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COMPENSATION FOR NON-MATERIAL DAMAGE FOR MENTAL ANGUISH SUFFERED DUE TO UNLAWFUL DEPRIVATION OF LIBERTY AND WRONGFUL CONVICTION

ABSTRACT: Compensation for non-material damage for mental anguish suffered as a result of unlawful deprivation of liberty and wrongful conviction represents one of the forms of compensation for non-material damage. The Constitution of the Republic of Serbia directly guarantees the fundamental rights and freedoms of every person. Violation of an individual's psychophysical integrity is prohibited. Everyone has the right to personal liberty and security (Article 27(1) of the Constitution of the Republic of Serbia). Deprivation of liberty is permitted only on grounds and in a procedure prescribed by law.

In the event of unlawful deprivation of liberty or wrongful conviction, the injured party's freedom and dignity—and consequently their reputation in

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society—are jeopardized. Although the presumption of innocence applies, the proceedings themselves constitute a source of discomfort and stress for the person against whom they are conducted. Such a person suffers mental anguish as a result of unlawful deprivation of liberty and wrongful conviction. In view of the foregoing, the aim of this paper is, on the basis of statutory regulation and relevant judicial decisions, to present general legal solutions in a more concise and systematic manner, as well as to outline the procedure for exercising the right to this type of compensation for non-material damage. The paper also seeks to clarify the subjective and objective circumstances that courts assess when determining the amount of compensation and the merits of the injured party's claim for non-material damage, and to point to inconsistent judicial practice that should be harmonized.

Keywords: *non-material damage, unlawful deprivation of liberty, wrongful conviction, monetary compensation.*

1. Introduction

In the event of a violation of the psycho-physical integrity of an individual, the injured party is entitled to compensation for damage. The two principal forms of compensation are for material damage and for non-material damage. Whereas material damage is exact and relatively determinate, the question of compensation for non-material damage has long been a matter of controversy.

Prior to the entry into force of the Law on Obligations of 1978 (hereinafter: the LOO), awards for compensation for non-material damage were rare. The reason was that neither legal doctrine nor judicial practice had established clear criteria concerning the method, scope, and amount for determining such compensation.

In the legal doctrine, two schools of thought emerged—negative and affirmative. Proponents of the negative view argued that mental and physical suffering cannot be expressed in monetary terms without degrading fundamental human goods. They maintained that equating personal rights with money is improper and that it would be deeply immoral to accept payment for their violation. They further noted that personal rights are already protected by criminal proceedings.

Advocates of the affirmative position conceded that assessing the scope and amount of compensation for non-material damage poses a challenge for the court, but insisted that one cannot ignore the fact that the individual's

psychological equilibrium has been disturbed. Accordingly, they argued, the injured party deserves satisfaction in an appropriate sum, determined not by economic measures, but by considerations of equity.

With the LOO in force, Article 200(2) provides that, when deciding on a claim for compensation for non-material damage and on the amount thereof, the court shall take into account the importance of the injured good and the purpose of such compensation, as well as ensure that the award does not serve ends incompatible with its nature and social function.

According to Oliver Antić, basing his view on the provisions of the LOO, the consequences of non-material damage may be remedied in two ways: by moral (non-material) satisfaction and by monetary (material) satisfaction. Pursuant to Article 199 of the LOO, moral satisfaction is effected by publishing the judgment or a correction, or by ordering the wrongdoer to retract the injurious statement—or by any other measure that achieves the purpose of compensation. Monetary satisfaction, on the other hand, consists of awarding a specified sum of money to the injured party, which may be used for personal redress.

An examination of the subject matter of this study leads to the conclusion that monetary awards are more prevalent in judicial practice than moral satisfaction.

2. Unlawful Deprivation of Liberty and Wrongful Conviction

The Constitution of the Republic of Serbia (2006, hereinafter: the Constitution), in Article 35, provides that anyone who has been deprived of liberty, detained or convicted of a criminal offence without grounds or unlawfully is entitled to rehabilitation, compensation for damage from the Republic of Serbia and other rights established by law. Articles 27–34 of the Constitution set forth the rules relating to every person's right to liberty and security; the procedures governing a person deprived of liberty; the right to defence; the urgency of proceedings; judicial protection; limits on the duration of deprivation of liberty (including pre-trial detention as a measure to secure the accused's presence in criminal proceedings); the presumption of innocence; and the right to a fair trial, which encompasses the prohibition of retroactive application of the law and the principle of *ne bis in idem* (Petrović & Mrvić Petrović, 2012, p. 368).

Unlawful deprivation of liberty constitutes an unwarranted restriction on freedom of movement resulting from an unjustified order of pre-trial detention or, more generally, from an unjustified deprivation of freedom of movement

in criminal proceedings (Radovanov, 2008, p. 297). If, in renewed criminal proceedings or on appeal, it is established that the conviction was wrongful or that the deprivation of liberty was unjustified, the injured party is entitled to claim monetary compensation or moral satisfaction by way of publication of an acquittal (Radovanov, 2008, p. 297).

The Law on Criminal Procedure of 2011 (hereinafter: LCP) provides, in Article 2(1)(23), that “deprivation of liberty” shall be understood to include arrest, detention, prohibition on leaving one’s dwelling, pre-trial detention and custodial stay in an institution, which, in accordance with this Code, is counted as detention.

Article 18 of the LCP provides that a person who has been deprived of liberty or convicted of a criminal offence without grounds is entitled to compensation for damage from the State and to other rights prescribed by law. The State’s liability for compensation is based on objective responsibility (Article 172 of the LOO).

In accordance with state liability under Article 172 of the LOO, it is noteworthy that the Appellate Court in Belgrade, in Decision Gž 5736/2011 of 1 February 2012, held that, for purposes of establishing the Republic of Serbia’s liability under Article 172 of the LOO, all circumstances, facts, and reasons related to the ordering of pre-trial detention—namely its legal basis—and whether the detention was extended for the same reasons for which it was initially ordered, as well as the conduct of the prosecutor and their approach to ascertaining the true state of affairs in the investigation, are material.

From the reasoning:...“Pursuant to Article 560(3) of the Law on Criminal Procedure, the right to compensation for damage does not belong to a person who, by their wrongful conduct, caused their own deprivation of liberty. This provision excludes the right to compensation even if no criminal proceedings were brought against the detained individual, or if the proceedings were terminated by a final decision, or if the person was acquitted by a final judgment or the indictment was dismissed. The right to compensation under paragraph 1 of Article 560 of the LCP is excluded because that person, by their wrongful conduct, caused the deprivation of liberty. For an injured party to have the right to compensation for unlawful deprivation of liberty, the conditions prescribed in Article 560 of the LCP must be cumulatively satisfied—that is, the prerequisites of paragraph 1 of that provision must exist and none of the negative prerequisites in paragraph 3—relating to the conduct of the injured party as suspect or accused—must occur. Accordingly, compensation will be denied when the injured party’s own impermissible conduct caused the deprivation of liberty, provided that such conduct is separately proven

in the compensation proceedings. Impermissible conduct may include any behaviour not aimed at establishing the truth—for example, concealment or attempted escape, which are special grounds for pre-trial detention under Article 142 of the LCP.”

This decision underscores that, while the State bears objective liability for unlawful deprivation of liberty, compensation may nonetheless be denied where the injured party’s own impermissible actions led to their detention.

From the reasoning of the contested judgment it appears that an investigation was initiated against the plaintiff on 18 June 2001, and on 29 March 2002 pre-trial detention was ordered and a warrant issued. He was taken into custody on 1 March 2004, and detention lasted until 11 October 2004, when it was lifted. However, the first-instance court, due to an erroneous legal position, failed to establish the facts relating to the ordering of detention—namely, the reasons for its imposition and its legal basis—whether detention was extended for the same grounds on which it was initially ordered, as well as the conduct of the plaintiff as the accused and his attitude toward establishing the true state of affairs in the investigation. All of these facts and circumstances are material for determining the Republic’s liability under Article 172 of the LOO.

Pursuant to Article 584 of the LCP, an “unlawfully deprived” person is one who was deprived of liberty and against whom no proceedings were instituted, or whose proceedings were finally terminated, or who was acquitted or had the indictment dismissed by a final decision; or one who served a sentence of imprisonment and, on the basis of a motion for retrial or a motion to protect legality, received a shorter sentence than that already served, or a sanction not involving deprivation of liberty, or was found guilty but relieved of punishment; as well as one whose detention lasted longer than the sentence of imprisonment finally imposed; and one who was deprived of liberty due to an error or unlawful act of the authorities, or who was held longer or retained in an institution for enforcement of a custodial sanction.

Compensation does not belong to a person whose own impermissible conduct caused their deprivation of liberty. Article 585(1) of the LCP then specifies the cases in which a person is not considered wrongfully convicted. Thus, a “wrongfully convicted” person is one against whom a criminal sanction was finally imposed or who was found guilty but relieved of punishment, and in respect of whom, upon extraordinary legal remedy, the new proceedings were finally terminated or the indictment was finally dismissed or ended with a final acquittal.

A convicted person has no right to compensation if, by false confession or otherwise intentionally, they caused their own conviction, except where they were compelled to do so; nor if the proceedings were terminated or the indictment dismissed because the injured party, as prosecutor or private prosecutor, withdrew the prosecution, or withdrew a motion following an agreement with the accused. In the case of joint offences (participation in a criminal act), the right to compensation may also extend to individual offences for which the conditions for awarding compensation are met (Article 585(3) of the LCP).

3. Criteria Considered by the Court in Determining the Amount of Monetary Compensation

When assessing the amount of monetary compensation, the court takes into account circumstances such as the duration of the unlawful deprivation of liberty; whether, on behalf of the suspect or convicted person, the facts were published in the media during the proceedings; the severity of the charge; whether the person was held in solitary confinement; the conditions under which the custodial sentence was served; loss of reputation in the community; forced separation from family; the person's age; their status and achievements as a parent; and other circumstances of either subjective or objective character (Radovanov, 2008, p. 299). If a monetary award is granted, it is awarded in a single sum.

The attached decision of the Higher Court in Kragujevac, Gž 2416/2011 of 24 October 2011, states: "When determining the amount of monetary compensation for non-material damage due to unlawfully imposed pre-trial detention, the court considers, in addition to objective circumstances, also subjective factors such as prior convictions, the family status of the accused, and the purpose for which the monetary compensation will serve."

From the reasoning:..."According to the case file and the reasons set out in the contested judgment, the plaintiff filed a claim against the defendant on 18 October 2010 for compensation for non-material damage, and, by written request of 12 August 2010, applied to the Ministry of Justice in B for payment of compensation in the amount of RSD 300,000.00. By final criminal judgment, he was acquitted of the charge of attempted incitement to abuse official position under Articles 359 § 1 in conjunction with Article 34 § 2 and Article 30 of the Criminal Code. The plaintiff had prior criminal convictions and, by a decision of the Ministry of Interior, PD K, PS B, was detained on suspicion of abuse of official position and held in pre-trial detention for

48 hours. In its response to the claim, the defendant admitted the plaintiff's request for payment of non-material damage in the amount of RSD 30,000.00.

Expert examination by a neuropsychiatrist established that during his time in detention the plaintiff experienced stress and an intense affective state—primarily due to personal endangerment and uncertainty regarding his business activities—and was acutely aware of reactions from his professional environment, family, and wider community, exacerbated by press coverage. According to the expert's findings and opinion, for two months following his release the plaintiff displayed elements of post-traumatic stress disorder, and he suffered mental anguish up until the date of the first-instance criminal judgment, but not thereafter.”

Starting from the factual findings as thus established, and in accordance with the legal reasoning of the Higher Court, the first-instance court acted correctly when, pursuant to Article 200(1) of the LOO, it ordered the defendant to compensate the plaintiff for non-material damage for mental anguish suffered due to unlawful deprivation of liberty, as well as for mental anguish arising from the violation of the plaintiff's honour, reputation, freedom, and personal rights, in the amount of RSD 50,000.00. The court correctly concluded that mental anguish resulting from unlawful deprivation of liberty constitutes a single form of damage encompassing all harmful non-material consequences affecting the plaintiff's personality that flow from the unlawful deprivation of liberty, and that the stated amount of compensation is appropriate. The court also correctly found, with respect to the existence of the criminal offence and the criminal liability of the perpetrator, that under Article 13 of the Law on Civil Procedure (LCP) it was bound by the final criminal judgment in which the accused was found guilty, and that, pursuant to Article 154(1) of the LOO, the plaintiff's claim for compensation is well-founded. In determining the amount of compensation at RSD 50,000.00, the first-instance court ensured that the award did not serve purposes incompatible with its nature and social function and properly rejected the plaintiff's claim for non-material damage in the amount of RSD 180,000.00 under Article 200(2) of the LOO. The court was also correct in concluding that the plaintiff is entitled to statutory interest on the awarded amount of non-material damage from the date of judgment, pursuant to Article 277 of the LOO, since the amount of non-material damage was fixed by the court on the date of the judgment.

However, the first-instance court misapplied the substantive law of Article 200 of the LOO when, in the operative part of its judgment, it awarded the plaintiff an additional RSD 70,000.00 (bringing the total to RSD 120,000.00). This error arose because the court, in measuring equitable compensation,

failed to consider all relevant criteria—namely, objective criteria such as the time spent in detention (48 hours for questioning the plaintiff) and the plaintiff’s opportunity to seek rehabilitation under Article 199 of the LOO, as well as subjective criteria such as the plaintiff’s prior unblemished life and his criminal record.

It follows that compensation for mental anguish suffered as a result of unlawful deprivation of liberty and wrongful conviction must be determined with regard to all circumstances of the case (both objective and subjective). The court gives due weight to the findings and opinion of the neuropsychiatric expert in order to render as fair and accurate a decision as possible when fixing the amount of monetary compensation. Injured parties may propose the amount of compensation they consider appropriate, but the final decision rests with the court, which must act within the limits of the claim and not in pursuit of objectives incompatible with the compensation’s nature and social purpose.

Thus, the amount of non-material damage awarded to a person serving a sentence under house arrest with an electronic monitoring device cannot be equated with the compensation awarded to a person serving a custodial sentence—see, for comparison, the Judgment of the Appellate Court in Niš, Gž 4892/2018 of 30 August 2018.

From the reasoning:...“By unlawful deprivation of liberty, the plaintiff suffered mental anguish due to the violation of his personal rights. The first-instance court therefore properly granted his claim for compensation for non-material damage, applying Articles 18 and 584(1)(4) of the LCP. However, the defendant’s appeal rightly challenges the amount awarded—RSD 150,000.00—on the ground of misapplication of substantive law, namely the provisions of Article 200 of the LOO.”

Namely, compensation for non-material damage constitutes satisfaction that alleviates the disturbances suffered in the injured party’s spiritual sphere, and in the present case depends on the duration of the unlawful incarceration, the plaintiff’s family circumstances, his occupation, and his overall social life. Taking into account all the circumstances of the case—both subjective and objective criteria for fixing the amount of compensation—and the fact that the plaintiff did not serve his custodial sentence in a correctional institution but at his home in N..., where he resided with other family members and enjoyed the benefits of serving the sentence under electronic monitoring, this Court finds that the award of RSD 150,000.00 for non-material damage was excessive. Having regard to his personal characteristics, the nature of the offence, his lack of prior convictions, and the fact that he spent an unjustified

36 days under house arrest due to the statute of limitations on enforcement, a just compensation is RSD 75,000.00.

4. Specific Features of Compensation for Non-Material Damage Due to Unlawful Deprivation of Liberty and Wrongful Conviction

Historically, under pre-war legislation, monetary compensation for non-pecuniary—or non-material—damage was referred to as “pain money”. That term described the mental suffering endured by a person whose personal rights had been violated. Since personal rights are absolute subjective rights, their infringement is a highly sensitive matter (Petrović, 1996, p. 44).

However, compensation for non-material damage is of a strictly personal nature and belongs solely to the injured party, not to their heirs (Salma, 2007, p. 623). The sole exception is that heirs may inherit the injured party’s right to compensation for material damage, and, if the injured party has already asserted a claim, the heirs may continue the proceedings only within the scope of that existing claim for material damage (Article 590(1) of the LCP). Heirs may also initiate or continue a claim for compensation after the injured party’s death—provided the claim was filed before the statute of limitations expired and the injured party had not renounced it—in accordance with the rules on compensation set out in the LOO (Article 590(1) of the LCP). An injured party is entitled to compensation for both non-material damage and material damage.

In fixing the amount of monetary compensation, the court exercises a free assessment. Because compensation for non-material damage is neither exact nor precise, but depends on the court’s free evaluation of subjective and objective circumstances of the case, the award can seem unpredictable.

Through the institution of unlawful deprivation of liberty and wrongful conviction, a person’s freedom is among the rights infringed. “Freedom is commonly defined as the ability to live according to one’s own choices, and its characteristics are universality (belonging to all persons), comprehensiveness (extending to all aspects of human existence), recognition and protection as one of the highest constitutional values, and limitation (by the rights and freedoms of others and by public interest)” (Petrović & Mrvić Petrović, 2012, p. 143).

All rights are guaranteed by the Constitution and are directly applicable. Any deprivation or restriction must comply both with statutory law and with constitutional principles and provisions.

A person against whom criminal proceedings have been wrongly instituted, yet who has not been deprived of liberty, cannot claim compensation (Petrović & Mrvić Petrović, 2012, p. 151), because such persons remain protected by the presumption of innocence.

Review of judicial practice shows that injured parties typically claim compensation not only for mental anguish suffered during pre-trial detention or imprisonment, but also for mental anguish arising from injury to honour and reputation. “Compensation for injury to honour, reputation, freedom or personal rights is awarded where words (spoken or written), facial expressions or gestures demean a person to such an extent that the act constitutes not only insult or defamation but also mental anguish owing to injury to reputation and honour” (Veljković, 2020, p. 652). Such injury may occur through television, press, radio, or other means.

For a long time, both doctrine and practice debated whether an injured party could claim separate compensation for each form of non-material damage or whether a single award should cover all. It is now settled that a unified sum is awarded, taking into account and weighing every harmful consequence to the person’s personality. Particular consideration is given to the injured party’s reputation in their community, work environment, profession, age, and health status—i.e., subjective factors—as well as objective factors such as the duration of detention or imprisonment and other circumstances affecting the injured party’s mental suffering (e.g., press coverage).

A disputed issue in practice has been whether an injured party may claim compensation for unused annual leave; the answer is no, since the law does not recognize such an entitlement.

When fixing the amount of compensation, the court also considers whether the injured party received moral satisfaction by way of public publication of the judgment. In other words, every circumstance is assessed, as the basis for non-material damage is highly complex, and the award is made in a single sum.

To the extent that the injured party’s ability to work was impeded, they are also entitled to compensation for material damage. Likewise, injury to honour and reputation may give rise to a claim for material damage—for example, where an entrepreneur or business owner loses professional standing due to wrongful conviction or unlawful detention (Milošević, 1982, p. 199). Such a claim may also be asserted by persons maintained by the injured party.

Awarding monetary compensation enables the injured party to choose the most appropriate means of restoring the psychological and emotional equilibrium that existed before the harmful event (Antić, 2014, p. 521).

5. Procedure for Exercising the Right to Compensation for Non-Material Damage

The procedure for exercising the right to compensation for damage unfolds in two phases. Pursuant to Article 588(1) of the LCP, before filing a lawsuit for compensation in court, the injured party is obliged to submit a claim to the Ministry competent for justice affairs in order to reach an agreement on the existence of damage, its type, and the amount of compensation. The claim is decided by the Compensation Commission, whose composition and manner of operation are regulated by an act of the Minister competent for justice affairs (Article 588(2) of the LCP).

The proceedings before the competent ministry for reaching a compensation agreement are conducted in accordance with the provisions of the Law on General Administrative Procedure (2016), and the Ministry's Commission may, if necessary, examine evidence and collect relevant information in those proceedings (Petrović & Mrvić Petrović, 2012, p. 157).

The competent authority may grant the injured party's claim in full, partially grant it, or determine that an agreement cannot be reached, in which case it must inform the injured party of that impossibility. In the event of partial grant, the injured party has the right to file suit in court with respect to the ungranted portion of the claim. If, within three months from the date the injured party submitted the claim, no response is received from the competent ministry (administrative silence), the injured party has the right to institute civil proceedings before the competent court in accordance with the provisions of the Law on Civil Procedure (2011).

6. Conclusion

Compensation for non-material damage due to unlawful deprivation of liberty and wrongful conviction is a complex institution, as its infringement encompasses multiple types of non-material harm. The purpose of compensation for non-material damage is to restore the injured party to the position and state they would have occupied had the violation of personal rights not occurred. Given that personal rights lack a market value, deciding on the amount and scope of compensation for non-material damage is a highly sensitive matter. Each person is an individual, and although the court exercises discretion in determining the scope and amount of compensation, the award must not serve aims incompatible with its nature and social purpose. Similarly, compensation for non-material damage must never degrade human dignity.

A fundamental prerequisite for any form of compensation for non-material damage—including this one—is that the injured party has, in fact, suffered mental anguish. If no mental anguish is present, there is no basis for awarding compensation for non-material damage. The court assesses all circumstances of the case, giving particular weight to subjective factors such as the injured party's place of residence, occupation, whether the deprivation of liberty or conviction received media coverage, the injured party's role as a parent, age, and so forth.

A related contentious question is whether close relatives of the injured party may claim compensation for non-material damage arising from the party's unlawful deprivation of liberty or wrongful conviction; the prevailing answer is that they may not. Nevertheless, some legal theorists argue that close family members who themselves suffer mental anguish should be entitled to compensation. We consider that compensation for non-material damage should be awarded to the closest family members—namely, the injured party's children and spouse. In particular, children—especially those attending primary or secondary school—may endure significant distress due to peer teasing, which can be acutely harmful during sensitive developmental stages (puberty). This ground merits further analysis. We do not, however, advocate extending this entitlement to all household members.

When the court awards appropriate compensation for non-material damage, it aims to provide the injured party with satisfaction for the harm suffered. Thus, if the case involving unlawful deprivation of liberty or wrongful conviction was publicized through the media and thereby harmed the injured party's reputation, the court will, upon request, publish a notice of its decision in the same media outlet, stating the unlawfulness of the detention or conviction (Article 592(1) of the LCP). If the case was not publicized, the court will, on request, deliver such notice to the state or other public authorities, the employer, or any other legal or natural person with whom the injured party was employed or associated at the time of the unlawful detention or wrongful conviction (Article 592(1) of the LCP). After the death of the convicted party, the right to file such a request passes to the spouse, a partner in a *de facto* or other permanent cohabitation, children, parents, and siblings.

It is important to note that judicial practice remains inconsistent. Some prominent scholars have proposed establishing statutory criteria, including ranges of monetary awards and benchmarks for determining the amount of compensation for non-material damage. Such ranges would serve as

guidelines within which the court, in exercising its discretion, would fix the amount of compensation. Previously, courts were constrained by a Regulation on compensation for damage, which prescribed criteria for determining both material damage and the amount of monetary compensation for non-material damage (Varađanin, 2024, p. 202). However, that regulation was declared unconstitutional.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, Tanja Varađanin, Marko Stanković, Marija Stanković; methodology, Tanja Varađanin, Marko Stanković; formal analysis, Tanja Varađanin i Marija Stanković; resources, Tanja Varađanin; writing – original draft, Tanja Varađanin, Marko Stanković, Marija Stanković; writing – review and editing, Marko Stanković, Marija Stanković.

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NAKNADA NEMATERIJALNE ŠTETE ZA PRETRPLJENE DUŠEVNE BOLOVE ZBOG NEOSNOVANOG LIŠENJA SLOBODE I NEOSNOVANE OSUDE

APSTRAKT: Naknada nematerijalne štete zbog pretrpljenih duševnih bolova usled neosnovanog lišenja slobode i neosnovane osude predstavlja jedan od oblika (vidova) naknade nematerijalne štete. Ustavom Republike Srbije (2006) neposredno su zajemčena osnovna prava i slobode svakog lica. Zabranjena je povreda psihofizičkog integriteta ličnosti. Svako ima pravo na ličnu slobodu i bezbednost (član 27 stav 1 Ustava RS). Lišenje slobode je dopušteno samo iz razloga i u postupku koji su predviđeni zakonom. U slučaju neosnovanog lišenja slobode ili neosnovane osude, oštećenom licu je ugrožena sloboda, dostojanstvo, a time i ugled u društvu. Iako postoji prezumpcija nevinosti, sam postupak predstavlja nelagodu i stresno iskustvo za lice protiv koga se vodi. Lice trpi duševne bolove usled neosnovanog lišenja slobode i neosnovane osude. Imajući u vidu navedeno, cilj rada je da se na osnovu zakonske regulative i aktuelnih sudskih rešenja uopštena rešenja prikažu konciznije i preglednije, kao i sam postupak ostvarivanja prava na ovaj vid naknade nematerijalne štete. Prioritet rada je i da se pojasne subjektivne i objektivne okolnosti koje sud ceni pri donošenju odluke o visini naknade i osnovanosti zahteva oštećenog lica za naknadu nematerijalne štete i ukaže na neujednačenu sudsku praksu koju bi trebalo harmonizovati.

Ključne reči: nematerijalna šteta, neosnovano lišenje slobode, neosnovana osuda, novčana naknada.

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