuries, and mental and emotional pain.

In the case of an unjustified conviction, there is no uniform position regarding compensation for damages. Statutory provisions on the basis of which the state is obliged to compensate wrongfully convicted persons exist in states such as New York, New Jersey, Alabama, California, Illinois, Iowa, Maine, Maryland, New Hampshire, North Carolina, Ohio, Tennessee, Texas, West Virginia, and Wisconsin.

As in other cases, when the right to compensation is based, so also in the case of damages for unjustified imprisonment or unjustified conviction, it is considered that a harmful act has been committed as a civil delict that legally obliges compensation. This right is realized by an appropriate lawsuit in civil proceedings – tort of negligence. In certain cases, it is possible to ask for aggravated damages, and in certain cases, for example, in the case of cruel and arbitrary actions of the perpetrators that violate the basic human rights of the injured party, it is possible to ask for special or exemplary damages (Mitchel, 2007: 9).

### **3. Unlawful Imprisonment**

Human rights are inviolable, and their limitation exists only when it is necessary to protect the human rights of another individual or the general interest. Therefore, when someone violates the human rights of another person or the general interest, the state acts with its authority, and using the existing legal rules, it denies the individual personal rights.

Thus, the state can limit the freedom of an individual in the event that he or she has committed an action that is not socially acceptable, i.e., when another individual's right or social interest is violated. Freedom can be limited by depriving the individual of his or her freedom for a certain period of time or for the rest of his life, by placing him or her in a certain institution, or by restricting his or her movement by prohibiting him from leaving the place of residence or prohibiting him or her from performing certain activities.

Imprisonment, according to Art. 27 of the Constitution of the Republic of Serbia, is allowed only for the reasons and in the procedure provided by law. According to Art. 10 para. 1 of the Code of Criminal Procedure, the defendant's freedom and rights may be restricted even before a final decision on the imposition of a criminal sanction is made, but only to the extent necessary to achieve the goal of the procedure, and under the conditions prescribed by this Code. Limitations of certain freedoms and rights, according to para. 3 of the same Article, can be applied from: confirming the indictment; determination of the main trial or hearing for the imposition of a criminal sanction in abbreviated proceedings; and determination of the main trial in the procedure for imposing a security measure of mandatory psychiatric treatment.

According to Art. 210 of the Code of Criminal Procedure, custody can only be ordered under the conditions provided for in this Code and only if it cannot be achieved using another measure.

The reasons for which the freedom of a person suspected of having committed a criminal offense may be restricted are listed in Article 211 of the Code. Thus, detention can be ordered in the following circumstances: if an individual is hiding or their identity cannot be established; if the accused avoids coming to the main trial; if there is a risk of escape; if there are circumstances that indicate that he or she will destroy, hide, alter, or falsify evidence or traces of a criminal offense; if the circumstances indicate that they will interfere with the proceedings by influencing witnesses, accomplices, or concealers; if the circumstances indicate that they will re-offend in a short period of time, complete an attempted criminal offense, or commit a criminal offense that they threatened to commit. Detention may be ordered if the criminal offense is punishable by a prison sentence of more than ten years, i.e., a prison sentence of more than five years for a criminal offense with elements of violence, or if the accused has been sentenced to a prison sentence of five years or a heavier sentence by a first-instance court verdict, and the manner of execution or the seriousness of the consequences of the criminal offense has led to public anxiety that may threaten the smooth and fair conduct of criminal proceedings.



Since detention is a criminal procedural measure that restricts an individual's right to freedom, the legislator has foreseen the conditions for how long this measure can last. Thus, Article 211 stipulates that in the event that detention is ordered only because the identity of the person cannot be established, it lasts until the identity is established. If custody is ordered because the accused avoids coming to the main trial, custody may last until the verdict is announced. In situations where detention is ordered due to the existence of circumstances that indicate that an individual for whom there is reasonable suspicion of having committed a criminal offense will destroy, hide, alter, or falsify evidence or traces of a criminal offense, the detention shall be terminated as soon as the evidence for which the detention was ordered is secured.

Restriction of freedom for a certain period of time by the state and in accordance with the conditions prescribed by law also exists in the case when an individual is sentenced to prison by a court decision, which is final and enforceable, due to the committed criminal act. The state can also, for a committed criminal offense, permanently restrict an individual's right to freedom on the basis of a final and enforceable court decision imposing a sentence of life imprisonment.

Except for the court, according to Article 291 of the Code of Criminal Procedure, an individual may be deprived of liberty by a member of the Ministry of Internal Affairs (so-called police arrest). The police can arrest, if there is a reason to order detention, but they are obliged to take the person without delay to the competent public prosecutor, to whom they will submit a report on the reasons for the arrest and the time when this action was carried out.

In addition to the state, i.e., of state authorities that can restrict an individual's right to freedom, the Criminal Procedure Code of the Republic of Serbia also recognizes "arrest in the act of committing a criminal offense", and thus anyone can arrest a person caught in the commission of a criminal offense. Such a person is prosecuted *ex officio* with the obligation to immediately surrender to the public prosecutor or the police, and if this is not possible, then one of these authorities must be immediately informed. This type of imprisonment is often called citizen's arrest (Criminal Procedure Code, Article 291).

#### 4. Unlawful Imprisonment and Wrongful Conviction

A lawful imprisonment may, under certain conditions, become unlawful, for example when an innocent individual's liberty is restricted for a certain period. Also, a person who has been found guilty by a final court decision and who has been sanctioned can be acquitted of charges and sanctioned by a decision based on an extraordinary legal remedy, and then we say that the original conviction was unlawful.

According to the law of the Republic of Serbia, unlawful imprisonment is when a person is deprived of liberty and the proceedings were not initiated, or the proceedings were suspended by a final decision, or the accusation was rejected, or the proceedings were legally ended by rejection or acquittal. Imprisonment is also unlawful when a person has served a prison sentence, and in connection with a request for the repetition of criminal proceedings or a request for the protection of legality, a prison sentence of a shorter duration than the sentence served, or a criminal sanction that does not consist in imprisonment, has been imposed, or the person was found guilty and released from punishment. Unlawful imprisonment also exists when a person is deprived of liberty longer than the duration of the criminal sanction or if the person is deprived of liberty as a result of an error or illegal work of the authorities in the procedure (Criminal Procedure Act, Article 584). "The right to compensation for damages due to unlawful imprisonment depends on the final outcome of the criminal proceedings" (Appellate Court in Belgrade, 3640/18).

"Wrongfully convicted is a person against whom a legally binding criminal sanction was imposed or who was found guilty and acquitted of punishment, and due to an extraordinary legal remedy, a new proceeding was legally suspended, or the accusation was legally rejected or ended with a legally binding acquittal" (Law on Criminal procedure, Article 585).

## **5. The Rights of Unlawfully Imprisoned or Convicted Individual**

A person unlawfully imprisoned or convicted has the right to compensation for damages, and that right is given to him by the Code of Criminal Procedure. "Civil liability for damages due to unlawful imprisonment or conviction is prescribed by the provisions of the Criminal Procedure Law, although those provisions are substantive in nature" (Appellate Court in Belgrade, 2967/10). This is characteristic of the legal institution of unlawful imprisonment or conviction because the individual is imprisoned in accordance with the rules of the criminal procedure law or is legally convicted in criminal proceedings. Precisely because the act of imprisonment or conviction was carried out in accordance with the law and there was no illegality, it is necessary, in order to protect the right to freedom, to lay the foundations for the application of the civil law institute of compensation for damages in the provisions of the Criminal Procedure Code. If compensation for damages to an individual unlawfully imprisoned or convicted was carried out only according to the rules of civil law, that person would have the right to compensation only if he or she proves the fault of the perpetrator (judge or police officer). However, since unlawful imprisonment or conviction most often occurs through no one's fault, strict adherence to the rules of civil law could not result in compensation for damages to these persons.

Another characteristic of the right to compensation for damages due to unlawful imprisonment or conviction in relation to other cases of the right to compensation for damages is the fact that the action by which the damage was caused was undertaken by state authorities in the exercise of public authority, that is, the damage is a direct consequence of the violation of human rights and freedom.

Unlawful imprisonment or conviction violates the human rights of an individual, and that violation can be seen as a violation of the individual's physical freedom because the freedom of movement is limited, but also as a violation of honor, human dignity, and reputation in the community. That is why the overriding goal of compensation for damages to an individual whose personal rights have been violated by unlawful imprisonment or conviction is to eliminate the harmful consequences that this violation has left on the personality of the individual.

Harmful consequences can be removed by paying a certain amount of money to the injured person in the name of compensation for damages according to the provisions of civil law, but by moral satisfaction – a public announcement of the decision, which explains the unlawfulness of imprisonment or conviction, or by an announcement in the community of the injured party, such as work environment, state body (moral rehabilitation). If his or her employment or status as a social security insured has ended, the injured party has the right to compensation as if he or she were employed. The period of unemployment that occurred due to unlawful imprisonment or conviction which was not caused by the fault of this person (Criminal Procedure Act, Article 594), is included in the length of service.

## **6. Right to Non-Material Damages Due to Unlawful Imprisonment or Conviction**

### **6.1. Non-Material Damages**

Due to the unjustified imprisonment and unjustified conviction, the injured party has the right to compensation for damages, and non-material damages, given that the harmed property is a personal right.

In the Republic of Serbia, the Law on Obligations from 1978 is in force, and it recognizes the right of an individual to protect, in addition to destroyed and damaged material property, personal property - freedom, life, body, honor, reputation, respect for the person and other personal property.

“Intangible damage in the sense of the Law on Obligations means physical pain, psychological pain, and fear.” Therefore, monetary compensation in the name of non-material damage can be awarded to the injured party only when the injury manifested itself in one of the mentioned types of damage and on the condition that the intensity and duration of the pain and fear and other circumstances of the case justify it, in order to restore the disturbed psychological balance of the injured

party. This interpretation of the concept of non-material damage was reached during the consultation of the Federal Court, the Supreme Courts of the Republics and Autonomous Provinces, and the Supreme Military Court in 1986.

The Law on Obligations names the types of non-material damages for which the right to monetary compensation can be recognized, in Art. 200, 201 and 203.

## **6.2. Non-Material Damages Due to Unlawful Imprisonment or Conviction**

Unlawful imprisonment or conviction results in the violation of human dignity or honor, and in the community, the victim is recognized as someone who was convicted, and their reputation suffers. Imprisonment or conviction, despite being unlawful, leaves the injured person feeling that their personal rights have been violated.

In addition to the violation of several rights (freedom, honor, and reputation), a single amount of compensation is awarded to the victim of unlawful imprisonment or conviction. The conclusion of the Consultation of the Civil and Civil Law Departments of the Federal Court, the Supreme Courts, and the Supreme Military Court of October 15 and 16, 1986 is that “mental pain due to unlawful imprisonment or conviction represents a unique type of damage, which includes all harmful consequences of an intangible nature, related to the person of the injured party, resulting from unlawful imprisonment. One amount of compensation is awarded for this damage [...]”.

The position on uniform compensation for non-material damage due to unlawful imprisonment or conviction has been retained in the law of the Republic of Serbia. “A person deprived of liberty, against whom the investigation has been legally suspended, has the right to fair compensation for non-material damages for mental pain suffered as a result of the violation of freedom, reputation, and honor. Fair monetary compensation as a form of eliminating harmful consequences consists in the payment of monetary compensation as satisfaction for suffered non-property damage in order to restore the psychological balance of

the injured party” (High Court in Novi Sad, 5394/10). The amount of compensation for non-material damages depends on several facts, but the following are most often taken into account: the length of detention, the severity of the criminal offense that was charged, the reputation that the injured party enjoyed in his work and private environment before the imprisonment, family circumstances, etc. “When deciding on the amount of this compensation in the sense of the provisions of Article 200 paragraph 2 of the Law of Obligations, account is taken of the importance of the injured property and the goal served by that compensation, but also of the fact that it does not favor aspirations that are not compatible with its nature and purpose” (Supreme Court in Novi Sad, 5394/10).

In addition to the damage due to violation of freedom, honor, reputation, and personal rights, the victim of unlawful imprisonment or conviction may also suffer other types of non-material damage named in para. 1 of Article 200 of the Law of Obligations, such as suffering fear and mental pain. In order to award these special types of non-material damages, it is necessary for the court to establish a cause-and-effect relationship between the suffered fear or reduction of life activity due to unlawful imprisonment or conviction by determining the expert opinion of a medical specialist.

“However, due to the unlawful imprisonment, the injured person may also suffer fear due to various circumstances accompanying his or her stay in detention, and if his or her life has been reduced due to his or her stay in detention, he or she has the right to compensation for mental pain caused by the reduction in life activities. Therefore, other types of non-material damage, such as fear and mental pain due to reduced life activity, are special types of non-material damage for which separate compensation is awarded for each type, and not a single compensation together with compensation for non-material damage for mental pain due to the violation of the right to freedom, reputation, honor, and dignity of the person” (Appellate Court in Belgrade, 4086/14).

“From a medical point of view, fear is a psychological disorder of personality, which can have a milder or a more severe form. It can, first, be fear for one’s life, which arises in moments when one is faced with death, but fear can also cause depression, neurotic conditions, trauma,

or a permanent psychological disorder with the possibility of causing more serious consequences. Such fear represents a violation of a person's health and physical integrity, and the person who suffered such fear has the right to compensation in the form of an awarded fair monetary compensation, the amount of which depends on the intensity and duration of the fear" (Supreme Court of Serbia, 409/85).

Unlawful imprisonment or conviction causes the victim to suffer mental pain and fear, which can leave permanent consequences on his or her psyche and lead to damage to his or her body. Consequently, it happens that the injured person is not able to perform his daily activities in full, but only partially and with increased efforts, which again creates physical or psychological pain or both.

Impairment of life activity, as a special basis for compensation for mental pain, includes all limitations in the life activities of the injured party. Restrictions also mean performing activities with increased efforts or under special conditions.

### **6.3. Exclusion of the right to compensation for damages due to unlawful imprisonment or conviction**

Unlawful imprisonment or conviction does not give the injured party the right to compensation indiscriminately. Based on Article 584 of the Code of Criminal Procedure, compensation for damages does not belong to a person who caused the imprisonment by his or her illegal actions. The right to compensation for damages does not belong to a person who has been deprived of liberty, but the proceedings have been suspended or the charges have been rejected because the injured party is the plaintiff in the new proceedings, i.e., the private prosecutor has abandoned the prosecution or because the injured party has abandoned the proposal, and until the abandonment came on the basis of an agreement with the defendant.

A wrongfully convicted person does not have the right to compensation in the following cases: if he intentionally caused his or her conviction by making a false confession or in another way unless he or she was forced to do so; if the suspension of the proceedings or the rejection

of the accusation occurred because, in the new proceedings, the injured party as a prosecutor, i.e. a private prosecutor, abandoned the prosecution or because the injured party abandoned the proposal, and the abandonment occurred on the basis of an agreement with the defendant (Criminal Procedure Code, Article 585).

“The right to compensation for non-material damage due to unlawful imprisonment does not exist for a person who, by his or her actions, contributed to the issuance of a warrant and the order of detention against him or her, i.e., caused the order of detention by his or her illegal behavior” (Appellate Court in Niš, 2860/16).

#### **6.4 Procedure for exercising the right to compensation for damages due to unlawful imprisonment or conviction**

An individual who has been unlawfully imprisoned or convicted has the right to initiate proceedings for compensation for damages due to unlawful imprisonment or conviction.

The procedure for compensation for damages due to unlawful imprisonment or conviction is two-phased because it takes place before the administrative body and the court, i.e. in administrative and judicial proceedings. Court proceedings for damages are civil proceedings and are based on criminal proceedings in which the prerequisites for conducting civil proceedings have been met.

According to the provisions of the Code of Criminal Procedure, Article 588, an individual injured by unlawful imprisonment or conviction is obliged to submit a request to the ministry responsible for judicial affairs before filing a claim for damages in order to reach an agreement on the existence of damages and the type and amount of compensation. The request for compensation is decided by the commission for compensation, whose composition and working methods are regulated by an act of the minister responsible for judicial affairs.

The administrative procedure before the Ministry of Justice can last for three months, in fact, this is the period during which the injured party cannot file a lawsuit for compensation to the court.



After the expiration of the three-month period, if the committee of the ministry responsible for judicial affairs does not decide on the request within that period or if it rejects the request for compensation, the injured party may submit a claim for compensation to the competent court. The injured party can file a lawsuit for compensation even if his or her claim is partially accepted.

An actively legitimized party in the procedure for compensation is an individual who was unjustly deprived of liberty and unjustly convicted, and in the event of his death, his or her heirs can continue the procedure for compensation within the limits of the requirements that the testator has already set. Heirs have the right to compensation for property damage only, and they can initiate proceedings only if their ancestor, who was unlawfully imprisoned or convicted, did not waive the right to compensation for damages and if the statute of limitations did not apply (Criminal Procedure Act, Article 590).

The passively legitimized party in the procedure for exercising the right to compensation for damages is the Republic of Serbia.

According to Article 591 of the Criminal Procedure Code of the Republic of Serbia, proceedings for damages may be initiated by a victim who has been unlawfully imprisoned or convicted within three years from the date of finality of the first-instance acquittal verdict, i.e. the finality of the first-instance decision suspending the proceedings or dismissing the charge, and if the appeal was resolved by the appellate court - from the date of receipt of the appellate court's decision. Article 589 of the Criminal Procedure Code provides for a special rule concerning statute of limitations. Namely, the statute of limitations does not run while the administrative procedure before the commission of the ministry responsible for judicial affairs continues.

## 7. Conclusion

The analysis of the regulation that protects one of the basic human rights – the right to freedom (especially if it is protected from the authority of the state) shows that compensation for damage to unlawfully imprisoned or convicted persons is the primary form of their social rehabilitation.

In order to indemnify such individuals, it is necessary to provide by law the conditions under which compensation can be awarded for the damage caused, as well as the procedure for compensation. The conditions and procedures are prescribed by the law that regulates the rules of criminal procedure. On the other hand, damages are awarded in accordance with the rules of the civil law, because it is precisely the criminal procedural laws that refer to the application of the civil and civil procedural laws.

The right to compensation for damages due to unlawful imprisonment or conviction is a *sui generis* subjective right. The state always responds objectively (regardless of guilt) if it is proven that damage was caused by the illegal action of an official.

This type of regulation is necessary because compensation for damage due to unlawful imprisonment is not damage caused by the fault of the perpetrator, nor is damage caused by a dangerous thing or dangerous activity.

At the time the act of imprisonment was performed, it was lawful. However, if sufficient evidence is gathered during the procedure that will rule out the criminal responsibility of the person and if it is confirmed that the acts of imprisonment should not have been undertaken, it is necessary to compensate the victim for the psychological pain suffered, and this is precisely achieved by the law that prescribes the rules and the conditions of imprisonment and the rules and conditions of decision-making prescribe the rules for rehabilitation when the human right to freedom has been violated due to the bad judgment of state officials.

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