
Moral and Material Rehabilitation of Persons Groundlessly Deprived of Liberty

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Abstract

The Right to Freedom is one of the basic human rights. This right was proclaimed by the Universal Declaration of Human Rights, the Charter of Fundamental Rights of the European Union, and the right to freedom in domestic law was proclaimed by the Constitution of the Republic of Serbia. Given that the right to freedom is protected by basic international and domestic legal acts, states prescribe sanctions for persons who limit the individual's right to liberty. However, in cases where the state has limited the right to freedom, and especially when it has groundlessly deprived a natural person of liberty, the question arises as to whether it can be held accountable and what its obligations are to the natural person, whom its authorities, courts and police have groundlessly deprived of liberty. This paper will deal with the rights of a natural person who has been groundlessly deprived of liberty, to moral and material rehabilitation. This paper will focus on the determination of the legal nature of the institute of material and moral rehabilitation of persons groundlessly deprived of liberty.

Key words: groundless deprivation of liberty, moral and material rehabilitation, compensation for damage, responsibility of the state

Introduction

Article 1 of the Universal Declaration of Human Rights, 1948. proclaims that all human beings are born free and equal in dignity and rights. Article 2 proclaims that everyone has the right to life, liberty and security of person.

Article 6 of the Charter of Fundamental Rights of the European Union, 2000., proclaims that everyone is entitled to the right to liberty and security.

The Constitution of the Republic of Serbia, in Article 27 stipulates that everyone has the right to personal freedom and security. Depriving of liberty shall be allowed only on the grounds and in a procedure stipulated by the law.

The highest international and national adopted documents guarantee the right to freedom for everyone. Although the right to freedom is a universal, basic human right, it can be limited by the state, and one of the restrictions, the denial of the right to freedom, is the deprivation of freedom by the exponents of state power, the courts and the police.

Allowed restriction of freedom, deprivation of liberty by the state, directed towards persons who are on its territory, and who are suspected of having committed a socially harmful act, can be implemented by ordering custody and sentencing to prison. Both custody and imprisonment are institutes of criminal law, and they are regulated by: custody by criminal law, and imprisonment by criminal substantive law.

In our law, the law of the Republic of Serbia, custody, since it is a measure of securing the presence of the accused in criminal procedure (Code of Criminal Procedure, 2011), is regulated by the provisions of the Code of Criminal Procedure, and imprisonment is a criminal sanction and the conditions for its imposition are prescribed by the Criminal Code (Criminal Code, 2005).

By adopting these laws by the highest authority of the state, prescribing the conditions and procedure in which its authorities can limit the freedom of an individual, the state, as the authority of the government, authorized itself, and in order to protect the public interest, to deny the individual one of the basic human rights, the right to liberty.

The restriction of the basic human right, the right to liberty, by the state authorities is implemented, is performed under the conditions and in the procedure strictly prescribed by positive legislation.

However, despite the fact that during the deprivation of liberty the individual's liberty is limited, i.e. that they are deprived of liberty in accordance with the rules prescribed by positive regulations and in the procedure prescribed by law, and for an action that society through its norms has declared to be socially unacceptable, punishable, a situation may arise where the criminal proceedings are not ended by a criminal verdict, i.e. by an extraordinary legal remedy it can be determined that the person did not commit the criminal offence for which they were charged and for which they were sentenced to prison. In such cases, it is indisputable that the person who was deprived of liberty suffered damage, first of all non-material, moral, and eventually material damage. In such cases, it is indisputable that the person who was deprived of liberty suffered damage, first of all non-material, moral, and possibly material damage.

Given that the basic human right, right to liberty, is limited to an individual, the principle of justice requires the state to enable such persons to achieve moral and material rehabilitation (Mrvić Petrović et al., 2003, pp. 303-304).

Civil law entitles the aggrieved individual to demand compensation from the tortfeasor. That is, by causing damage the obligation to compensate for that damage arises for the tortfeasor. Thus, there must be a responsibility for the state to compensate the aggrieved party for groundless use of the most severe criminal-legal repression - deprivation of liberty. That is, due to the fact that the state exponents, the court and the police, limited the liberty and rights of an individual, and later it was established that they did not commit a crime punishable by law, the state responds by materially and morally rehabilitating the individual who was deprived of liberty.

The moral and material rehabilitation of an individual unjustly deprived of liberty is achieved through the compensation of non-material and material damage and through moral satisfaction by publishing in the media a statement about the decision resulting from the groundless deprivation of liberty and unjustified conviction, or by delivering that decision to a legal or natural person ordered by the aggrieved party.

The primary type of compensation for damages to individuals groundlessly deprived of liberty is compensation for material and non-material damage. Damage compensation is a civil legal institution, a non-contractual obligation, which arises from causing damage. However, for the creation of the institution of compensation for damage, in addition to the damage caused, it is necessary to have established the responsibility of the person who is obliged to compensate for the damage which can be subjective or objective.

With the legal institute of compensation for damages due to groundless deprivation of liberty, it is indisputable that an individual groundlessly deprived of liberty suffers, first of all, non-material damage, and can also suffer material damage. However, given that the deprivation of liberty by state exponents was carried out in compliance with positive regulations, it is a disputable second element of the institution of compensation for damages - guilt, responsibility. That is, the question arises whether there can be

responsibility of the state, if its bodies, its exponents, the courts and the police, acted in compliance with the law. For this reason, and in order to satisfy the principle of fairness, the state has prescribed by law the conditions under which an individual groundlessly deprived of liberty or groundlessly convicted can obtain compensation for non-material and material damage suffered and/or moral satisfaction, and this is prescribed in the law of the Republic of Serbia by the Code of Criminal Procedure (Grubač, 1979).

The subject of this paper is the legal nature of the right to compensation for non-material or non-material damages and the right to moral rehabilitation. In order to understand the legal nature of moral and material rehabilitation due to groundless deprivation of liberty, it is necessary to determine when the damage occurred, that is, when the individual was groundlessly deprived of liberty or groundlessly convicted.

Groundless deprivation of liberty and conditions for exercising the right to compensation for damages

In order for an individual who has been deprived of their liberty to achieve their right to moral and material rehabilitation, it is necessary, first of all, to fulfill the conditions prescribed by law, which determine that deprivation of liberty as groundless.

The Code of Criminal Procedure of the Republic of Serbia defines as groundless deprivation of liberty an individual who: was deprived of liberty, but the proceedings were not initiated, or the proceedings were suspended by a legally binding decision or the accusation was dismissed, or the proceedings were legally terminated by a rejection or acquittal verdict; who has served a prison sentence, and regarding a request for the repetition of criminal proceedings or a request for the protection of legality, they were sentenced to a prison sentence of a shorter duration than the sentence served, or a criminal sanction was imposed that does not consist of deprivation of liberty, or they were found guilty and acquitted; who was deprived of liberty for a longer period of time than the duration of the criminal sanction consisting of the deprivation of liberty imposed on them; who was deprived of liberty due to a mistake or illegal work of the procedural authorities, or the deprivation of liberty lasted longer or was kept longer in an institution for the execution of a criminal sanction consisting of deprivation of liberty.

However, in order for an individual deprived of liberty to have a right to moral and material rehabilitation, it is necessary that that person did not cause the deprivation of liberty by their illegal actions, or that the proceedings were not suspended or the charges were not rejected because the aggrieved party was the prosecutor in the new proceedings, that is, the private prosecutor gave up the prosecution, or because the aggrieved party gave up the proposal, and the withdrawal was based on an agreement with the defendant.

The condition for excluding the state from liability for damages can be determined from the following example of judicial practice:

"The right to compensation for damages is granted to a person groundlessly convicted under certain conditions (Article 556 of the Law on Criminal Procedure (LCP)) and a person who was groundlessly detained (Article 560 of the LCP). It is considered that the person was groundlessly detained, among other things, in the case when no criminal proceedings were initiated or the criminal proceedings were suspended by decision (Article 560 of the LCP). Valuing the contribution of the detained person, the legislator prescribed limitations and an exception when a person who was groundlessly detained cannot

receive compensation for damages. That exception is provided for in Article 560, Paragraph 3 of the LCP, according to which, even if a person was in groundless detention, they are not entitled to compensation if they caused the deprivation of liberty by their illegal actions.

It follows from the established facts that the prosecutor wronged the deprivation of liberty by their illegal actions in the criminal proceedings. The prosecutor received a summons for the hearing and was aware of the fact that criminal proceedings were being conducted against him, they did not respond to the summons nor did they justify their absence, which is why the investigating judge concluded that the prosecutor was hiding and avoiding criminal proceedings, and for those reasons they were ordered to be detained. The aforementioned decision was examined upon the prosecutor's appeal and the extra-procedural council found that the investigating judge acted correctly when they ordered the prosecutor to be detained. Bearing in mind the facts established in this way, the correct conclusion of the lower courts was that the prosecutor wronged the deprivation of liberty by their illegal actions and that therefore the defendant was not liable for damages based on Article 560, paragraph 1, point 1 of the Code of Criminal Procedure. The lower courts therefore properly rejected the plaintiff's request for compensation for non-material and material damages in the name of lost earnings and paid attorney's fees in compliance with the provision of Article 560, Paragraph 1, Item 1 and Paragraph 3 of the Code of Criminal Procedure" (Decision of the Supreme Court of Cassation, Rev 1435/14 of February 4th, 2016).

The right to compensation for damages due to groundless deprivation of liberty is a personal right, established in favor of the person who has suffered damage due to deprivation of liberty. The heirs of a person who has been deprived of liberty inherit only the part of the aggrieved party to material damage, and if the aggrieved party has already pointed out the heirs can continue the procedure only within the limits of the already established request for compensation for property damage. The heirs of the aggrieved party may continue the procedure for compensation after their death, i.e. initiate the procedure if the aggrieved party died before the expiration of the statute of limitations and did not waive the claim, in compliance with the rules on compensation of damages prescribed by the Law on Contract and Torts (Code of Criminal Procedure, 2011, art. 588–591).

The procedure for exercising the right to compensation for damages in the law of the Republic of Serbia is conducted in two stages (Code of Criminal Procedure, 2011, Art. 588 – 591).

The first phase is conducted before the administrative body, the ministry responsible for judicial affairs. This procedure begins by submitting a request for compensation to the competent body - the committee of the mentioned ministry in order to reach an agreement on the existence of damage and the type and amount of compensation.

The competent committee of the ministry has a deadline set by law of three months to decide on the submitted request. The period of three months starts from the date of submission of the request.

If the committee does not make a decision within the given period of three months, the injured party can file a claim for compensation to the competent court.

The aggrieved party has the right to file a lawsuit even in the case when they have reached an agreement with the committee, but only on part of the claim. In that case, they submit the lawsuit afresh on the remaining claim.

The aggrieved party may file a claim for damages within three years from the date of finality of the first-instance rejection or acquittal verdict, i.e. the finality of the first-instance decision suspending the

proceedings or rejecting the charge, and if the appeal was decided by the appellate court - from the date of receipt of the decision of the appellate court, and after that period the statute of limitations for claims for damages begins. While the proceedings before the committee of the ministry responsible for justice affairs are ongoing, the period to be counted for the statute of limitations does not run, that is, the statute of limitations has expired.

The amount of damages awarded to the aggrieved party is measured in compliance with the provisions of the Law on Contract and Torts

The amount of non-material damage, which the court awards to the aggrieved party, is measured by applying the criteria and standards comprised in Article 200 of the Law of Contract and Torts.

An example from court practice: "When deciding on the amount of monetary compensation for non-material damage, the plaintiff's profession and the work they were engaged in at the time they were deprived of liberty, their marital and family status and lack of conviction, the type and severity of the criminal offense that they were charged with in the indictment, the length and conditions of their stay in detention, and based on this, the amount of fair monetary compensation was determined. A higher amount of compensation than the one awarded, both the one demanded by the lawsuit on that basis - in the amount of 7,250,000.00 RSD, and the amount of 100,000.00 RSD awarded by the first-instance verdict, would be contrary to the purpose of the compensation and would favor aspirations that are contrary to its social purpose (Article 200, Paragraph 2 of the Law of Contract and Torts)." (Decision of the Supreme Court of Cassation, Rev 397/17 of March 9th, 2017).

An aggrieved person, a person deprived of liberty has a right to material damage according to the rules of the Law on Contract and Torts, Article 189, and to ordinary damage and loss of profit.

The aggrieved party may submit a request for compensation for damages due to groundless deprivation of liberty within three years from the date of finality of the first-instance rejection or acquittal verdict, i.e. the finality of the first-instance decision by which the proceedings were suspended or the charge was rejected, and if the appeal was decided by the appellate court - from the date of receipt of the decision of the appellate court. After the expiration of the three-year period, they lose the right to claim damages.

The procedure for exercising the right to moral satisfaction is achieved in such a way that the court, at the request of the aggrieved party, delivers a statement of the decision from which the deprivation of liberty is groundless. The announcement is delivered to the media so that they publish it but under the condition that the deprivation of liberty or the conviction of a person is shown through the media.

In the case when the deprivation of liberty was not shown through the mass media, the announcement resulting from the groundless deprivation of liberty will be, at the request of the person groundlessly deprived of liberty, delivered to the state and other authorities, companies and other legal or natural persons, where the person groundlessly deprived of liberty was employed.

After the death of a person groundlessly deprived of liberty, a request for moral satisfaction can be submitted by their spouse, a person with whom they lived in a common law marriage or other permanent union, children, parents, brothers and sisters.

The request for moral satisfaction is not related to the submission of a request for compensation for damages, and it can be submitted if no compensation for damages has been claimed, and it can be

submitted within six months. The request shall be submitted to the court that tried the criminal procedure in the first instance.

The legal nature of the moral and material rehabilitation of a person groundlessly deprived of liberty

From the foregoing, it can be determined that the institution of compensation for damages due to an groundless conviction is a specific legal institution, primarily because it is regulated by the provisions of civil law and the provisions of criminal law, given that only by applying the provisions of both criminal and civil law can the purpose of that institution be realized, the reparation of the aggrieved person, that is, the reparation of the violated personal right - the right to freedom (Mrvić Petrović & Petrović, 2008, pp. 26–30).

Namely, in the event that compensation for damage to a person groundlessly deprived of liberty is considered in compliance with the rules of civil law, then compensation would be possible only in the situation if the guilt of a representative of the state authority, a person who acted on behalf of the state - a judge, a police officer - was proven. The institution of groundless deprivation of liberty most often arises through no one's fault (On the reasons that lead to an unfounded conviction, see: Mc Closkey, 1989, pp. 2-59), and the exclusive application of the rules of civil law would not achieve justice, because in that case the person groundlessly deprived of liberty would not be able to claim compensation for damages. This indicates that the application of only general rules of civil law cannot be the basis of liability for damage caused by groundless deprivation of liberty.

Whereas the compensation for damages to persons groundlessly deprived of liberty cannot be achieved according to the strict rules of civil law, the state's responsibility for compensation for damages due to groundless deprivation of liberty, some theoreticians, find in reasons of justice. Thus, the state's obligation to compensate damages for groundless deprivation of liberty does not arise from its tort liability, but rather from justice, which is supposed to eliminate the damage caused on the basis of a mistake (Marković, 1937, p. 563). Advocates of the theory of justice as the basis of the state's responsibility for compensation for damages due to groundless deprivation of liberty do not deny the legally sanctioned obligation of the state in the event that the body of the criminal procedure caused damage by groundless deprivation of liberty. According to them, the law only sanctioned what follows from the principle of justice (Heninzberg, 1933, p.460, Vujaklija, 1982, pp. 1301–1311).

It is true that justice dictates the right of a person groundlessly deprived of liberty to compensation for damages. However, justice without its support by the law, its inclusion in the legal norm, cannot create an obligation of the state to compensate for damages. For, if only justice were the basis for compensation, it could lead to the fact that the right of a person groundlessly deprived of liberty to compensation depends on the judge's discretionary assessment, which is not in the spirit of the rule of law.

There are further understandings, according to which the responsibility of the state for damage suffered by persons groundlessly deprived of liberty is a subtype of responsibility for damage suffered by persons due to illegal or improper work of state authorities (Radoman, 1977, pp.14).

According to some legal theorists, the responsibility of the state is subjective because the state performs its functions through its bodies and civil servants. So mistakes of state officials are mistakes of

the state, because it made a bad choice of officials, or did not provide funds and so forth (Newsletter of Judicial Practice of Supreme Court of Serbia, 2008).

On the other hand, there are understandings that the responsibility of the state is objective, because it exercises power and benefits from the functioning of services and bodies. If it benefits, it bears the risk of causing damage and is responsible for it. For the aggrieved party, it is irrelevant which official is to blame, whether they are overworked, whether the service is poorly organized, or whether it lacks material resources, etc (Newsletter of Judicial Practice of Supreme Court of Serbia, 2008).

The stated views on the state's responsibility for the damage suffered by a person groundlessly deprived of liberty indicate the specific legal nature of this institute. The basis of liability for damages, in the law of the Republic of Serbia, is actually found in the regulation of criminal law, the Code of Criminal Procedure, namely in the provisions of Art. 583 - 591.

In order to exercise the right to damages, a person groundlessly deprived of liberty must prove the existence of the circumstances referred to in Article 584, Paragraph 1 of the Code of Criminal Procedure, and it is not necessary to prove omission in work, failure to take the necessary action, which is the case with the state's responsibility for damage from Article 172 of the Law on Obligations.

A person groundlessly deprived of liberty who is seeking compensation for damages does not have to prove omission in work of the enforcement body, or irregular and illegal work - it is only necessary to prove that the criminal proceedings have not ended with a conviction or a sentence imposing a prison sentence. Because of this, there is a similarity with objective responsibility, responsibility without fault. Also, as with objective responsibility, there is an exclusion from responsibility, prescribed by paragraph 2 of Article 583 of the Criminal Procedure Law.

Based on the above, I am of the opinion that the state's responsibility for damage caused by unjustified deprivation of liberty, responsibility without fault, objective responsibility, can be called legal objective responsibility, because it is established by law (Petrović, 2023, pp. 228).

Conclusion

The emergence and development of the right of a person groundlessly deprived of liberty to compensation for damages is directly related to the development of the idea of state responsibility. The idea of state responsibility arose with the disappearance of the absolutist state and the emergence of the idea of the rights of citizens to demand legal and proper work from the state and state bodies.

In such conditions, there was a need to create state responsibility for groundless deprivation of liberty, as one of the forms of protection of personal rights, especially the right to freedom and personality rights.

First, aggrieved persons were recognized as having the right to achieve moral rehabilitation, and in the second half of the nineteenth century, the right to compensation for material damage was recognized (Srzentić, 1966, p. 434).

In the nineteenth century, the right to compensation was recognized if the damage was caused by the malicious action of the court, and an example of this is the Code of Criminal Procedure of the Principality of Serbia of 1865.

It was only later, at the beginning of the 20th century that the recognition of the right to compensation for damages due to unjustified deprivation of liberty under the conditions known today was

initiated, i.e. no malicious action of the court was required, and the right to compensation was also recognized for persons groundlessly deprived of their liberty, and not only unjustly convicted. The Law on Court Criminal Procedure of the Kingdom of Yugoslavia of 1929 contained provisions on the right to moral and material rehabilitation of persons groundlessly deprived of liberty and groundlessly convicted.

The right to compensation for moral and material damage of persons unjustifiably deprived of liberty, developed alongside society and society's awareness, expressed through the representatives of the government, of the need to protect basic human rights.

With the exception of the Criminal Procedure Law of 1948, for a period of almost a century, the protection of the right to liberty from state authorities evolved into the right of the aggrieved party to moral and material rehabilitation in the form of compensation for non-material and material damage and moral satisfaction.

In order to exercise the right to moral and material reparation, it is not necessary for the aggrieved party to prove the negligent and malicious behavior of the state authorities (court and police), and it is necessary to attach documents (decisions of the authorities conducting criminal proceedings) on the basis of which the deprivation of liberty has transformed from a grounded and lawful deprivation of liberty to an groundless deprivation of liberty.

In order to exclude the responsibility of the state for damage, the existence of a hidden action of the aggrieved party, by which they avoided the presence of the criminal proceedings, is necessary.

Even the current the Code of Criminal Procedure recognizes the case of state responsibility for damage caused by groundless deprivation of liberty, which can be subsumed under, let's say, general state responsibility for damage caused by its body through improper or illegal work. This is the case from Point 4), Paragraph 1, Article 584 of the Code of Criminal Procedure, when a person is deprived of liberty or the deprivation of liberty lasted longer due to a mistake or illegal work of the procedural authorities. In that case, it is the duty of the aggrieved party to prove the error or illegal work of the procedural body, which is not the case in other cases which the Criminal Procedure Code defines as groundless deprivation of liberty.

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Moralna i materijalna rehabilitacija lica neosnovano lišenih slobode

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Sažetak

Pravo na slobodu predstavlja jedno od osnovnih ljudskih prava. Ovo pravo je proklamovano Univerzalnom deklaracijom o ljudskim pravima, Poveljom o osnovnim pravima Evropske unije, dok je pravo na slobodu u domaćem pravu utvrđeno Ustavom Republike Srbije. Imajući u vidu da je pravo na slobodu zaštićeno osnovnim međunarodnim i domaćim pravnim aktima, države propisuju sankcije za lica koja ograničavaju pravo pojedinca na slobodu. Međutim, u slučajevima kada je država ograničila pravo na slobodu, a naročito kada je fizičko lice neosnovano lišila slobode, postavlja se pitanje da li ona može biti odgovorna i koje su njene obaveze prema fizičkom licu koje su njeni organi, sudovi i policija neosnovano lišili slobode. Ovaj rad će se baviti pravima fizičkog lica koje je neosnovano lišeno slobode na moralnu i materijalnu rehabilitaciju. Poseban fokus biće na utvrđivanju pravne prirode instituta materijalne i moralne rehabilitacije lica neosnovano lišenih slobode.

Ključne reči: neosnovano lišenje slobode, moralna i materijalna rehabilitacija, naknada štete, odgovornost države