



The Right to Compensation for Unlawful Detention Legal Perspectives

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Abstract

This paper examines the legal dimensions related to the right to compensation for unlawful detention. Unlawful detention brings about significant social, moral, and economic consequences, denying individuals the opportunity to work and lead a dignified life. Rooted in International Conventions, Constitutional principles, and national laws, the right to compensation faces practical challenges in implementation. The increasing number of compensation claims highlights the need for legal reforms to ensure financial accountability for individuals or institutions involved. This presentation highlights key issues, emphasizing the necessity for legal changes to address financial responsibility for those who have caused unlawful detention. The paper will also explore the importance of an effective legal system to ensure that individuals harmed by this injustice have easy access to compensation procedures. The inclusion of specific cases and studies of different situations will assist in determining standards and criteria for determining the amounts to be awarded. Through the analysis of current jurisprudence and comparison with international practices, specific challenges that may be encountered during the implementation of the right to compensation for unlawful detention in the Albanian legal context will be identified. Additionally, recommendations will be proposed for improving this system through legal and administrative changes.

Keywords: Right to Compensation, Unlawful Detention, Compensation Claims, Damages Compensation

1. Examination of the Legal Basis of International Conventions Regarding the Right to Compensation for Unlawful Detention

The legal process is considered a set of rules and practices aiming to protect the freedoms and rights of citizens from arbitrary actions of state institutions. These institutions cannot violate these rights without ensuring the prior adherence to proper legal procedures. In the field of criminal justice, the legal process ensures rights during the stages of apprehension, arrest, investigation, trial at the first instance and on appeal against the actions, inactions, and decisions of institutions involved in these procedures. However, violations of rights are often identified during various stages of the trial or serving of the sentence. Therefore, as long as unjust measures or decisions cannot be avoided, it becomes necessary to ensure special guarantees even after the completion of the trial.

In this context, regardless of the knowledge of the legal process and investigations undertaken during legal proceedings, unjust cases of deprivation of liberty for the innocent occur. And in the case of the punishment of an innocent person, it would be unfair if the guarantees of the legal process were limited only to observing the legality of the actions taken. What the system should ensure at all costs in such cases is the state's obligation to correct mistakes made and compensate for the damages caused.

The Constitution of the Republic of Albania guarantees a fair legal process, this providing special protection against arbitrary actions that may be taken by state authorities regarding freedom, property, and other rights guaranteed by law. Similarly, both the Constitution and the procedural penal legislation have sanctioned the principle of rehabilitation of violated rights. The Constitution of Albania and our penal¹ legislation have been drafted in accordance with international human rights acts², especially with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Although not explicitly provided in the relevant provisions of the Constitution³, the ECHR guarantees the right of every person to rehabilitation if harmed due to an unlawful act⁴.

International instruments for the right to compensation in cases of unjust punishment include the "International Covenant on Civil and Political Rights" (ICCPR) and the "European Convention for the Protection of Human Rights and Fundamental Freedoms" (ECHR).

In the case of the ECHR, this instrument recognizes the right to compensation in situations where the freedom of a person accused of a criminal offense is deprived by a final court decision. This right is stipulated in two provisions of the ECHR, in Article 9, paragraph 5, and in Article 14, paragraph 6.

- Article 9 (5) of the International Covenant on Civil and Political Rights states: Anyone who has been a victim of unlawful arrest or detention has the right to compensation.
- Article 14 (6) of the International Covenant on Civil and Political Rights states: Anyone who has been a victim of arrest or detention in violation of the provisions of this article has the right to compensation.

Another important component is the European Convention on Human Rights and Fundamental Freedoms (ECHR), which ensures the right to compensation for persons arrested or detained in violation of specified guarantees. This convention guarantees the right to compensation for a person arrested or detained in violation of the specified guarantees.

Article 3 of the protocol of this convention bears a striking resemblance to Article 14, paragraph 6 of the Constitution and the International Covenant on Civil and Political Rights (ICCPR). Similarly, Article 5, paragraph 5 of the ECHR states:

"Anyone who has been a victim of arrest or detention in violation of the provisions of this article has the right to seek and obtain compensation."

Article 3 of Protocol 7 of the ECHR emphasizes that in cases where a person has been sentenced to a final form of punishment for a criminal offense due to an erroneous decision of non-disclosure of the unknown fact, which clearly indicates a violation of this principle. An individual who has suffered such a penalty has the right to compensation under the law.

This article emphasizes the importance of justice and the duty to ensure that every person has the opportunity for rehabilitation and compensation if there has been an injustice in the justice system. These two provisions guarantee the right to compensation, ensuring that in case of failure of justice, the individual has the right to compensation.

Referring to these provisions, every state is obliged to include in its domestic legislation the rules for the procedure that victims should follow to obtain compensation.

2. The Constitution and National Laws Regarding the Right to Compensation for Unlawful Detention

The right to compensation under domestic legislation is an important aspect of the legal system in Albania. This right emanates from the Constitution but is also of an international character, as Albania has ratified key international acts. The law specifies the cases and conditions under which compensation can be obtained for unjust imprisonment or punishment. In the Albanian context, the right to compensation is considered a subjective right that arises as a result of an unjust harm caused by a judicial decision. The Code of Criminal Procedure⁵ has defined the moments when a request

1 See: Article 9 of the Code of Criminal Procedure of the Republic of Albania stipulates: "Persons who are processed unlawfully or punished unjustly are reinstated in their rights and compensated for the damage suffered."

2 See: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights.

3 See: Articles 27 and 28 of the Constitution of the Republic of Albania guarantee the right to liberty and security of individuals. Despite such provisions encompassing much of the terminology of the ECHR, it lacks Article 5, which 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" Top of Form

4 See: "Article 44 of the Constitution of the Republic of Albania."

5 See: Article 268: Anyone declared innocent by a final decision has the right to compensation for the pre-trial detention suffered, except in cases where it is proven that the erroneous decision or the delayed discovery of the unknown fact is caused wholly or partly by them.

for compensation can be submitted, including cases of unlawful deprivation of liberty⁶. Also, practical issues were addressed by Unified Decision No. 3 dated March 27, 2003. Later, Law No. 9381, dated April 24, 2005, "On Compensation for Unlawful Imprisonment," was adopted. According⁷ to Article 2 of the law: The right to compensation is enjoyed by a person declared innocent or for whom the case has been dismissed with a final court decision or by the prosecutor, or who has been held in prison beyond the specified time in the sentencing decision. However, the law also specifies cases when the possibility of compensation is excluded⁸.

The right to claim compensation for unjust imprisonment or unjust punishment does not materialize automatically from any institution; rather, this right is preconditioned by the submission of a request to a competent court for compensation. The individual who has suffered such injustice must initiate the request, and usually, it is not initiated by the Court or the Prosecutor's Office but by the individual or authorized entities. The law has been clear regarding the circle of legitimate subjects to file such a request⁹.

To benefit from this right, it is necessary for a separate decision to be approved in favor of the request, acknowledging that legal criteria have been met, including pre-trial detention that occurred before the annulment of the sentence. The purpose of this procedure is to improve the economic conditions of individuals harmed during their unlawful imprisonment as a result of actions or inactions by state institutions. For this reason, the review of these issues falls within the jurisdiction of administrative courts, and in the judicial process, the rules of civil action are applied in criminal procedure¹⁰. Compensation for unjust imprisonment or unfair punishment has a financial character and aims to improve the economic situation of the individual as well as their integration into society¹¹. It compensates for the mistakes of state institutions and the personal consequences caused during the time spent in prison or pre-trial detention.

The law has specified the maximum amount of compensation at 2000 (two thousand) lek per day of imprisonment and 3000 (three thousand) lek per day of pre-trial detention. In calculating the specific amount that can be obtained, all days spent in prison or pre-trial detention are included. This maximum amount applies to all types of cases and includes all expenses and damages caused by this injustice.

To seek compensation, the injured party must submit a claim to an administrative court, including all necessary arguments and documentation to prove the injustice and damages incurred. After the approval of a positive decision, competent authorities are obliged to take measures for the payment of compensation.

It is also important to emphasize that this procedure is not limited only to cases of harm from unjust imprisonment; it also includes cases of harm from pre-trial detention and violations of human rights during this period. This provides a broad framework for this right, making it a powerful instrument for ensuring justice and compensation in cases of injustices caused by state authorities in the field of criminal justice. The law has stipulated the maximum amount of compensation at 2000 (two thousand) lek per day of imprisonment and 3000 (three thousand) lek per day of pre-imprisonment. In calculating the specific amount should be paid, the court takes into account: a) income from salary for employees in the public or private sector up to one month before imprisonment; b) profits from commercial and lucrative activities during the last three years before imprisonment; c) pensions received before or during pre-trial detention; d) the

The same right belongs to the convicted person who has been pre-tried when, by a final decision, it is ascertained that the act determining the measure was issued without meeting the conditions provided for by Articles 228 and 229. The provisions of paragraphs 1 and 2 also apply in favor of the person for whom the suspension of the case has been decided by the court or prosecutor. When a court decision has confirmed that the fact is not provided for by law as a criminal offense, due to the repeal of the relevant provision, the right to compensation is not recognized for that part of the pre-trial detention suffered before the repeal."

6 See: The request for compensation must be submitted, otherwise it will not be accepted, within three years from the date on which the acquittal or dismissal of the case has become final.

7 See: See: Law No. 9381, dated April 28, 2005 "On Unjust Compensation". Top of Form

8 See: Article 4 of the law, "Exception from the Right to Compensation. A person who has been declared innocent by a final decision has the right to compensation for the pretrial detention suffered, except in cases where it is proven that the erroneous decision or non-disclosure in due time of an unknown fact is entirely or partially caused by him. When a court decision has verified that the fact is not provided by law as a criminal offense, due to the abrogation of the relevant provision, the right to compensation is not recognized for that part of pretrial detention suffered before the abrogation. The right to compensation is not recognized for the part of the pretrial detention suffered, which is calculated for the purpose of determining the imprisonment period, in cases provided for in Article 465 of the Code of Criminal Procedure. A person imprisoned for an offense, which is appealed, is excluded from the benefit when the case is dismissed due to reconciliation. Top of Form

9 See: Article 8 of the law, "Compensation Request. 1. The compensation request is made by the person who benefits from it under this law or, after his death, by the heirs, unless the right has been prescribed at the time the prisoner was alive. 2. For a minor or mentally incapacitated person, this right is exercised by the legal guardian."

10 See: Articles 65-68 of the Criminal Procedure Code.

11 See: Decision of the Administrative College of the Supreme Court No. 106 dated 23.03.2022.

minimum wage nationally for those who have been unemployed, at least one month before the date of imprisonment; e) other circumstances related to the economic and family situation of the imprisoned person; f) income from work in prison.

In fact, in judicial practice, in many cases of calculating compensation, determining the amount of compensation takes into account not only material damages but also non-material ones, such as moral and spiritual suffering not only of the detained or arrested person but also of their family members¹².

3. Identification and Analysis of the Consequences of Unlawful Imprisonment in Social, Moral, and Economic Aspects

In the social aspect, unjust imprisonment has serious consequences on society, bringing about irreparable consequences. Some of these consequences are:

- a) Stigmatization: ¹³Unjust imprisonment causes unwarranted stigmatization, affecting the perception and social evaluation of the person, and this can be difficult to reduce even after release.
- a) Impact on Family Relationships: The disruption of significant family ties, unjust imprisonment causes separation from the family, creating tensions and ruptures among family members.
- Difficulty in Reintegration into Society: Lack of support after release, individuals who have suffered unjust imprisonment may face difficulties in integrating into society, as adequate support for reintegration is often not provided.
- Discrimination in Employment: Difficulty in finding employment after release, individuals may encounter challenges in finding employment due to prejudices and discrimination from employers.
- Recidivism: Increase in the repetition of crimes, unjust imprisonment may increase the likelihood of reoffending, as individuals may feel isolated and deprived of legitimate opportunities.
- Mental Health Impact: Psychological impact, unjust imprisonment can cause strong psychological effects, including anxiety, depression, and loss of self-esteem.
- Lack of Trust in Justice: Social responsibility, unjust imprisonment may lead to a lack of trust in justice and its institutions, creating challenges for necessary vetting and reforms.
- a) Moral Aspect: Moral reconciliation, the violation of fundamental rights can create moral dilemmas for the system and institutions responsible for law enforcement. Impact on the moral and individual beliefs of those involved in the situation of unjust imprisonment.
- b) Economic Aspect: Financial Consequences, individuals who suffer unjust imprisonment may face economic losses, including loss of employment, income, and employment opportunities. In the economic aspect, the cost of implementing unjust imprisonment for society and the legal system can be considerable.
- c) Legal and Institutional Aspect: Damage to Trust in the Legal System, unjust imprisonment can damage the trust of citizens in the legal system and justice institutions.

To fully understand the impact of unjust imprisonment on society, it is important to conduct a comprehensive analysis that includes these different dimensions.

4. Proposals for Legal and Administrative Changes to Improve the Unjust Imprisonment Compensation System

- *Review of Compensation Criteria:* Establishing clearer and fair criteria to qualify cases necessary for compensation.
- *Development of Efficient Mechanisms for Compensation Application:* Establishing a fast and efficient mechanism for implementing compensation decisions, including a transparent and easy process for citizens.
- *Increase in Maximum Compensation Amount:* If necessary, increasing the maximum limit of compensation for unjust imprisonment or pre-trial detention per day to better reflect the actual harm suffered by the individual.
- *Inclusion of Legal Aid for Compensation Claims:* Providing legal aid to facilitate access for those wishing to file compensation claims.
- *Development of Administrative Procedures:* Simplifying administrative procedures for submitting and reviewing claims, including a reasonable response time.

¹² See: Decision no. 1508, dated June 25, 2013, of the Court of Appeals in Tirana. Top of Form

¹³ Stigmatization involves a negative remark or labeling of an individual, group, or condition based on a particular characteristic that often deviates from societal norms.

- *Monitoring and Periodic Evaluation:* Implementing a monitoring and evaluation mechanism to assess the effectiveness and impact of the changes made to the system.
- *Institutional Accountability Building:* Ensuring that institutions responsible for reviewing compensation claims adhere to the law and follow procedures responsibly.
- *Increase in Public Awareness:* An organized campaign to raise public awareness about compensation rights and ways to engage in the process.

These are some aspects that can be included in proposals for legal and administrative changes to improve the unjust imprisonment compensation system. Each change should aim at justice and social justice for individuals affected by an unjust system.

5. Conclusion

Albania has signed and ratified the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and their additional protocols, making them part of domestic legislation. Albania recognizes and implements the provisions of these acts as long as they are self-executing, and it accepts the obligation to incorporate the rules into domestic legislation. Only in this way do these become more than mere declarations, producing the desired impact on citizens as mandated by international human rights acts. Despite efforts to implement legislation in practice, there is a need for a review and improvement of compensation criteria, taking into account changes in the legal context and best international practices.

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