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GENERAL DAMAGES AWARDED FOR EMOTIONAL DISTRESS RESULTING FROM MISCARRIAGE OF JUSTICE AND FALSE IMPRISONMENT

ABSTRACT: Compensation for non-economic damages, the debate over its justification, and the adequacy of compensation awarded for harm to non-economic goods have been contentious issues among domestic legal theorists for decades. The provisions of the 1978 Law on Obligations resolved this debate by introducing the right to monetary compensation for non-economic damages in explicitly enumerated cases. The aim of the authors is to use appropriate scientific methods to demonstrate how failures by state authorities, specifically the police and judicial bodies, can cause non-economic damage to individuals through miscarriages of justice and false imprisonment. Freedom is a fundamental human right, guaranteed by the Constitution, laws, and ratified international documents. This raises the question of how, and to what extent, a wrongful conviction or unlawful deprivation of liberty violates this fundamental right, and what legal remedies are available to the victim. The focus of the paper will be on the legislation of the Republic of Serbia, as well as the views and interpretations in legal theory and in practice regarding the victim's

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claim for monetary compensation for harm to non-economic goods, such as reputation and honor.

Keywords: *non-economic damages, freedom, wrongful conviction, deprivation of liberty, detention.*

1. Introduction

The Law on obligations (hereinafter referred to as the LOO) represents the most significant source of compensation law in the Republic of Serbia. Although it does not contain an explicit definition of damages, the LOO classifies damages into ordinary damages, lost profit, and forms of general damages. (Article 155 of LOO: “Damage consists of a reduction in someones property (ordinary damage) and the prevention of its increase (loss of profit), as well as causing physical or psychological pain or fear to another (non-material damage)”). In contrast to this normative understanding of damage, legal theory presents varying conceptual definitions of damage. For example, Radovanov defines damage as: “Injury to someones subjective right or legally protected interest caused by a harmful act” (Radovanov, 2009, p. 257). Radišić defines damage as “A loss suffered by the injured party, arising against their will, due to the actions of a third party or a natural event” (Radišić, 2004, p. 197). Salma views damage as “a reduction or diminution of someones property or harm to the psychological or physical integrity of a person. This definition of damages is not uniform, as it simultaneously encompasses both moral and material damage” (Salma, 1999, p. 441).

The grounds for claiming general damages under the provisions of the LOO may include physical pain, fear, death, or severe disability of a close relative, infringement of personal freedom or rights, mental suffering due to various reasons such as: reduction in general life activity, disfigurement, harm to honor and reputation, in cases of criminal offenses such as rape, indecent acts, or other crimes against personal dignity and morality, as well as miscarriage of justice and false imprisonment.

The last mentioned reason, mental suffering caused by miscarriage of justice and false imprisonment, constitutes a specific legal basis for claiming monetary compensation in cases of general damages. This raises the question: why do these circumstances provide grounds for claiming compensation? While a conviction in a judicial process and false imprisonment are certainly not legitimate reasons to seek damages, when an appeal or a renewed criminal proceeding establishes that the conviction and imprisonment were groundless, the injured party has a legal right to seek compensation for the damages suffered.

What does the damage in the specific case reflect? To answer this question, it is necessary to consider the broader context and look at the injured party within a larger framework, as an individual who belongs to a collective, a society that surrounds them, and in which the individual occupies a certain place, reflected through their social position and status. Every individual's actions influence their reputation, which can be either positive or negative. However, reputation is not constant and is subject to change due to internal and external factors. Changes in behavior and individual actions can significantly undermine and damage a person's honor and dignity. External factors can also impact someone's social status in both negative and positive contexts. Miscarriage of justice and false imprisonment certainly fall into factors that exclusively alter the injured party's status in society in a negative context and offend their dignity as one of the greatest human goods. "Individuals who are falsely imprisoned or wrongfully convicted in criminal proceedings are, in a way, victims of erroneous, improper, or illegal actions by the police and/or judicial authorities. The fundamental demand for justice necessitates that these individuals be compensated for the damages suffered, and subsequently, that their full social rehabilitation be achieved" (Mrvić Petrović & Petrović, 2010, p. 7).

2. General damages – concept, legal nature and purpose

Many questions have been raised in the past regarding the compensation for general damages: whether compensation is justified and fair, whether it is compensation in the true sense of the word, and whether it is even possible to express non-economic damage in monetary terms, or if it all results from the courts' individual assessment in each specific case. In legal theory, there are viewpoints that argue that general damages are not justifiable "because it does not restore the state to what it was before the damage occurred. It is, by nature, a form of satisfaction provided to the injured party for the violation of their non-economic goods. It is based on the principle that the injured party cannot receive more through compensation than the extent of the actual damage suffered" (Blagojević & Krulj, 1980, p. 737).

Our Law on obligations has not left room for improvisation and free interpretation by legal theorists and the judiciary regarding what general damages should be, but has specified it in Article 155 of the LOO, defining all forms of damage that can occur: "Injury or loss shall be a diminution of someone's property (simple loss) and preventing its increase (profit lost), as well as inflicting on another physical or psychological pain or causing fear (general damages)." We believe this is the correct stance and that it is beneficial that the nature of damage

is not automatically determined based on the type of the attacked good, as general damages can be caused not only by violations of personal rights (such as life, freedom, body, honor, reputation, and other non-economic goods guaranteed by the legal order to every citizen) but also by the destruction of property or harm to affections towards a close person. Property damage can arise from violations of these same goods, so the damage suffered is always either property or general.

Violation of personal integrity and personal rights leads to a disturbance in the psychological balance and a disruption in the physical integrity of the individual, that is, the injured party. The condition of the individual prior to the occurrence of the damage was ordinary. Therefore, compensation for general damages should not be viewed merely as a sum of damages incurred, and compensation should not be perceived as repair, but rather as satisfaction to be received by the injured party. The purpose of monetary compensation is not for lucrative goals, as someone seeking material gain would be incompatible with the purpose of this compensation, since moral values should not be commercialized. "Satisfaction as a form of compensation represents a general term for marking various types of damages in the field of non-economic damages (such as the publication of a judgment, withdrawal of statements, monetary compensation, etc.). Since the consequences of the wrongdoers actions cannot be eliminated in cases of general damages, satisfaction simultaneously represents the goal of compensating general damages – providing satisfaction to the injured party. While restoration to the previous state is the primary form of compensation for material damage, the primary compensatory result in the realm of general damages is the provision of satisfaction. The manner of providing satisfaction is determined based on the type of general damages. In principle, satisfaction can be determined in kind and in money" (Džudović & Prelević, 2009, p. 48).

Article 200, paragraph 2 of the LOO establishes the criteria that the court must adhere to when deciding on a claim for general damages compensation: "In deciding on the request for redressing non-material loss, as well as on the amount of such damages, the court shall take into account the significance of the value violated, and the purpose to be achieved by such redress, but also that it does not favour ends otherwise incompatible with its nature and social purpose" (Article 200, paragraph 2 of LOO). The court must take into account the significance of the injured interest, as this may vary from case to case. For instance, an amputated leg will be of much greater significance in terms of loss for a professional athlete who can no longer engage in sports, or an injured hand for a musician who can no longer play an instrument, compared to similar injuries to others. Similarly, the pain caused by an injury to ones honor is less than the pain caused by severe disfigurement of one's face.

When making a decision, the court must pay attention to certain factors. Primarily, it should consider the importance of the injured interest and the goal it aims to achieve in deciding on the claim for general damages. In determining the amount of compensation, the court should take into account the social purpose it seeks to achieve through its judgment. Bećirović and Ljajić assert that: “In the case of general damages as defined by law, monetary compensation is awarded to the injured party only if the intensity and duration of the pain or fear are justified, which will affect the reestablishment of psychological balance or at least provide some relief to the injured party’s psychological state. This has been shown in practice to be a partially effective method of achieving the goal of damage compensation, which is to restore the prior state. By initiating proceedings before the competent court, the injured party can claim compensation for general damages through a lawsuit. A claim for general damages is characterized by the element of specificity regarding the type of general damages; even when it arises from the same life event, each form of damage must be specified individually. In modern legal systems, compensation for general damage is a part of our present-day reality” (Bećirović Alić & Ahmatović Ljajić, 2018, pp. 141–142).

Numerous circumstances must be considered by the court when evaluating the validity and determining the amount of compensation for general damages. This primarily refers to the intensity of emotional pain, fear, and physical pain experienced by the injured party, as well as the duration of these effects. Only after establishing that their intensity and duration are sufficient to justify the claim will the court proceed to determine the amount of monetary compensation. The provisions of the LOO regarding compensation for general damages aim to align with the nature of the damage and the specific type of compensation, which is why it is not incorrect to say that compensation has more of a satisfaction function rather than a compensation and restitution function, as confirmed by judicial practice.¹ Article 200, paragraph 1 of the LOO stipulates that the court will award fair monetary compensation when physical pain, emotional pain, and fear are justified; however, the law introduces an additional condition, requiring that it must also

¹ “Fair compensation for non-material damage, as a form of remedying adverse effects, involves the payment of a sum of money as satisfaction for the suffered non-material damage, with the aim of restoring the injured party’s psychological and emotional balance to the extent possible, given that restitution is inherently impossible” Presuda Vrhovnog kasacionog suda Republike Srbije br. Rev 508/2017 od 12.04.2017. godine [Judgment of the Supreme Court of Cassation No. Rev 508/2017 of April 12, 2017.] Downloaded 2024, August 27 from: <https://www.vrh.sud.rs/sr/vks-search-download-file/24520>

fulfil the following; “if it finds that the circumstances of the case, particularly the intensity of pain and fear and their duration, justify it.”² This means there is no right to compensation for minor damage, and if the court finds that the pain for which compensation is sought was of short duration and minimal intensity, it will reasonably reject the claim for general damages. Thus, both a long duration and significant intensity of emotional pain are required.

The LOO provides for the possibility of compensation for general damages due to psychological (emotional) and physical (bodily) pain. Psychological pain manifests as harm to the feelings, reputation, and honor of the injured party. In some cases, compensation for harm to reputation and honor may follow the principle of restitution to the prior state (*restitutio in integrum*). However, in cases of harm to feelings, that is, emotional pain, only monetary compensation as material satisfaction can be applied to the injured party. Determining compensation for harm to feelings and the resulting psychological pain is a delicate and complex process, as there are no general standards due to the varying moral and psychological constitution of each individual, as well as the wide range of circumstances that lead to damage causing psychological pain to the injured party. According to Blagojević and Krulj, “Compensation for physical pain, compared to compensation for harm to feelings and moral integrity of the injured party, which can be considered independent of the act of causing damage itself, appears as an additional compensation in cases of bodily harm. It represents a type of accessory compensation in addition to the primary compensation that covers medical treatment, rehabilitation costs, and lost earnings” (Blagojević & Krulj, 1980, p. 740).

3. Miscarriage of justice and false imprisonment – Legal Basis for awarding general damages caused by emotional pain

3.1. Constitutional provisions

Fundamental human and minority rights and freedoms are guaranteed by Articles 18–81 of the Constitution of the Republic of Serbia. Due to the sensitivity of the issue of freedom and its limitation, deprivation, or complete abolition, the Constitution contains specific provisions addressing matters

² This opinion is based on the provision of the Law of Obligations which states that; “the court, if it finds that the circumstances of the case, particularly the intensity and duration of pain and fear, justify it, shall award fair monetary compensation, regardless of the compensation for material damage or in its absence”

such as the right to liberty and security, the treatment of persons deprived of liberty (especially when deprived of liberty without a court decision), and the matter of detention and its duration. “Criminal proceedings carry with them not only the risk of unjustified initiation against an innocent person, but also the risk of ending with an unjustified conviction” (Brkić, 2009, p. 411). Violations of fundamental human rights have consequences affecting both the violator and the injured party, the victim. “Person falsely imprisoned or wrongfully convicted in criminal proceedings are considered victims of wrongful, irregular, or illegal actions by the police and/or judicial authorities. The fundamental demand for justice imposes the need to compensate these individuals for the damage suffered and subsequently achieve their full social rehabilitation” (Mrvić Petrović & Petrović, 2010, p. 2). In cases of false imprisonment and miscarriage of justice, the question of state responsibility, the responsibility of its authorities, arises. The position of state authorities in the legal relationship with citizens is not one of equality, as they operate from a superior position as holders of public authority and those who control the apparatus of coercion. “It is certain that there is a strong tendency today to recognize the states obligation to pay compensation, and this obligation in modern states increasingly relies on the concept of risk – that the state should guarantee with its assets for the proper and lawful performance of public services and the principle of equal burdens in situations where officials and state authorities have violated an individuals rights through permitted actions” (Marković, 2014, p. 41). Stanić emphasizes that: “The right to liberty and personal security is one of the most important human rights, which is thus guaranteed on both the national and international level. When it comes to detention, formally, and in accordance with the presumption of innocence, detention is always applied to a person who is formally innocent. Therefore, it is necessary to provide certain guidelines on how detention should be applied only when necessary, to prevent the state from later being obligated to compensate for the damage incurred” (Stanić, 2019, p. 269). Article 30, paragraph 1 of the Constitution provides the following regarding detention: “A person who is reasonably suspected of committing a criminal offense may be detained only based on a court decision if detention is necessary for conducting criminal proceedings.” To resolve any doubts regarding miscarriage of justice and false imprisonment, Article 35 of the Constitution stipulates: “Anyone who has been unlawfully or illegally deprived of liberty, detained, or convicted of a criminal offense has the right to rehabilitation, compensation from the Republic of Serbia, and other rights established by law. Everyone has the right for compensation for material or general damages

caused by unlawful or irregular actions of a state authority, holder of public authority, autonomous province authority, or local self-government authority. The law determines the conditions under which the injured party has the right to seek compensation directly from the person who caused the damage.”

3.2. Legal Regulation of damages compensation for wrongful conviction and false imprisonment

The LOO contains a provision in Article 172 that regulates the liability of a legal entity for damage caused by its authorities. However, we believe that this provision is inapplicable in cases of false imprisonment and miscarriage of justice, as the application of the LOO requires that the actions of the state authority be unlawful (i.e., in direct violation of legal provisions) and improper (i.e., legal provisions not applied as intended by the legislator), which is not the case here. Specifically, state authorities, including the police and judiciary, act in a lawful and proper manner, but the injured party is falsely imprisoned and wrongfully convicted due to errors and misunderstandings by the state authorities. “However, these “errors” are often not the result of unlawful conduct. A person who suffers damage due to false imprisonment or miscarriage of justice,, where such damage did not result from improper and unlawful conduct by the court, would not be able to claim compensation under general rules of civil liability for damages, as there is typically no improper and unlawful conduct involved. Therefore, it is in the interest of the injured party to seek compensation based on liability for damages regardless of the existence or non-existence of fault” (Marković, 2014, p. 41).

In legal theory, we encounter opinions that offer alternatives to detention, thereby reducing the likelihood of improper conduct by state authorities and consequently the potential for claims for damages: “The institution of bail exists in other branches of law, such as civil or administrative law, and is also present in enforcement proceedings. In relation to bail in other branches, where it represents a guarantee for the fulfillment of financial obligations of a specific individual, in criminal proceedings, bail is determined to ensure the accused’s presence and the unobstructed conduct of the proceedings. The advantages of bail over detention, as well as other measures that restrict the accused’s freedom of movement, are numerous. Specifically, bail ensures the presence of the accused and the smooth conduct of the proceedings while avoiding the detrimental effects of restricting the accused’s personal freedom. At the same time, the budgetary costs associated with the accused’s detention are eliminated, and at the end of the proceedings, potential compensation

for wrongful deprivation of liberty is avoided. Furthermore, bail, like other alternatives to detention, reduces the overcrowding of institutions where detention is served, which already represents a chronic problem under domestic conditions” (Banović, 2019, pp. 202–203).

The Criminal Procedure Code (hereinafter referred to as the CPC) is, alongside the Civil Code, another law that regulates the right to damages in the case of wrongful deprivation of liberty: “An individual who has been wrongfully deprived of liberty or convicted of a criminal offense has the right to compensation from the state and other rights defined by law.” (Article 18, paragraph 1 CPC.) The CPC specifically enumerates who is considered to be wrongfully deprived of liberty: “An individual is considered to be wrongfully deprived of liberty if:

1. They were deprived of liberty, and no proceedings were initiated, or the proceedings were terminated by a final decision, or the indictment was dismissed, or the proceedings were concluded by a final judgment of acquittal or dismissal;
2. They served a prison sentence, and upon a request for retrial or a request for protection of legality, they were sentenced to a prison term shorter than the sentence served, or a criminal sanction that does not involve deprivation of liberty was imposed, or they were found guilty but exempted from punishment;
3. They were deprived of liberty for a period longer than the criminal sanction involving deprivation of liberty that was imposed on them;
4. They were deprived of liberty due to an error or illegal actions by procedural authorities, or their deprivation of liberty lasted longer than legally prescribed, or they were held longer in a facility for the execution of a criminal sanction involving deprivation of liberty” (Article 584, paragraph 1 CPC.)

3.3. International Legal Frameworks

The right and guarantee of freedom are also enshrined in numerous international legal documents ratified by Serbia. For instance, the Universal Declaration of Human Rights³ guarantees in Article 3 that “Everyone has the right to life, liberty, and security of person,” and in Article 9 that “No one shall

³ Opšta deklaracija o pravima čoveka [Universal Declaration of Human Rights] – adopted by the United Nations General Assembly on December 10, 1948. Downloaded 2024, August 21 from: https://ravnopravnost.gov.rs/wp-content/uploads/2012/11/images_files_UN_Opsta%20deklaracija%20o%20pravima%20coveka.pdf

be subjected to arbitrary arrest, detention, or exile.” The International Covenant on Civil and Political Rights provides additional guarantees for the rights of individuals deprived of liberty. According to this international document, deprivation of liberty may only be applied in accordance with the law (Article 9), and it is explicitly prohibited to deprive someone of their liberty for failure to fulfill contractual obligations (Article 11). These documents together form the foundation for the protection of fundamental human rights worldwide. The European Convention on Human Rights provides that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty except in accordance with a procedure prescribed by law” (Knežević, 2011, p. 169).

3.4. Procedure for claiming damages

In the event that an individual is victim of a miscarriage of justice or falsely imprisoned, under the provisions of the LOO, there is the possibility to claim monetary compensation for general damages caused by such circumstances. Emotional distress resulting from miscarriage of justice or false imprisonment includes all harmful effects related to the personality of the injured party that arise or are directly caused by the miscarriage of justice or false imprisonment. When determining the amount of monetary compensation, the court takes into account all the circumstances of the particular case. Radovanov specifies cases in which there is no right to compensation, in accordance with Article 585 of the CPC: “The right to liberty is not considered to have been violated:

1. if the termination of proceedings or the judgment dismissing the indictment occurred because, in a new procedure, the injured party, as the prosecutor or private prosecutor, withdrew from prosecution or if the injured party withdrew the motion based on an agreement with the accused;
2. if in the new procedure the indictment was dismissed due to the court’s lack of jurisdiction, and the authorized prosecutor undertook prosecution before the competent court;
3. the convicted person has no right to compensation if they intentionally caused their own conviction through false confession or otherwise, unless they were coerced into doing so” (Radovanov, 2009, p. 298).

The proceeding for claiming general damages due to miscarriage of justice or false imprisonment involves the injured party in a process that

has a “dual nature: (1) an administrative procedure before an administrative body, which is primary, and (2) a judicial procedure before a civil court, which is secondary and supplementary” (Simović & Jovašević, 2017. p. 91). According to Article 588, paragraph 1 of the CPC, before filing a lawsuit for damages in court, the injured party must submit a “request to the Ministry responsible for justice to reach an agreement on the existence of damage and the type and amount of compensation. The request for compensation is reviewed by the Compensation Commission, whose composition and procedures are regulated by an act of the Minister responsible for justice. If the request for compensation is not approved or if the Commission does not decide on the request within three months from the date it was submitted, the injured party may file a lawsuit for compensation with the competent court. If an agreement is reached only regarding part of the claim, the lawsuit for compensation may be filed for the remaining part of the claim.” The request can be downloaded electronically from the Ministry of Justice’s website. “The Compensation Commission for determining damage and the type and amount of compensation for individuals who are victims of miscarriage of justice and false imprisonment reviews the request and accompanying documentation and makes appropriate decisions. After making a decision to approve the request, the Ministry of Justice provides the applicant with a Proposal for an agreement on the type and amount of compensation, enclosed with a supporting act (which specifies the documentation required to be submitted to the Ministry, if there is agreement on the proposal) and sets a deadline for the applicant to indicate whether they accept the proposed agreement.”⁴ “This approach leaves the injured party the option to refuse to sign the agreement if they believe that the monetary amount proposed by the state does not adequately reflect the damage suffered. In such a case, the injured party has the right to address the competent court, present the agreement along with the reasoning for its rejection when filing the lawsuit, and seek approval of the claim, including other facts and evidence supporting their claim for damages. Additionally, if a partial agreement is reached with the Commission, the injured party retains the right to obtain partial compensation through the agreement while submitting a lawsuit to the competent court for the remaining amount” (Milovanović, 2021, pp. 259–276).

⁴ Zahtev za naknadu neosnovano osuđenih i neosnovano lišenih slobode. [Request for Compensation for Wrongful Conviction and Unlawful Deprivation of Liberty]. Downloaded 2024, August 21 from <https://www.mpravde.gov.rs/tekst/15039/zahtev-za-naknadu-stete-neosnovano-osudjenih-i-neosnovano-lisenih-slobode.php>

Based on statistical data from an objective research by the Belgrade Center for Human Rights, which used the legal right to request access to information of public importance, the results are discouraging. Specifically, for the past eight years (2016–2023), there is a noticeable trend of decreasing numbers of individuals subjected to detention, which is a positive trend. However, during the same period, the number of detainees has nearly doubled (Table 2) and shows a trend of increasing growth. Given the drastic rise in cases of domestic violence in the Republic of Serbia over the last decade, accompanied by femicide, which has not decreased,⁵ it is a logical conclusion that detention is used as a measure to prevent domestic violence and femicide, as evidenced by the significant increase in the imposition of measures restricting proximity, meetings, and communication in Table 1. Nevertheless, despite the increased number of imposed measures, the rise in their application indicates that they are not yielding the expected results, and more effort is needed in education and prevention.

The Compensation Commission for individuals falsely imprisoned or wrongfully convicted⁶ provided data on the number of claims submitted for compensation caused by false imprisonment, the number of claims reviewed by the Commission, the number of agreements reached, and the amounts paid under the concluded agreements.

Analysis of the data presented in table 3, relating to compensation for false imprisonment, based on the parameters provided in Table 3 – namely, the number of claims submitted for compensation caused by false imprisonment, the number of claims reviewed by the Commission, the number of agreements reached, and the amounts paid under the concluded agreements (in RSD) – the following conclusions can be drawn:

- The number of claims submitted for compensation due to **false imprisonment** decreased by 227 from 2015 to 2023, representing a 31.7% reduction in the number of claims.
- The number of claims reviewed by the Commission doubled (from 223 to 448).

⁵ “According to official data, there were 20 cases of femicide recorded in 2021, 26 cases in 2022, and as many as 28 cases in 2023. In Serbia, 28 women were killed in 2023: Stanojević urges to report violence” Downloaded 2024, August 27 from: <https://www.nin.rs/drustvo/vesti/43317/u-srbiji-u-2023-ubijeno-28-zena-stanojevic-poziva-da-se-nasilje-prijavi>

⁶ Pravilnik o sastavu i načinu rada komisije za naknadu štete licima neosnovano lišenim slobode ili neosnovano osuđenim [Rulebook on the composition and method of work of the commission for compensation of damages to persons unjustly deprived of liberty or unjustly convicted]. *Službeni glasnik RS*, br. 156/20.

Table 1. Overview of the number of individuals subject to detention and other measures for ensuring the defendant’s presence and the unimpeded conduct of criminal proceedings.

Measures	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	Year 2021	Year 2022	Year 2023
Detention	5.634	6.754	6.107	5.840	5.123	4.645	3.523	4.788
Bail	31	33	23	45	18	18	19	19
House arrest	428 (of which 215 are under electronic monitoring)	760 (of which 544 are under electronic monitoring)	677 (of which 466 are under electronic monitoring)	392 (of which 311 are under electronic monitoring)	475 (of which 180 are under electronic monitoring)	425 (of which 263 are under electronic monitoring)	223 (of which 145 are under electronic monitoring)	439 (of which 248 are under electronic monitoring)
Restriction on leaving residence	612	512	452	396	413	385	285	371
Restraining order	372	1.029	1.797	1.744	1.391	1.139	875	1.66

Source: Human Rights in Serbia 2023 (2024)., pp. 80–81.

Table 2. Overview of the number of detainees.

Year	2015	Year	2016	Year	2017	Year	2018	Year	2019	Year	2022	Year	2023
1.539		1.736		1.577		1.693		1.833		2.193		2.518	

Source: Human Rights in Serbia 2023 (2024)., pp. 80–81.

Table 3. Compensation for false imprisonment.

YEAR	Number of claims Submitted for compensation due to false imprisonment	Number of claims reviewed by the Commission	Number of Agreements Reached	Amounts Paid Under the Concluded Agreements (in RSD)
First half of year 2015	450	172	20	1.939.500
2016.	940	243	61	15.485.000
2017.	815	235	38	10.747.500
2018.	787	257	69	14.418.000
2019.	767	208	51	8.939.948
2020.	739	133	43	7.791.500
2021.	759	517	189	84.376.000,00
2022.	750	447	219	76.832.267,12
2023	713	448	145	55.188.000,00
TOTAL	6.720	2.660	1.495	275.717.715,12 (about 2.356.561,67EUR)

Source: Human Rights in Serbia 2023 (2024)„ pp. 80–81.

- The number of agreements reached also increased significantly (from 61 to 145).
- The amounts paid under the concluded agreements increased substantially, from 15.4 million RSD to amounts that are significantly higher compared to 2016, with payments of 84.3 million RSD in 2021, 76.8 million RSD in 2022, and 55.1 million RSD in 2023.

For the period from 2015 to 2023, a total of 275,717,715.12 RSD was paid, which is approximately equivalent to 2,356,561.67 EUR. According to the report by the Belgrade Center for Human Rights, data from courts handling civil claims for compensation due to wrongful detention are also noted: “Regarding the compensation paid for damages caused by wrongful detention adjudicated by civil courts, according to data obtained from the State Attorney’s Office, 128,461,952.33 RSD, or approximately 1,097,965.4 EUR, was paid in 2023, which is nearly double the amount paid in 2020.” (Human Rights in Serbia 2023, 2024, p. 81.)

4. Conclusion

Compensation for general damages, since the enactment of the Law on Obligations in 1978, is no longer a contentious issue in legal theory and practice regarding the validity of claims for such compensation. Judicial practice has demonstrated that each case of general damages is unique and cannot be addressed with a general approach; instead, each case must be carefully evaluated to ensure that compensation is fair. As previously discussed, the purpose of compensation for general damages is not reparative but rather to provide satisfaction to the aggrieved party.

The task of the court is challenging, as determining the amount of monetary compensation for general damages is complicated by the need to avoid two “traps” when rendering a judgment. On one hand, the court must strive not to generalize and ensure that the monetary compensation provides the aggrieved party with satisfaction that will, to the extent possible, restore the psychological balance disrupted by the inflicted mental anguish, physical pain, and fear. On the other hand, the court must adhere to the constitutional principle guaranteeing equality of all citizens before the law and the court. Therefore, the court cannot act arbitrarily or according to its own discretion. It is the court’s obligation, particularly in cases of miscarriage of justice and false imprisonment, to ensure the satisfaction of the aggrieved party, given that the court has determined that the individual was deprived of a fundamental human right – the right to liberty.

The research conducted in this paper shows that the amounts paid under concluded agreements in the last three years are ten times higher compared to the multi-year average, even though the number of claims for compensation due to false imprisonment shows a decreasing trend. There is also a rising trend in the number of detainees over the past eight years, which somewhat corresponds to the “epidemic” of domestic violence and the number of femicides in recent years in Serbia. It is evident that the use of detention as a preventive measure in cases of domestic violence has intensified in practice.

To reduce the number of claims for compensation for general damages due to miscarriage of justice and false imprisonment, the authors suggest increased adherence to legal procedures when determining detention and deprivation of liberty. It is imperative, and a democratic achievement, to reduce political influence on the judiciary to prevent the misuse of detention for dealing with political dissenters, who may file claims for general damages upon release. It is also suggested that mandatory training be provided to all those involved in the process of restricting citizens’ freedoms: from investigative bodies to prosecutors and courts.

Ultimately, adherence to international standards and best international practices can only benefit everyone and contribute to reducing the number of claims for compensation for general damages due to miscarriage of justice and false imprisonment.

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NAKNADA NEMATERIJALNE ŠTETE ZBOG DUŠEVNIH BOLOVA NASTALIH NEOSNOVANOM OSUDOM I NEOSNOVANIM LIŠENJEM SLOBODE

APSTRAKT: Naknada nematerijalne štete, dilema njene opravdanosti i adekvatnost obeštećenja koje je neko lice primilo na osnovu pretrpljene štete na nematerijalnom dobru, predstavljaju pitanja oko kojih su se

decenijama „lomila koplja“ među domaćim pravnim teoretičarima. Tačku na ovu nedoumicu stavile su odredbe Zakona o obligacionim odnosima iz 1978. godine koje su uvele pravo na novčanu naknadu nematerijalne štete u taksativno navedenim slučajevima. Cilj autora je da u radu, primenom odgovarajućih naučnih metoda, ukažu na koji način propusti u radu državnih organa, konkretno, policije i organa pravosuđa, mogu da pričine nematerijalnu štetu žrtvi, neosnovanom osudom i lišenjem slobode. Pravo na slobodu je elementarno ljudsko pravo zagarantovano Ustavom, zakonima i ratifikovanim međunarodnim aktima. Postavlja se pitanje na koji način i u kojoj meri donošenje neosnovane osude tj. neosnovano lišenje slobode krši to elementarno ljudsko pravo i koji pravni instrumenti stoje na raspolaganju žrtvi. Predmet rada će biti pozitivnopravni propisi u Republici Srbiji, kao i stavovi i shvatanja u pravnoj teoriji i praksi u vezi sa zahtevom žrtve da joj se novčano nadoknadi šteta koju je pretrpela na nematerijalnim dobrima kao što su ugled i čast.

Ključne reči: *nematerijalna šteta, sloboda, neosnovana osuda, lišenje slobode, pritvor.*

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