

The Albanian mechanism for guaranteeing the right to compensation for unjust imprisonment and wrongful conviction¹, in the light of obligations arising from international acts

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Abstract

Punishment with imprisonment and the security measure of *detention on remand*, are among the most severe sanctions and convictions provided by the Albanian criminal legislation. The unjust serving of such measures or punishments implies serious psychological and economic consequences for both the convicted person and his/her family members. Similar to the infringement of any right and freedom, the unjust infringement of the right to liberty, induces the obligation to return the person in the previous state and to provide compensation for related consequences.

Besides the right to effective remedy, the international human rights acts² provide, specifically, for the right to compensation of the person in cases of an unlawful arrest or detention, as well as in the case of serving an unjust punishment as a result of the miscarriage of justice. In both hereof mentioned cases, these acts acknowledge the right to compensation for unjust imprisonment, while leaving it to the member states to establish a special mechanism under the domestic legislation which would enable actual fulfillment of such right for the citizens of the said country.

This paper is an attempt to present an overview of the Albanian legislation regarding the mechanism established toward the effective implementation of the right to compensation, in the case of decisions of the respective state institutions causing the unlawful or unjust imprisonment, from the point of view of respective international obligations.

Keywords: right to compensation; unjust imprisonment; wrongful conviction; compensation mechanism; miscarriage of justice.

¹ The wording “unjust imprisonment” and “wrongful conviction” refers to their definitions under the domestic criminal procedural legislation. They will be used in explaining the Albanian compensation mechanism.

² The International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms

Introduction: The right to compensation in the case of a wrongful conviction as one of the elements of the due process of law

The due process of law is considered as a set of rules and practices guaranteeing the protection of citizens' freedoms and rights from the arbitrary actions of the state institutions. The later, cannot prejudice these rights without having first ensured the observation of due legal procedures.

In the criminal justice area the due process guarantees the rights during the procedures of arrest, detention, investigation, trial and appeals against actions, omissions, and decisions of the institutions involved in these proceedings. However, it happens frequently that violations of rights are identified during the various phases of rendering justice. Also it happens that the justice system, due to errors that might occur, issues wrong or unjust sentences. For this reason, for as long as unjust measures or decisions cannot be avoided, it is necessary the granting of special guarantees even after the completion of the trial.

In this context, notwithstanding the acknowledgment of the due process or the legal steps undertaken during investigations and trial procedures, cases of unjust deprivation of liberty of innocents do occur. And in the case of the conviction of an innocent, it would be unjust for the due process guarantees to be limited to the observation of the legality of the undertaken actions. What the system must guarantee at all costs, in the case of such sentences, is the obligation of the state to act toward correcting the committed errors, as well as compensating the damages caused.

If we consider that the observation of rights and guarantees offered during the investigative and trial phases leads to a due and efficient legal process, then we also need to acknowledge that it is the possibility that it offers for the reinstatement of the violated rights and the compensation for damages suffered in case of violations that makes this process effective.

The Constitution of the Republic of Albania (hereinafter "The Constitution") guarantees for a due process of law, offering thus a special protection against arbitrary actions that might be performed by state authorities related to liberty, property, and other rights guaranteed by law³. Likewise, both the Constitution⁴ and the criminal procedural legislation⁵, have sanctioned the principle of reinstatement of the violated rights and the right to compensation. The Constitution has been drafted in the spirit of

³ Art. 42, first paragraph of the Constitution of the Republic of Albania provides: "Freedom, property and the rights recognized in the Constitution and by law cannot be infringed without a due process of law".

⁴ Art. 44 of the Constitution provides: "Everyone has the right to be rehabilitated and/or remedy pursuant to the law, in case that he is damaged due to an unlawful act, action, or omission to act of the state institutions".

⁵ Art. 9 of the Criminal Procedural Code of the Republic of Albania provides: "Persons that are unlawfully processed or that are unfairly punished are reinstated in their rights and are compensated for the suffered damage".

the international human rights acts⁶ and to a considerable extent is in line with their formulation, in particular with the ones of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR). Nevertheless, in the respective provisions that determine the rights of the person who is deprived of his liberty⁷, it is not explicitly provided for the right to be compensated in case of unlawful arrest or detention, or for the right of compensation in case of serving unjust punishment due to the miscarriage of justice. Despite the above, it guarantees the right of any person for rehabilitation and/or remedy pursuant to the law, in case that they have been harmed due to an unlawful act, action, or omission to act of the state institution⁸. Such provision does not differentiate, and it refers to any type of damage caused and to any type of unlawful act, action or omission that has constituted grounds for taking a measure or enforcing a punishment which have limited or infringed the right to liberty. Such rights are provided by the special legislation which determines schemes and mechanisms for their effective achievement.

International standards on the right to compensation in case of wrongful conviction

International human rights instruments recognize, *inter alia*, the right for an effective remedy in case of violation of rights and freedoms that said acts guarantee. In the framework of this general right to remedy, they specifically recognize the right to compensation for wrongful conviction in criminal proceedings.

Among the international instruments the main source for guaranteeing the right to compensation for wrongful conviction is undoubtedly "The International Covenant on Civil and Political Rights" of December 16th 1966 (hereinafter ICCPR). This instrument recognizes, both, the right to compensation in case of unlawful deprivation of liberty of a person charged for committing a criminal offence without having a final court decision on it, and in case the person has suffered a punishment as a result of a final court decision which, based on newly derived or discovered evidence, results to have been issued under the conditions of the miscarriage of justice. These rights are provided for in two different provisions of the ICCPR, respectively, in article 9, paragraph 5 and in article 14, paragraph 6.

*Article 9 (5) of the International Covenant on Civil and Political Right states:
Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

⁶ Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms

⁷ Article 27 and 28 of the Constitution of the Republic of Albania guarantees the right to freedom and safety of persons. Despite that such provisions contains a big part of the ECHR terminology, in it is not found the provision of Article 5, paragraph 5 of ECHR, according to which "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation".

⁸ Art. 44 of the Constitution of the Republic of Albania

Article 14(6) of the International Covenant on Civil and Political Right states:

When a person has by a final sentence been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Similarly, under the example set by the ICCPR, article 5, paragraph 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of November 4th 1950, guarantees the right to compensation of a person arrested or imprisoned contrary to the guarantees set forth by the Convention, regarding the right to liberty and security of a person. Whilst article 3 of its Protocol 7⁹, is almost identical with article 14, paragraph 6 of the ICCPR.

Article 5, paragraph 5 of the ECHR states:

Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 3 of Protocol 7 of ECHR states:

Compensation for wrongful conviction

When a person has by a final sentence been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Thus, Article 9(5) of ICCPR and Article 5(5) of ECHR guarantee the right to compensation, respectively, in the case of an unlawful arrest or detention (the case of ICCPR), or in case when the detention contravened their provisions (the case of ECHR), prior that the person is tried and convicted by a final sentence for the criminal offence he is suspected of. In the interpretation made to Article 9(5) of ICCPR the arrest or detention are considered as unlawful whether they contravene the provisions of the international law as well as of the domestic one¹⁰. Whilst in the interpretation of Article 5(5) of ECHR, the European Court recognizes such right even if the arrest or detention is considered lawful pursuant to the domestic legislation. In determining the unlawfulness, the violation of only one of the paragraphs of Article 5 of the Convention¹¹ is sufficient. Despite differences among them, both aforementioned provisions impose to countries the obligation to establish the necessary legal framework within the

⁹ Drafted on November 22 1984.

¹⁰ Human Rights Committee, Draft general comment No. 35, Article 9: Liberty and security of person. Revised draft prepared by the Rapporteur for general comment No. 35, Mr. Gerald L. Neuman, paragraph 51

¹¹ Refer to the Decision of the Court of Human rights on the case: Harkmann v. Estonia, no. 2192/03.

domestic legislation, which shall produce a compensation mechanism to effectively guarantee such right¹².

Meanwhile, Article 14(6) of ICCPR and Article 3 of Protocol no. 7 of ECHR guarantee the right to compensation when:

- The person has been convicted with a final decision for committing a criminal offence;
- The convicted person has served the sentence pursuant to the issued decision;
- The conviction has subsequently been reversed, or the person has obtained pardon, on the grounds of a new or newly discovered fact, which shows conclusively that there has been a miscarriage of justice, as well as
- When it has not been proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to said person.

These provisions require that in case of a miscarriage of justice the person is entitled to compensation *"pursuant to the state law or practice"*. This implies the obligation of states parties to these acts to include in their domestic legislations rules on the procedure to be followed by victims for obtaining compensation, in order for such right to be effective¹³. However, this does not imply that such right cannot be obtained due to lack of provisions in the domestic legislation or a states' practice. What is important in this context is the establishment of an effective system, guaranteeing compensation for cases regulated by Conventions¹⁴.

Albania has ratified both of the abovementioned acts, which have become part of the internal legal system and at the same time are mandatory to be implemented. Based on the hierarchy of rules provided for in the Constitution¹⁵, these follow hierarchically

¹² Human Rights Committee, Draft general comment No. 35, Article 9: Liberty and security of person. Revised draft prepared by the Rapporteur for general comment No. 35, Mr. Gerald L. Neuman, paragraph 50 ' as well as Macovei Monica, The right to liberty and security of the person "A guide to the implementation of Article 5 of the European Convention on Human Rights". Human Rights Handbooks no. 5, F-67075 Strasbourg, CEDEX, page 67, www.humanrights.coe.int

¹³ Refer to the Explanatory Note on Protocol 7 of the ECHR, and to the Human Rights Committee, Draft general comment No. 35, Article 9: Liberty and security of person. Revised draft prepared by the Rapporteur for general comment No. 35, Mr. Gerald L. Neuman, paragraph 50.

¹⁴ The Explanatory Note on Protocol 7 of the ECHR outlines: "This does not mean that no compensation is payable if the law or practice makes no provision for such compensation. It means that the law or practice of the State should provide for the payment of compensation in all cases to which the article applies. The intention is that States would be obliged to compensate persons only in clear cases of miscarriage of justice, in the sense that there would be acknowledgement that the person concerned was clearly innocent. The article is not intended to give a right of compensation where all the preconditions are not satisfied, for example, where an appellate court had quashed a conviction because it had discovered some fact which introduced a reasonable doubt as to the guilt of the accused and which had been overlooked by the trial judge"
As well as the Human Rights Committee, CCPR General Comment 32 (2007), paragraph 52.

¹⁵ Article 116/1 of the Constitution of the Republic of Albania provides that: *"Normative acts that are applicable throughout the entire territory of the Republic of Albania are: a) the Constitution; b) Ratified International Agreements; c) laws; ç) normative acts of the Council of Ministers"*.

immediately after the Constitution, and are directly applicable, except for cases when they are not self-executing and require the approval of a law¹⁶.

The International Convention on Civil and Political Rights¹⁷ constitutes part of the domestic legislation since 1991. Also, part of the domestic legislation is the European Convention on Human Rights and Fundamental Freedoms¹⁸, as well as its additional protocols, which have occupied a special place compared to other international acts.¹⁹

The Albanian mechanism for guaranteeing the right to compensation

As mentioned hereof, the right to obtain compensation in case of wrongful conviction, stems from the Constitution, but it is also a right of a supra legal nature as long as Albania has made part of the domestic legislation, upon signing and ratification, the main international acts providing for it, such as ECHR and ICCPR. This has led to the obligation for establishing a mechanism to make it effective and enforceable. For such reason, special provisions have been introduced to the domestic legislation which determine cases for when it can be benefitted of such right, as well as modalities and procedures giving the opportunity to claim it and benefit from it.

The Albanian legislation considers the right to compensation as a subjective right, arising from an unjust damage caused by an act that deprives a person's liberty, undertaken during the exercise of the duties by judges and prosecutors. These acts might be: wrongful sentences of courts in determining the security measure of detention on remand; wrongful actions of the prosecutor or the judicial police officer during the arrest on the spot or a person's detention; but also court sentences that declare guilty and punish with imprisonment persons whom at a later stage, after the repeal of the decision, are declared innocent, or the criminal charges brought against them are dismissed by a final sentence.

¹⁶ Article 122 of the Constitution of the Republic of Albania

¹⁷ Ratified by law no. 7510, dated 08.08.1991 "On the accession of the Republic of Albania in the International Covenant on Civil and Political Rights". Later on, in the year 2007 the 2 additional protocols of this Covenant were also ratified. Parliament has adopted the Law no. 9725 dated 07.05.2007 "On the accession of the Republic of Albania in the additional protocol of the International Covenant on Civil and Political Rights", and Law no. 9726, dated 07.05.2007 "On the accession of the Republic of Albania in the second additional protocol of the International Covenant on Civil and Political Rights".

¹⁸ Ratified by law no. 8137, date 31.07.1996 "On the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms", that has approved the Convention and the Additional Protocols no. 1, No. 2, No. 4, No. 7, No. 11 of such convention. This law was added by: law no. 8641, dated 13.07.2009 (which ratified the additional protocol no. 6); by law no. 9264, dated 29.07.2004 (which ratified the additional protocol no. 12); and by law no. 9453, dated 15.12.2005 (which ratified the additional protocol no.14)).

¹⁹ Article 17, paragraph 2 of the Constitution of the Republic of Albania, provides that "*Limitations to human rights and freedoms cannot violate the essence of liberty and rights and in no case can they surpass the limits set out by the European Convention on Human Rights*"

Initially it was the Criminal Procedural Code (hereinafter CPC)²⁰ to provide when a request for compensation could be filed, including cases of unlawful deprivation of liberty²¹ (defined by the CPC as unjust imprisonment²²), as well as the case of unjust imprisonment due to a wrongful conviction, for which the person has been found innocent²³ after the repeal of the sentence (defined by CPC as “wrongful conviction²⁴”). CPC also provides for conditions of being eligible for such right, as well as terms for filing a compensation request. The Code delegates to the secondary legislation the regulations related to the amounts of compensation and its calculation modality. Nonetheless, despite this delegation, it took 10 years until the approval of the law “On the compensation for unjust imprisonment”, to fulfill these obligations²⁵. A similar delay, regarding the lack of regulations for determining the degree and the modality for the calculation of the compensation, has certainly produced its consequences in practice, as concerns the effective realization of such right, as well as the functioning of the mechanism established by the state toward its realization. However, despite such legal loophole, courts have granted this right by interpreting the provisions of the current legislation in force, or by analogy with similar regulations²⁶. The Supreme Court has provided solution to the problematic encountered, during this period, with

²⁰ Criminal Procedural Code of the Republic of Albania, approved by law no. 7905, dated 21.03.1995, as amended, provides such right at articles 268, 269, 459.

²¹ Article 268 and 269 of the Criminal Procedural Code provide the cases of compensation for unjust imprisonment. Article 268 provides that: “1. *One who is acquitted by a final decision, has the right to be compensated for the time served under pre-detention, except in cases when it is proved that the wrong decision or non discovery in due time of the unknown fact, is caused, wholly or in part, by him.* 2. *The same right applies also to a convicted person, who has been under pre-detention, when it is proved by a final decision that the decision which assigned the remand order, is issued without complying when the requirements provided for under articles 228 and 229.* 3. *The provisions of paragraph 1 and 2 are also applicable in favour of the person whose case has been dismissed by the court or prosecutor.* 4. *When it is proved by a court decision that the act is not provided under the law as a criminal offence, because of the abrogation of the respective provision, the right of compensation is not recognized for that part of the pre-detention time served before the abrogation.*

Article 268 provides that: 1. *The application for compensation must be filed within three years from the date when the decision of acquittal or dismissal became final, otherwise it is not accepted.* 2. *The amount of compensation and the manner of assessment, and also the compensation in cases of house arrest, are determined by special law.*

²² Term used hereinafter in the context of the Albanian legislation analysis.

²³ Article 459 of the CPC provides the compensation in case of miscarriage of justice: 1. *The one who is acquitted during the review, when has not given intentional causes or gross negligence for the wrong decision, is entitled to a compensation in proportion with the duration of the sentence and personal and familiar consequences deriving from the sentence.* 2. *The compensation is made by payment of an amount of money or by providing means.* 3. *The request for compensation is made, by effect of non-acceptance within two years from the day that the decision of review has become final and was submitted to the secretary of the court which has rendered the decision.* 4. *The request is communicated to the prosecutor and to the all interested persons.* 5. *The decision granting compensation can be repealed in front of the court of appeal.*

²⁴ Term used hereinafter for purposes of analyzing the respective legal provisions.

²⁵ Law no. 9381 “On the compensation for unjust imprisonment, dated 28.04.2005”.

²⁶ In order to determine the compensation degree, due to the lack of legal provisions, courts have made referral to the third paragraph of article 57 of the Criminal Code, which actually refers to cases when following the closing of the criminal case against him, the detainee is found guilty and is convicted by imprisonment or with a fine, and the court makes the calculations by converting the days spent in the pre-detention with the time that he shall suffer in jail, and in cases when it is punished with a fine by calculating one day of pre-detention with a 5 thousand Lek fine.

regard to the compensation for unjust imprisonment or wrongful conviction by its Unifying Decision of its Joint Panels no. 3, dated 27.03.2003²⁷.

The criminal procedural legislation on the right to compensation for unjust imprisonment

The CPC provisions regarding the deprivation of liberty due to arrest or detention go beyond the provisions of Article 5(5) of the ECHR and Article 9(5) ICCPR. While these ones associate the enjoyment of the right to compensation with the unlawfulness of the arrest measure or detention²⁸, the Albanian legislation does not necessarily relate the enjoyment of this right with the existence of the unlawfulness actions or omissions. The Albanian legislation also considers as sufficient the actions and omissions of the prosecutor or the court which, later in time, result from a final court decision as invalid or unjust. Hence, it is sufficient the verification of the unjust and wrongful deprivation of liberty not due to the fault of the individual. This is based on the general presumption that the activity of the state institution is always lawful, thus, as a consequence, when an act depriving the personal liberty of an individual is considered unlawful, the right to rehabilitation, consisting in compensation²⁹ in this particular case, must be recognized to the person suffering the damage. Failing to benefit from this right is conditional on the subjective position of the claimant during the issuance of such unfair decision, his guilt, which must be proven by the court that has dismissed the case or has granted the innocence. Referring to this legislation, the individual, that at the end of a judicial proceeding has been acquitted or whose case has been dismissed, shall be exempted from the right to compensation for unjust imprisonment when:

- It has been proven that such sentence has been a wrongful one, partly or entirely, due to his fault, or
- Failure to identify in a timely manner the unknown facts, which if known to the criminal court would not have led to the conviction of the claimant, is entirely or partially attributable to the latter.

The house arrest served is also recognized for compensation purposes, for cases when, as for the detention on remand, the sentence ordering it has been proven to be unlawful or unjust³⁰.

²⁷ The Supreme Court decisions carry a special status in the domestic legal system, and are considered as sources of law. This special status is recognised by the Constitution of the Republic of Albania pursuant to which "Toward the unification or change of the judicial practice the Supreme Court is entitled to bring for review at the Joint Panels certain cases".

²⁸ As explained above during interpretation of such provisions

²⁹ The position of the Albanian jurisprudence. Refer to Decision no. 1508 date 25.06.2013 of Tirana Appeal Court.

³⁰ Article 269, paragraph 2, recognises this right also for the house arrest. In accordance with the Albanian legislation it is part of the precautionary security measures, ordered by the court, against the person s suspected to have committed a criminal offence.

The criminal procedural legislation on the right to compensation for wrongful conviction

The criminal procedural law recognizes the institution of the judicial review of final criminal decisions³¹, as a means of guaranteeing the repair of potential mistakes, verified during the issuing of a sentence. Such law, recognizes this right when the punishment has been enforced or extinguished. Causes that justify reviews include:

- When the underlying facts of the sentence are not in line with the ones of another final decision;
- When the decision was grounded on a decision of a civil court that has been further on revoked;
- When following the sentence other evidence has been identified which, alone or jointly with the evidence that has been previously evaluated, demonstrate that the sentence is wrongful;
- When it is demonstrated that the sentence has been issued as a consequence of the falsification of the acts of the trial or of another fact, that pursuant to the law constitutes a criminal offence.

The right to file such request pertains to the convicted person or his/her custodian. When the convict dies, even prior to the review procedure, the compensation right passes to his/her heirs. The law has granted the review competence to the Supreme Court, which, when it considers it just, resolves for the overruling of the sentence and sends the case for retrial at the first instance court that has issued the sentence³², or to the appeal court, in case the claim refers only to this instance. The court retrying the case issues a sentence only after performing a re-evaluation of evidence and when it accepts the request for review, it overrules the sentence. In the case when acquittal is granted, the court orders reinstatement in the previous state and compensation of eventual damages³³. Moreover, to the person who has been acquitted during the review, when he has not intentionally or by serious negligence caused a miscarriage of justice, it is granted the right to compensation for unjust imprisonment, in proportion with the duration of the punishment and the personal and family consequences deriving from it.

Therefore, the procedural law recognizes thus the right to compensation for wrongful conviction due to the miscarriage of justice, by respecting the obligation arising from the provisions of article 3 of protocol no. 7 of the ECHR and article 14(6) of the ICCPR.

³¹ Chapter IV of the CPC, articles 449-461

³² The court that has issued the sentence in this case is composed of different judges than those which had tried the case in the first instance.

³³ In accordance with article 457 of CPC when issuing an acquittal decision the court orders the return of all amounts paid for the execution of sentences involving payment of fines, for procedural expenses, lifting of pecuniary precautionary measures, as well as compensation of damages in favour of the civil claimant that has been part of the repeal trial. The court orders also the return of the confiscated items, except for the items whose production, use, transportation and possession constitute a criminal offence.

However, whilst these acts relate the benefit of this right with the identification of a new or newly found evidence proving the miscarriage of justice or errors of the judiciary, through interpretation of the above mentioned provisions on judicial review, it results that causes leading toward the existence of this right are related to the newly discovered evidence, or the identification of existing ones, proving the miscarriage of justice, as well as to the contradiction of the content of a decision with another court decision, either a criminal or a civil one. The law contains more specified provisions, as regards this case of compensation, compared to compensation for unjust imprisonment. It provides for: the competent court where the person files the claim, being the chancellery of the court that has issued the sentence; some basic criteria that are taken into consideration for calculating the compensation amount, such as the personal or family consequences (without differentiation among the economic or psychological nature of such consequences); as well as the duration of the punishment. The law provides that compensation is made through payment of an amount of money or through the provision of a living income, even though there is no interpretation or practice that interprets the "living income".

Similarly to the unjust imprisonment, cause for exemption from obtaining compensation is the culpability of the person in the respective miscarriage of justice. But different from the above, in the case of the claim for wrongful conviction the person is exempted from the right to compensation when he/she has provided intentionally or by serious negligence a cause for such miscarriage of justice and for the ordering of such conviction sentence against him/her, as proven after the review of the case³⁴. Thus, the CPP recognizes the right to compensation also for the case when the person has acted under slight negligence.

The law "On compensation for unjust imprisonment"³⁵

Following a 10 year period, in 2005, the obligation provided in the CPP, regarding the amount of compensation and the manner of assessment, in case of unjust imprisonment³⁶, was met through the approval of the special law "On compensation for unjust imprisonment". In addition to the obligation provided for in the CPP, also taking into account practical short comings and the Unifying Decision of the Supreme Court, said law re-determines the cases implying a right to compensation, as well as the procedures regarding the claim and the benefit of the compensation.

³⁴ Article 459, paragraph I of the CPP.

³⁵ Despite being used the term of "unjust imprisonment" whose meaning in the case of CPP was described hereof, this law in its article no. 3 handles also cases of 'wrongful conviction' according to the terminology used by the CPP.

³⁶ Article 269 of the CPP, second paragraph of the CPP.

Taking into consideration every potential case an unjust imprisonment harming the liberty of the person and legitimizing a person to claim compensation, may emanate from, the law recognizes the right to compensation for³⁷:

- The pre-detention period for a case or charge for which the prosecution has dismissed the investigation³⁸ or the court has granted innocence³⁹ or has dismissed the case⁴⁰;
- The pre-detention period when by a final court decision it has been attested that such act was issued by infringement of terms provided for by the Criminal Procedural Code regarding the lawfulness of the security measures⁴¹.
- The pre-detention or imprisonment period exceeding the one sanctioned by final court decision;
- The pre-detention period that exceeds the legal permitted terms for the pre-detention period⁴²;
- The period for the house arrest in the cases set out above;
- The period of imprisonment pursuant to a court decision, which following enforcement has been overruled and innocence has been granted or the case has been dismissed by a final decision;

³⁷ Article 3 of the Law

³⁸ Article 328 of the Criminal Procedural Code provides for cases when the dismissal of the investigations is done. Such provision states that *in any stage of the proceedings, the prosecutor decides the dismissal of the case when: a) it is evident that the fact does not exist; b) the fact is not provided by law as a criminal offence; c) the injured has not brought an action or he withdraws the action in cases the proceedings start on his request; d) the person cannot be considered as defendant or he may not be punished; e) a reason which renders the criminal offence null and void or does not allow the initiation or the continuation of the criminal proceedings exists; f) it results that the defendant has not committed the offence or is not proved that it is committed by him; g) the defendant is convicted by a final decision for the same criminal offence; h) the defendant dies; i) in other cases provided by law.*

³⁹ Article 388 of the Criminal Procedural Code provides for cases when the Court resolves for the acquittal of a person. According to such provision: *the court shall render a decision of acquittal when: a) the fact does not exist or it is not proved that it exists; b) the fact does not constitute a criminal offence; c) the fact is not provided by law as a criminal offence; d) the criminal offence is committed by a person who cannot be charged or convicted; e) it is not proved that the defendant has committed the offence he is accused for; f) the fact has been committed under lawful reasons or an impunity reason and also when there is doubt about their existence.*

⁴⁰ Article 387 of the Criminal Procedural Code provides for cases when the court resolves for the dismissal of the case. Such provision states that: *When the prosecution should not have initiated or must not continue or when the criminal offence no longer exists, the court decides the dismissal of the case, explaining the reasons why. The court decides the same way when the existence of a requirement to proceed or of a cause which makes the criminal offence inexistent is doubtful. Article 389 provides the consequences on liberty that may result by the dismissal of charges or the acquittal of the defendant, as follows: By a decision of acquittal or dismissal the court orders the release of the defendant from the custody and declares the abolition of the other precautionary measures. The same way is disposed of when the decision has been suspended conditionally*

⁴¹ Article 228 of the CPC provides conditions for imposing the precautionary measures. Pursuant to such provision: *No one may be subjected to personal precautionary measures unless he is suspected of a reasonable suspect, grounded on evidence. No measure may be imposed under circumstances of impunity or cessation of the criminal offence. The personal precautionary measures shall be imposed when: a) there are important causes which threaten the obtaining or the genuineness of evidence, b) the defendant has escaped or the danger that he escapes is evident, c) due to the circumstances of the fact and the defendant's personality there is a danger that he may commit serious crimes or other criminal offences, similar with that he has been proceeded for.*

⁴² See Article 263 and 264 of the Criminal Procedural Code which provides the time-limits on the duration of the detention and pre-detention

- The period of unjust imprisonment caused due to the error in the court decision enforcement order.

The exemption from the right to compensation is recognized in the following cases⁴³:

- When it has been proved that the wrongful decision or failure to identify in a timely manner an unknown fact, has been, entirely or partially, caused by the person who has been declared innocent by a final court decision;
- When by a court decision it has been ascertained that the fact is not provided by the law as a criminal offence, due to abrogation of the respective provision. In such case the right to compensation is not recognized for that part of the pre-detention that was served prior to the abrogation;
- The right to compensation is not recognized for that part of the pre-detention served, that has been calculated for purposes of determining the duration of the imprisonment sentence⁴⁴;
- For criminal offences prosecuted upon request of the accusing injured party, when the case is dismissed due to reconciliation, the detention period is not recognized for compensation purposes.

Examination of compensation claims

The right to benefit compensation for unjust imprisonment or wrongful conviction is not realized *a priori* ex-officio upon decision of the competent institution (the court or the prosecution office) on innocence or dismissal of the case, implying compensation rights. Such right is conditioned by filing before the competent court⁴⁵ the compensation claim by the person who claims it. It is benefitted only upon special decision in favor of the submitted claim acknowledging that the legal criteria is met.

Despite deriving from the criminal procedural law, the right to request compensation has a pecuniary nature⁴⁶. It aims improving the economic conditions of persons who have been harmed during the time that they have been unlawfully detained in jail, as a result of an act, action or omission of state institutions. For this reason, the review of these cases falls under the jurisdiction of the civil courts. With regard to the court examination the rules of the civil lawsuit in criminal proceedings are applied⁴⁷.

⁴³ Article 4 of the Law "On compensation for unjust imprisonment".

⁴⁴ Article 465 of the CPC provides cases of the calculation of the pre-detention and of suffered sentences. It provides that: *in imposing the length of imprisonment the prosecutor shall assess the period of detention served for the same offence or for another criminal offence, the served period of punishment to imprisonment for another criminal offence when the punishment is revoked or when for the criminal offence has been awarded amnesty or pardon. In any case the assessment shall comprise the period of detention or the punishment served after the commission of the criminal offence subject to the imposition of the punishment to be executed.*

⁴⁵ In accordance with article 8, paragraph 3 of the Law "On the unjust imprisonment", the claim is filed within the court that has issued the sentence or within which territory the state institution obliged for the payment of compensation, has its residence.

⁴⁶ Refer to Decision no. 1508 date 25.06.2013 of Tirana Appeal Court

⁴⁷ Refer to Article 65-68 of CPC

In these proceedings, the person does not have the burden of proof for attesting the existence of the subjective element (the third party fault), or any damage or lost profit⁴⁸, based on the presumption that we are facing a faultless responsibility, consequence of a state action. In order to obtain such right provided by the law, it is sufficient for the court the fact of the existence of a pre-detention period or of an unjust imprisonment, caused not as a fault of the sentenced person⁴⁹. The court that examines the claim for compensation for unjust imprisonment, bases the subjective position of a person regarding the issuance of an unjust sentence against him, on the decision that grants his/her innocence or the dismissal of the case. Whenever issuing decisions, courts have the obligation to reason their decisions⁵⁰, outlining also the position of the defendant toward the charges brought against him/her, as well as the entirety of the case's circumstances forming the subject of the proof.

The lawmaker has conditioned the benefit from the compensation right with meeting the preclusive terms, infringement thereof extinguishes the right. In order for the compensation right to be benefitted, the claim related to it, must be filed within 3 years from the date of the final decision granting innocence or dismissing the case (in cases of wrongful pre-detention)⁵¹, and within two years from the date of the final repeal decision (in cases when the decision granting innocence or dismissing the case in favor of the beneficiary is issued after the review of the final criminal sentence)⁵².

Parties participating in compensation claim examination

The law, in filing the claim by the subject-matter of compensation for unjust imprisonment, provides for the locus standi of the following⁵³:

- The person who benefits of this right referred to cases mentioned hereof;
- His/her heirs, in case of death of the claimant, and when his/her right has not been prescribed;
- The legal custodian of the underage person or of the mentally disabled person.

In such trial they have the quality of the plaintiff, whilst in the quality of the respondent are the state bodies or institutions to which the legislation assigns the responsibility of enforcing the court decisions, concerning obligations that affect the state budget⁵⁴.

⁴⁸ Refer to Decision no. 1508 date 25.06.2013 of Tirana Appeal Court

⁴⁹ Refer to Decision no. 1508 date 25.06.2013 of Tirana Appeal Court

⁵⁰ The reasoning of court decisions is an obligation that sources from the Constitution: Article 142/1 of the Constitution provides that "Court decisions must be reasoned". Moreover, such obligation is provided also by articles 382, 383 of the CPC setting for the obligation to reason the issued decisions.

⁵¹ Refer to article 269/1 of CPC.

⁵² Article 459/3 CPC. However, even if we refer to article 8 paragraph 3, despite the fact that the law provides both for the case of the imprisonment and the wrongful conviction (referred in this terms to the terms of CPC), it determines that "the claim is submitted within three years from the date such right is born...".

⁵³ Article 8 of the law no. 9381, dated 28.04.2005 "On the compensation for unjust imprisonment".

⁵⁴ Such as the institution of the Ministry of Finances, and its structures such as the Treasury Office.

In the meantime, these hearings may be attended, in their capacity of interested parties, by the prosecution office for cases initiated by this office or by the accusing injured party for cases in which pursuant to CPC criminal investigation commence upon filing of their claim⁵⁵.

The compensation amount for unjust imprisonment

The compensation for unjust imprisonment or wrongful conviction has a financial nature and aims at improving the economic condition of the person as well as his/her integration in society. It compensates for the error of the state institutions, as well as for the personal consequences produced during the time spent in prison or in pre-detention. The law has provided for the maximum compensation amount of 2000 ALL (two thousand) for one day of imprisonment and 3000 ALL (three thousand) for one day spent in pre-detention. In the calculation of the specific amount to be paid, the court takes into consideration the following:

- The income from the salary for public sector employees or the private sector ones, until one month prior to the imprisonment;
- The registered profit of commercial companies in the last three years, prior to the imprisonment;
- The pensions benefitted prior or during imprisonment;
- The minimum referral salary country-wise for those that have been unemployed at least until one month prior to the imprisonment date;
- Other circumstances related to the economic and financial situation of the detainee;
- The income resulting from the work during detention⁵⁶.

In the case of house arrest, the person is compensated under the same criteria as for the imprisonment, but the provided compensation measure must not be higher than half of the amount set out in the imprisonment case.

As a matter of fact, the judicial practice, in quite some cases of the compensation calculation, indetermining the compensation amount, takes into account, not only the pecuniary damages, but also those that are not pecuniary, such as the moral and spiritual suffering not only of the detainee or the arrested person, but also of his/her family members⁵⁷.

⁵⁵ Referred to the jurisprudence and the decision no. 3 dated 27.03.2003 of the Joint Session of the Supreme Court.

⁵⁶ The law provides both for the unjust imprisonment as well as for the wrongful conviction. However, it does not differentiate among the criteria for the calculation of the compensation measure. Referring to article 459 of CPC the general criteria are: the duration of the conviction, the personal and family consequences resulting from such conviction.

⁵⁷ Refer to Decision no. 1508 date 25.06.2013 of Tirana Appeal Court.

Conclusions

Albania has signed and ratified the International Convent on Civil and Political Rights, the European Convention of Human Rights, as well as their additional Protocols, making them part of the domestic legislation. Albania recognizes and implements the provisions of these acts for as much as those are self-enforcing, as well as acknowledges the obligation for incorporation into the domestic legislation of rules, for as long as those are not self-enforcing. Only this way the latter do not remain as simple statements, not producing for the citizen the impact desired from the international acts on human rights.

In this context, the Albanian legislation recognizes the right to compensation arising from ICCPR and ECHR for cases of an unjust deprivation of liberty, due to the unlawful arrest or detention, or due to a decision issued under miscarriage of justice conditions. Since these rights is not self-enforcing, in view of its effective guarantee, measures have been taken towards the determination in the domestic legislation of rules, procedures and conditions for obtaining such right. Currently, despite delays, rules have been provided both, in the criminal procedural legislation, as well as in the special law "On the compensation for unjust imprisonment". Albania is among those countries that have established a scheme, with relevant mechanisms for providing the necessary guarantees to make this right effective nationwide, and enable every citizen to benefit from the right to compensation in cases of wrongful convictions.

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