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COMPENSATION OF NON-MATERIAL DAMAGE DUE TO UNBASED DEPRIVATION OF LIBERTY - EXAMPLES FROM THE PRACTICE OF THE REPUBLIC OF SERBIA AND THE RUSSIAN FEDERATION¹⁾

Abstract

Compensation for non-pecuniary damage resulting from unjustified deprivation of liberty is an important segment of the protection of human rights and justice in modern legal systems. This right implies the obligation of the state to compensate for the damage, because the harmful act is committed by civil servants in the performance of their duties. The state is liable objectively, regardless of guilt, if it is proven that the damage was caused by the unlawful act of an official. An analysis of the practice of the Republic of Serbia and the Russian Federation shows different approaches to determining the responsibility of the state and the amount of compensation. Special attention is paid to the effectiveness of legal mechanisms for the protection of human rights and the rights of victims of unjustified deprivation of liberty. In Serbia, the importance of judicial protection and the application of international standards is emphasized, while Russian practice emphasizes procedural mechanisms and the specifics of national legislation. By comparing this practice, the advantages and disadvantages of both systems can be identified, which contributes to the improvement of the legal protection of citizens and the prevention of violations of the right to freedom.

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The methodology of the work is based on a comparative analysis of legal regulations and court practice in the Republic of Serbia and the Russian Federation. Relevant legal acts, court decisions and legal commentaries, as well as professional literature in the field of human rights and non-material damage compensation, were collected and analyzed. A descriptive and analytical method was used to identify key elements and legal standards, while the comparative method enabled the comparison of the approaches of both countries. Also, part of the research includes the analysis of specific court cases that illustrate the practice of compensation for non-material damages due to unjustified deprivation of liberty, which is the goal of the research, to look in detail at the legal bases, procedures and jurisprudence in relation to the compensation of damages arising from the violation of personal freedom without a legal basis, as well as to identify similarities and differences in the approaches of two legal jurisdictions.

Keywords: *compensation for non-material damage, judicial protection, unjustified conviction, unjustified deprivation of liberty, prevention.*

1. Introduction

Observed throughout history, the right to freedom and the protection of freedom developed through the institute of state power, through the realization of the right to prevent the illegal deprivation of an individual's freedom by the state²⁾. Imprisonment, or deprivation of liberty, is considered a key punishment in all countries³⁾, but the protection of personal freedom occupies a central place in modern legal systems and international instruments for the protection of human rights⁴⁾. The right to freedom is one of the basic human rights and a prerequisite for exercising other rights. Human life, bodily integrity and freedom represent fundamental social values that are traditionally the subject of criminal law protection.⁵⁾ Although deprivation of liberty is a measure permitted by law when it is necessary for conducting criminal proceedings or executing a criminal sanction, in practice there are cases of un-

2) Petrović Z. M. (2023) Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi, Civitas, Novi Sad, br. 1, str 212-229.

3) Igrački, J., (2016) *Etičko-pravni aspekti kažnjavanja i kazne zatvo-ra*, Zbornik Instituta za kriminološka i sociološka istraživanja, 35 (1). pp. 105-118. ISSN 0350-2694.

4) Ibid.

5) Igrački, J., Karović, S., Živadinović, T.(2023) The Criminal Offense of Murder: Historical, Criminal and Criminology Aspects. In: International Scientific Conference "The Strategic and Security Concept for the Countries of South East Europe", 27-29 September, 2023, Struga. University "St. Kliment Ohridski" ; Bitola Faculty of Security, Skopje, Skopje, pp. 173-187. ISBN 2671-3624.

founded or illegal deprivation of liberty. Such actions represent a serious encroachment on human dignity, honor and reputation of an individual, causing material and non-material consequences. Mental pain, a sense of humiliation, disruption of family and social relations, as well as long-term psychological consequences are forms of non-material damage for which the legal order recognizes the right to fair monetary compensation. The right to compensation for damages is regulated by criminal legislation, while issues of the type and amount of compensation are resolved by applying the general rules of the Law on Obligations.⁶⁾

Article 200 of this law stipulates that the court can award fair monetary compensation for the violation of honor, reputation, freedom and other personal rights, taking into account the importance of the injured property, the intensity and duration of the consequences, as well as the purpose of the compensation. International standards for the protection of the right to freedom are contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights, which guarantee the right to freedom and personal security and prohibit arbitrary deprivation of liberty. In case of violation of this right, the individual must be provided with effective legal protection. In the Republic of Serbia, the right to rehabilitation and compensation is guaranteed by the Constitution of the Republic of Serbia⁷⁾. Its provisions are elaborated in the Code of Criminal Procedure, which prescribes cases in which a person is considered to be unjustifiably deprived of liberty, including situations where the proceedings have not been initiated, have been suspended or have ended with an acquittal or refusal verdict, as well as cases of illegal or excessively long deprivation of liberty⁸⁾. The right to compensation for damages is also recognized by the legislation of the Russian Federation through the institute of rehabilitation, based on the responsibility of the state for the illegal actions of the criminal prosecution and judiciary. Although both legal systems start from the same principle of protection of personal freedom, they differ in normative solutions, procedural mechanisms and judicial practice. In legal theory, special attention is paid to the criteria for determining the amount of non-material damage compensation⁹⁾.

6) Zakona o obligacionim odnosima, ("Službeni list SFRJ" br. 29/78, 39/85, 45/89, 57/89, "Službeni list SRJ", br. 31/93, br. 1/2003 - Ustavna povelja i "Službeni glasnik RS", br. 18/2020).

7) Ustav Republike Srbije, ("Službeni glasnik RS", br. 98/2006 i 115/2021).

8) Zakonik o krivičnom postupku (ZKP). ("Službeni glasnik RS", br. 72/2011, 101/2011, 1216/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - odluka US i 62/2021 - odluka US.).

9) Petrović, Z. (2000) Okolnosti bitne za odmeravanje visine novčane naknade nematerijalne štete, Izbor sudske prakse, br. 1, str. 7-13; Vujaklija, D., (1986) Naknada štete u sučajeveima neopravdane osude ili neosnovanog lišenja slobode i društvena rehabilitacija, Beograd, str. 169-175; Marković, M., (2000) Naknada štete zbog neopravdane osude i neosnovanog lišenja slobode u sudskoj praksi, u: Obavezno osiguranje, naknada štete i obezbeđenje potraživanja, III, Budva, str. 110-119, Mrvić-Petrović, N., Petrović, Z., (2008) Naknada štete zbog neosnovanog lišenja slobode ili neosnovane osude, Beograd, str. 111, 194-205.

The subject of this paper is the analysis of the right to compensation for non-material damages due to unjustified deprivation of liberty through a comparative legal presentation of the legislation and judicial practice of the Republic of Serbia and the Russian Federation. Special attention is paid to the normative bases of state responsibility, the criteria for determining the amount of compensation, as well as the practice of national courts and the European Court of Human Rights. The aim of the research is to determine the similarities and differences between the legal systems of the Republic of Serbia and the Russian Federation in terms of the protection of the right to unjustified deprivation of liberty, as well as to assess their compliance with international standards. The initial hypothesis is based on the assumption that both systems recognize the right to compensation for non-material damage, but that there are significant differences in the scope of protection, criteria for determining compensation and the effectiveness of exercising this right. Normative, comparative and analytical methods were applied in the work, along with the analysis of legislation, court practice and relevant legal literature.

2. Concept and legal nature of unjustified deprivation of liberty

The right to freedom and personal security is one of the basic human rights that enjoys protection in national and international law. Deprivation of liberty means any legally permitted restriction of an individual's freedom of movement by state authorities, which is most often achieved through arrest, police detention, detention or execution of a prison sentence. In certain circumstances, house arrest or forced placement in an institution can be a form of deprivation of liberty. The Constitution of the Republic of Serbia guarantees the right to personal freedom and security, whereby deprivation of liberty is permitted only under the conditions and in the procedure prescribed by law¹⁰. The legality of deprivation of liberty implies the existence of a legal basis and the implementation of the prescribed procedure. In accordance with Article 5 of the European Convention on Human Rights, everyone has the right to freedom and personal security, while deprivation of liberty is permitted only in strictly prescribed cases and in accordance with the law. At the same time, the Convention guarantees the right of every person to challenge the legality of deprivation of liberty before a court¹¹. Unfounded deprivation of liberty is a legal institution that arises when a person was deprived of liberty during criminal proceedings, and it is subsequently determined that there was no justified basis for such restriction. In contrast to illegal deprivation of liberty, which implies a violation of the law already at the moment of taking the measure, unjustified deprivation of liberty can also exist when the com-

10) Igrački, J. (2020) Efekti zatvora u resocijalizaciji osuđenika, Institut za kriminološka i sociološka istraživanja, Beograd; Živadinovi, T., (2026) Mera pritvora u savremenom krivičnom postupku i standardi postupanja sa zatvorenicima, Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe, Novi Sad, Doktorska disertacija.

11) European Court of Human Rights. (2024) European Convention on Human Rights-Right to liberty and security.; Council of Europe. (1950) Convention for the Protection of Human Rights and Fundamental Freedoms. Strasbourg.

petent authorities acted in accordance with the law and the available facts, but the final outcome of the procedure showed that the person was not responsible for the crime he was charged with or that there were no conditions for further restriction of his liberty¹²⁾. The concept of unjustified deprivation of liberty is defined by Article 584 of the Criminal Procedure Code¹³⁾. This term includes persons against whom no criminal proceedings have been initiated, against whom the proceedings have been legally suspended, charges have been dismissed or who have been legally acquitted, as well as persons who have served a sentence or were deprived of their liberty longer than was justified due to a mistake or illegal work of state authorities. Freedom, dignity, honor and reputation of an individual are violated by unjustified deprivation of liberty, which is why the injured person has the right to compensation for material and non-material damage. In judicial practice, the position is accepted that compensation for non-material damage represents a unique form of satisfaction that includes all the consequences resulting from the unjustified deprivation of liberty. When determining the amount of compensation, the court especially assesses the duration of deprivation of liberty, the intensity of mental suffering, damage to reputation and other circumstances of the specific case. The legal basis for awarding fair monetary compensation is contained in Article 200 of the Law on Obligations¹⁴⁾.

The distinction between unjustified and illegal deprivation of liberty has significant practical significance. While in the case of illegal deprivation of liberty the injury already exists at the moment of determining the measure, in the case of unjustified deprivation of liberty the decisive criterion is the final outcome of the criminal proceedings. Therefore, the right to compensation for damages may exist even when the detention was legal at the time of the determination, but the proceedings were later concluded in favor of the defendant¹⁵⁾. Comparative law solutions confirm the same approach. Thus, the law of the Russian Federation foresees the possibility of compensation for non-material damage to persons who were unjustifiably or illegally deprived of their liberty. The Civil Code of the Russian Federation enables the awarding of fair compensation for suffered mental pain, violation of honor and dig-

12) Petrović, M. (2023) Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi. Civitas, Novi Sad, br. 1, str 212-229.; Mrvić-Petrović, N. (2010) Naknada štete zbog neosnovanog lišenja slobode i neosnovane osude, Institut za uporedno pravo, Beograd.

13) Zakonik o krivičnom postupku, Republika Srbija. (2011) Službeni glasnik RS, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 i 62/2021.

14) Mrvić-Petrović, N. (2013) Kriterijumi za odmeravanje naknade nematerijalne štete zbog neosnovanog lišenja slobode, Osiguranje i nadoknada štete, Zlatibor, str. 264-271; Kalodera, M.(1941) Naknada neimovinske štete, Zagreb; Petrović, Z., Petrović, N. (2012) Nadoknada nematerijalne štete, Beograd.

15) Petrović, M. (2023) Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi. Civitas, Novi Sad, br. 1, str 212-229.

nity, whereby the court takes into account all the circumstances of the specific case when deciding¹⁶). Modern legal systems base the state's responsibility for unjustified deprivation of liberty primarily on the principle of fairness and the obligation to protect human rights, and not on proving the guilt of state bodies¹⁷). Most often, unjustified deprivation of liberty occurs during the determination and extension of judicial custody, and sometimes in the later stages of criminal proceedings by suspending the proceedings, due to the withdrawal of the indictment by the public prosecutor or after the passing of a negative verdict, when a person acquires a legal basis for compensation for damages¹⁸). International standards confirm this approach, since Article 5 paragraph 5 of the European Convention on Human Rights guarantees the right to compensation for damages to anyone who has been a victim of arrest or detention contrary to the provisions of the Convention.

Unfounded deprivation of liberty is an institute that connects criminal procedural, civil and international human rights law. Its purpose is to establish a balance between the state's interest in effectively prosecuting the perpetrators of criminal acts and the obligation to protect the individual from unjustified restrictions on freedom. Effective prevention of such cases implies the consistent application of procedural guarantees, improvement of the work of judicial authorities and consistent application of international standards for the protection of human rights¹⁹).

International legal framework

The right to liberty and security of person is one of the fundamental human rights that enjoy universal protection through numerous international documents. The development of penal policy at the national and international levels is an attempt at unified action in the prevention of crime²⁰). For the Republic of Serbia, the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is part of the internal legal order and is directly applicable, is of particular importance. Domestic courts are obliged to interpret national regulations in accordance with the practice of the European Court of Human Rights, which ensures a higher level of human

16) "Конституция Российской Федерации" (принята всенародным голосованием 12.12.1993 с изменениями, одобренными в ходе общероссийского голосования 01.07.2020); "Гражданский кодекс Российской Федерации (часть первая)" от 30.11.1994 N 51-ФЗ (ред. от 10.06.2026).

17) Petrović, M. (2023). Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi, Civitas, Novi Sad, br. 1, str 212-229; Grubač, M. (1979) Naknada štete za neopravdanu osudu i neosnovano lišenje slobode, Beograd, Savremena administracija, str. 21-22.

18) Živadinović, T. (2026) Mera pritvora u savremenom krivičnom postupku i standardi postupanja sa zatvorenicima, Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe, Novi sad, Doktorska disertacija.

19) Igrački, J. (2016) Etičko-pravni aspekti kažnjavanja i kazne zatvora, Zbornik Instituta za kriminološka i sociološka istraživanja, 35 (1). pp. 105-118. ISSN 0350-2694

20) Igrački, J. (2022). Politika strogog kažnjavanja: izazovi krivičnog prava u prevenciji kriminala. Bezbednost, (1), 179–190.

rights protection. The European Court of Human Rights has developed through its practice standards for the interpretation of Article 5 of the Convention, especially with regard to the legality of deprivation of liberty and the right to compensation for damages. The Court consistently points out that protection against arbitrary deprivation of liberty is one of the basic characteristics of a democratic society based on the rule of law. The right to compensation exists when a violation of one of the rights guaranteed by Article 5 of the Convention has been established, whereby states must provide effective legal remedies and fair compensation for material and non-material damage. The standards developed in the practice of the European Court have significantly influenced the legislation of European countries, including the Republic of Serbia and the Russian Federation, improving the procedural guarantees of persons deprived of their liberty and mechanisms of state responsibility. Thus, the right to compensation for damages due to unjustified or illegal deprivation of liberty became an integral part of the right to an effective legal remedy and an important instrument for the protection of human dignity, representing the basis for the development of national protection systems and comparative legal analysis of Serbia and the Russian Federation.

3. Legal framework of the Republic of Serbia

The right to compensation for damages due to unjustified deprivation of liberty in the Republic of Serbia is based on constitutional guarantees, international obligations and provisions of domestic legislation. The normative framework consists of the Constitution of the Republic of Serbia, the Code of Criminal Procedure and the Law on Obligations, while the jurisprudence of domestic courts and the standards of the European Court of Human Rights play a significant role in its application. Constitution of the Republic of Serbia²¹⁾ guarantees the right to freedom and personal security. Article 27 stipulates that freedom can be restricted only for the reasons and according to the procedure provided by law, while Article 35 guarantees the right to rehabilitation, compensation for damages and other rights established by law to a person who has been unjustly or illegally deprived of liberty, detained or convicted. This provision represents the constitutional basis of the state's responsibility for damage caused by illegal or unfounded restriction of freedom. The most important legal source is the Criminal Procedure Code²²⁾ which in Chapter XXV regulates the procedure for exercising the rights of unjustly convicted and unjustly deprived of liberty.

According to Article 584, the right to compensation belongs to a person who was in custody and against whom no criminal proceedings have been initiated, against whom the proceedings have been legally suspended or who has been legally acquitted. The same right belongs to a person who, due to a mistake or illegal work of a state body, was deprived of his liberty for longer than the law allowed. The law also prescribes exceptions to this right, espe-

21) Ustav Republike Srbije, Službeni glasnik RS, br. 98/2006.

22) Zakonik o krivičnom postupku, (2011) Službeni glasnik RS, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 i 62/2021.

cially when the person deliberately caused detention by his illegal behavior. The realization of the right takes place in two stages - first through the procedure before the Ministry of Justice in order to try to resolve the dispute by agreement, and if the agreement is not reached, the injured party can initiate civil proceedings against the Republic of Serbia. The right to compensation expires within three years from the finality of the decision which ended the proceedings in favor of the injured party. The type and scope of compensation are regulated by the Law on Obligations²³⁾, which represents the general legal basis for the compensation of material and non-material damage. Article 200 provides for fair monetary compensation for mental pain caused by the violation of freedom and other personal rights. Unfounded deprivation of liberty is one of the most serious forms of violation of personal rights, which is why courts award compensation for non-material damages with the application of criteria developed through judicial practice²⁴⁾. The right to compensation is based on the objective responsibility of the state, so the injured party is not obliged to prove the guilt of the state authorities, but the existence of conditions prescribed by law for exercising this right²⁵⁾. Unfounded deprivation of liberty can cause various forms of non-material damage, which are most often reflected in mental pain due to violation of liberty, fear and feeling of insecurity, injury to honor and reputation, disruption of family relations, psychological consequences and difficult social and professional reintegration.²⁶⁾

Individuals may develop anxiety, depression and other psychological disorders, which are determined by the courts based on medical documentation and expert reports. When determining the amount of fair monetary compensation, the courts evaluate all the circumstances of the specific case, especially the length of detention, the conditions of its execution, the intensity and duration of mental pain, the age and health condition of the injured party, the consequences for family and professional life, as well as possible media exposure of the case²⁷⁾.

The length of detention is one of the most important criteria, but it is always evaluated together with other circumstances. The jurisprudence of the Supreme Court of the Republic of Serbia plays a significant role in harmonizing the criteria for awarding compensation. In its decisions, the court points out that unjustified deprivation of liberty is a serious violation of personal rights and that the very fact of unjustified detention is the basis for awarding fair monetary satisfaction, with the consequences for the private, family and

23) Zakon o obligacionim odnosima, Službeni list SFRJ, br. 29/78, 39/85, 45/89 i 57/89.

24) Perović, S. (2004) Obligationo pravo, Beograd: Službeni list SCG.

25) Petrović, M. (2023) Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi. Civitas, Novi Sad, br. 1, str 212-229.

26) European Court of Human Rights. (2024) Guide on Article 5 of the European Convention on Human Rights: Right to liberty and security. Strasbourg: Council of Europe.

27) Mrvić-Petrović, N. (2010) Naknada štete zbog neosnovanog lišenja slobode i neosnovane osude, Institut za uporedno pravo, Beograd.

professional life of the injured party being especially valued²⁸). Domestic courts are increasingly applying the standards developed in the practice of the European Court of Human Rights, which emphasizes that the right to compensation for illegal or unjustified deprivation of liberty must be real and effective, and not just formally recognized²⁹). The judgments point out that the very fact of unjustified detention is the basis for the emergence of mental pain, because detention implies separation from the family environment, restriction of daily activities and exposure to social stigmatization. The courts especially take into account the circumstances under which the detention was carried out, as well as the consequences it left on the private and professional life of the injured party³⁰). This contributes to harmonizing domestic judicial practice with European standards for the protection of human rights and strengthening legal certainty. It can be concluded that the legal framework of the Republic of Serbia provides a high degree of protection to persons unjustifiably deprived of their liberty through a combination of constitutional, criminal procedural and obligation law norms. Although in practice there are still problems regarding the length of procedures and the uniformity of awarded amounts, the existing system represents a significant mechanism for protecting the right to freedom and the responsibility of the state for the illegal work of its organs.

4. Legal framework of the Russian Federation

The right to compensation for damages due to unjustified or illegal deprivation of liberty in the Russian Federation is based on the Constitution of the Russian Federation, the Criminal Procedure Code and the Civil Code³¹). The Constitution of the Russian Federation guarantees the right to judicial protection and compensation for damages caused by the illegal actions of state authorities, while the Criminal Procedure Code of the Russian Federation regulates the institute of rehabilitation of persons who have been unjustly prosecuted or illegally deprived of liberty. The modern development of criminal procedural law increasingly emphasizes the need to establish a balance between the interests of the state in criminal prosecution and the protection of the fundamental rights of the individual. Zadorožnaja and Karović indicate that the protection of human rights in criminal proceedings is one of the central issues of modern justice and that the effectiveness of the proceedings must be accompanied by appropriate procedural guarantees³²).

28) Petrović, M. (2023) Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi. *Civitas*, Novi Sad, br. 1, str 212-229.

29) Perović, S. (2004) *Obligaciono pravo*. Beograd: Službeni list SCG.

30) Vrhovni sud Republike Srbije. (2023) *Praksa u predmetima naknade štete zbog neosnovanog lišenja slobode*. Beograd.

31) *Constitution of the Russian Federation* (1993).

32) Zadorožnaya, V. A., Karović, S. (2022) Human rights and criminal process: Modern tendencies. *European and Asian Law Review*, 5(3), 15–21; Code of Criminal Procedure of the Russian Federation (2001), Chapter 18, Art. 133.

The basic legal source is the Criminal Procedure Code of the Russian Federation, Chapter 18 of which regulates the right to rehabilitation. According to Article 133, rehabilitation includes compensation for property damage, elimination of the consequences of moral damage, restoration of lost work, pension, housing and other rights, as well as restoration of the reputation of the rehabilitated person. The state is liable for damage caused by illegal criminal prosecution, regardless of the fault of the investigating authorities, the prosecution or the court³³). The right to rehabilitation belongs to persons who have been legally acquitted, against whom the proceedings have been suspended for rehabilitation reasons, to whom the charges have been withdrawn, whose conviction has been revoked with the suspension of the proceedings, as well as to persons who have been unlawfully subjected to measures of procedural coercion. The body that makes the decision on rehabilitation is obliged to inform the rehabilitated person of the right to compensation for damages and the way to achieve it³⁴). The legal basis for her compensation is contained in Article 151 and Articles 1099-1101 of the Civil Code of the Russian Federation, which provide for monetary compensation determined according to the principles of fairness and reasonableness³⁵). More detailed criteria for courts are contained in the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 17 of November 29, 2011 (as amended on December 9, 2025), which clarifies that when determining the amount of compensation, courts must take into account, in particular, the nature and degree of physical and moral suffering associated with the individual characteristics of the rehabilitated person, as well as other circumstances worthy of attention³⁶).

When determining the amount of compensation, the courts take into account the duration of deprivation of liberty, the intensity of physical and mental suffering, the state of health and personal circumstances of the injured party, the consequences for his professional and family life, as well as the degree of damage to reputation and dignity. The Supreme Court of the Russian Federation emphasizes that each case must be evaluated individually, applying the principles of fairness and reasonableness³⁷). Rehabilitation includes the right to compensation for material and moral damages, restitution of other violated rights, as well as elimination of the consequences of illegal criminal conduct. In this way, Russian law tries to establish a fair balance between the interests of the state in the implementation of criminal policy and the need to

33) Civil Code of the Russian Federation (1994), Arts. 151, 1099–1101

34) Code of Criminal Procedure of the Russian Federation (2001), Chapter 18, Art. 133.

35) Ibid.

36) Resolution of the Plenum of the Supreme Court of the Russian Federation No. 17 of November 29, 2011 (as amended on December 9, 2025) «On the Practice of Application by Courts of the Norms of Chapter 18 of the Criminal Procedure Code of the Russian Federation Regulating Rehabilitation in Criminal Proceedings».

37) Supreme Court of the Russian Federation. (2022). Resolution on Compensation for Moral Damage and Application of Articles 151, 1099–1101 of the Civil Code of the Russian Federation.

protect the fundamental rights of the individual. The importance of procedural guarantees in the exercise of this right is emphasized by Vera A. Zadorožnaya, who points out that the principle of equality of all before the law and the court is one of the basic assumptions of a fair criminal procedure. According to her understanding, the real protection of the rights of the participants in the procedure requires not only the formal recognition of procedural rights, but also the creation of conditions for their effective exercise before state authorities and courts³⁸). Jurisprudence shows that the right to compensation for moral damages is regularly recognized for rehabilitated persons, but in theory it is indicated that the amounts awarded are often lower than the standards developed in the practice of the European Court of Human Rights. The broad discretion of the courts and the absence of more precise criteria for determining the amount of compensation are cited as reasons³⁹). The practice of the European Court of Human Rights had a significant impact on the development of the Russian system of protection of the rights of persons unjustly deprived of their liberty during the membership of the Russian Federation in the Council of Europe (1996–2022). In several judgments, the court indicated the obligation of the state to provide effective compensation for damages due to illegal detention, taking into account the real consequences that such a measure produces on the private, family and professional life of the injured party.

In addition to the national legislation, the development of the Russian system for the protection of the rights of persons unjustly deprived of liberty is also connected with the modern tendencies of the development of criminal procedural law, in which increasing importance is attached to the protection of human rights and limiting the possibility of abuse of the state's repressive power. In this context, the works of Vera Zadorožna indicate the need to establish a balance between the efficiency of criminal proceedings and the guarantee of individual rights, which is one of the key issues of the modern criminal procedural system⁴⁰). In this sense, the exercise of the right to compensation for damages due to unjustified deprivation of liberty cannot be viewed in isolation from the general principles of criminal procedural law. As Zadorožnaya points out, access to criminal justice is a complex institution that includes the individual's ability to effectively use legal protection mechanisms and to obtain a fair decision from the competent authorities. This approach is especially important for persons who have suffered the consequences of unfounded criminal prosecution, because their protection does not end with the end of the proceedings, but requires the complete restoration of violated rights.

38) Zadorozhnaya, V. A. (2022). Equality before the law and the court: Definition of the concept in criminal proceedings. *Surgut State University Journal*, 1(35), 91–100

39) Kaliuzhnyi, A. N. (2020). Evaluation of Moral Damage Caused by State Authorities in the Russian Federation. *Revista Espacios*, 41(31), 148–156;

40) Zadorozhnaya, V. A. (2021). Basic elements of access to criminal justice: Creating a categorical scheme. *Legal Order: History, Theory, Practice*, (4), 106–112

Although after 2022 the judgments of the European Court no longer have the same immediate significance in the Russian legal system, the standards developed in its practice still represent an important comparative legal landmark⁴¹). It can be concluded that the legal framework of the Russian Federation provides broad normative protection to persons who are unjustifiably deprived of their liberty. Its greatest advantage is reflected in the developed institute of rehabilitation, which includes compensation for material and moral damage, as well as the restoration of the legal status of the rehabilitated person. At the same time, in practice there are still challenges that are reflected in the uneven judicial practice, relatively low amounts of awarded moral damages and insufficiently precise criteria for its determination⁴²).

6. Similarities and differences between the legal systems of Serbia and the Russian Federation in compensation for non-material damages

A comparative analysis of the legal systems of the Republic of Serbia and the Russian Federation shows that both systems recognize the right of a person unjustifiably or illegally deprived of liberty to compensation for non-material, i.e. moral damage. The responsibility of the state in both legal systems is based on the fact that the damage was caused by the illegal actions of state authorities, which ensures the protection of basic human rights and the principle of the rule of law⁴³). In the Republic of Serbia, the right to compensation for damages has a constitutional basis in Article 35 of the Constitution of the Republic of Serbia, while the procedure for exercising this right is regulated by the Code of Criminal Procedure, and the criteria for determining fair monetary compensation are derived from the Law on Obligations⁴⁴). In the Russian Federation, the right to compensation for damages is guaranteed by Article 53 of the Constitution of the Russian Federation, while the Criminal Procedure Code regulates the institute of rehabilitation, which recognizes the right to compensation for property and moral damages to a rehabilitated person, as well as the restoration of other violated rights⁴⁵).

The main difference between the two systems relates to the legal construction of damages. Serbian law uses the concept of non-material damage,

41) European Court of Human Rights. (2024). Guide on Article 5 of the European Convention on Human Rights: Right to Liberty and Security; Smirnov, A. V., & Kalinovsky, K. B. (2018). Criminal Procedure of the Russian Federation. Moscow: Norma.

42) Kaliuzhnyi, A. N. (2020). Evaluation of Moral Damage Caused by State Authorities in the Russian Federation. *Revista Espacios*, 41(31), 148–156;

43) Petrović, M. (2023). Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi. *Civitas*, Novi Sad, br. 1, str 212-229.

44) Ustav Republike Srbije (2006), čl. 35; Zakonik o krivičnom postupku, Službeni glasnik RS, br. 72/2011...62/2021; Zakon o obligacionim odnosima, Službeni list SFRJ, br. 29/78...57/89.

45) Constitution of the Russian Federation (1993), art. 53; Criminal Procedure Code of the Russian Federation (2001).

which includes the violation of freedom, honor, reputation and other personal rights, while Russian law uses the concept of moral damage, which means physical and mental suffering caused by the violation of personal non-property rights. Regardless of terminological differences, the goal of both institutes is to provide fair satisfaction to the injured party⁴⁶⁾. When determining the amount of compensation, the courts in both systems assess the duration of the deprivation of liberty, the intensity of the suffering suffered, the consequences for family and professional life, as well as other circumstances of the specific case. At the same time, the wide discretion of the courts leads to uneven judicial practice and different amounts of awarded compensation⁴⁷⁾.

There are also differences in the exercise of rights. In Serbia, the request is first submitted to the Ministry of Justice in order to attempt an amicable solution, and only then can litigation proceedings against the Republic of Serbia follow. In the Russian Federation, the right to compensation is linked to prior recognition of the status of a rehabilitated person in criminal proceedings⁴⁸⁾. The peculiarity of the Russian system is reflected in a broader understanding of rehabilitation, which, in addition to monetary compensation, includes the restoration of other violated rights and the restoration of reputation. In contrast, in Serbia, the emphasis is primarily on tort protection. There is also a significant difference in the influence of international standards. Serbia is still bound by the European Convention on Human Rights and the practice of the European Court of Human Rights, while after the termination of the membership of the Russian Federation in the Council of Europe in 2022, the immediate impact of the Convention has been significantly reduced⁴⁹⁾.

It follows from the attached that both legal systems recognize the state's responsibility for unjustified deprivation of liberty and the right to compensation for non-material, i.e. moral damages. However, they differ in the procedural model of exercising rights, the scope of rehabilitation and the importance of international standards, with Serbia following the practice of the European Court of Human Rights to a greater extent, while the Russian Federation relies on its own rehabilitation system⁵⁰⁾.

46) Civil Code of the Russian Federation (1994); Perović, S. (2004). *Obligaciono pravo*. Beograd: Službeni list SCG.

47) Kaliuzhnyi, A. N. (2020). Evaluation of moral damage caused by state authorities in the Russian Federation. *Revista Espacios*, 41(31), 148–156; Petrović, M. (2023) *Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi*. Civitas, Novi Sad, br. 1, str 212-229.

48) Criminal Procedure Code of the Russian Federation (2001); *Zakonik o krivičnom postupku* (2011).

49) Convention for the Protection of Human Rights and Fundamental Freedoms (1950); European Court of Human Rights (2024). *Guide on Article 5 of the European Convention on Human Rights*.

50) Kaliuzhnyi, A. N. (2020); Petrović, M. (2023).

7. Obstacles in realizing the right to compensation for non-material damage

Although the legal systems of the Republic of Serbia and the Russian Federation formally guarantee the right to compensation for damages to persons who have been unjustifiably deprived of their liberty, the realization of this right in practice is often accompanied by numerous legal and procedural difficulties. The problems relate both to the procedure for exercising rights, as well as to determining the amount of compensation, proving damage and the effectiveness of legal protection. Therefore, in legal theory and judicial practice, the question arises more and more often whether the existing mechanisms enable the full realization of the rights guaranteed by domestic and international law.

One of the most frequently highlighted problems is the long duration of procedures for exercising the right to compensation for damages. Persons who were unjustifiably deprived of their liberty must first wait for the final conclusion of the criminal proceedings, after which they only have the opportunity to initiate proceedings for compensation. The process of obtaining compensation often takes several years, especially if it is conducted before a court. In the Republic of Serbia, the procedure starts with an appeal to the Ministry of Justice in order to try to resolve the request by agreement, and only after that can a civil procedure before the competent court follow. Such a system can contribute to a more efficient resolution of individual cases, but in certain cases it represents an additional procedural phase that prolongs the total duration of the procedure.

Similar problems exist in the Russian Federation, where the exercise of rights depends on a previous rehabilitation procedure. In cases where there is a dispute regarding the extent of damage or the amount of compensation, the procedure can last significantly longer than expected, which reduces the effectiveness of legal protection⁵¹⁾.

Another significant problem relates to the unevenness of judicial practice when determining the amount of compensation for non-material, i.e. moral damage. Legal norms generally contain general criteria for determining fair monetary compensation, while specific assessment is left to the courts. In the Republic of Serbia, when deciding, the courts take into account the duration of custody, the intensity of mental pain, the consequences for reputation and family life, as well as other circumstances of the specific case. However, due to the lack of precise guidelines, significant differences can be observed between the amounts awarded in similar cases⁵²⁾. A similar situation exists in the Russian Federation. Courts have wide discretionary powers, which leads to different assessments of the intensity of moral damages and different

51) Kaliuzhnyi, A. N. (2020) Evaluation of moral damage caused by state authorities in the Russian Federation. *Revista Espacios*, 41(31), 148–156.

52) Petrović, M. (2023) Naknada nematerijalne štete zbog neosnovane osude i neosnovanog lišenja slobode u sudskoj praksi, *Civitas*, Novi Sad, br. 1, str 212-229.

amounts of compensation. The consequence of this is reduced legal predictability and unequal treatment of injured persons in similar legal situations⁵³⁾.

Unlike material damage, which can be proven by documentation of lost earnings or other financial losses, non-material damage has a subjective nature. Mental pain, fear, humiliation and damage to reputation cannot be precisely measured, which makes it difficult to prove them in court proceedings. Although the judicial practice starts from the assumption that only unjustified deprivation of liberty causes a certain degree of mental suffering, in many cases the injured parties try to prove the existence of additional consequences, such as psychological disorders, depression or permanent impairment of professional status. In such situations, courts often resort to medical expertise, which further complicates and prolongs the procedure. A special problem is proving damage to reputation and social status, especially when there is no direct evidence of the consequences that detention had on the professional or private life of the injured party.

One of the most frequent criticisms in the professional literature refers to the question of whether the amounts awarded represent adequate satisfaction for the damage suffered. In many cases, the injured persons believe that the monetary compensation does not correspond to the real consequences that the unjustified deprivation of liberty left on their lives.

This problem is particularly pronounced in the Russian Federation, where numerous studies have shown that the amounts of moral damages awarded are often significantly lower than the standards developed in the practice of the European Court of Human Rights. Similar remarks can be found in the part of Serbian legal theory, where it is indicated that the amounts awarded sometimes do not reflect the real importance of the violated right to freedom. The impossibility of full monetary compensation for lost time, damaged family relationships or lasting psychological consequences is one of the basic limitations of the non-material damage compensation system.

A special problem is the cases in which the criminal proceedings were covered by the media. Publishing information about an arrest or detention can lead to the creation of a negative image of a person even before a legally binding decision is made. Even after an acquittal or a stay of proceedings, the consequences for reputation and social status often remain. In such cases, monetary compensation cannot completely remove the social stigma to which the person was exposed. Loss of trust of business partners, interruption of professional career or damaged family relationships represent consequences that are often difficult to prove, but which can have a long-term impact on the quality of life of the injured person⁵⁴⁾.

The practice of the European Court of Human Rights indicates that the right to compensation for damages must be real and effective, and not just formally recognized in legislation. This implies the existence of effective proce-

53) Kaliuzhnyi, A. N. (2020) Evaluation of moral damage caused by state authorities in the Russian Federation. *Revista Espacios*, 41(31), 148–156.

54) Mrvić-Petrović, N. (2010) *Naknada štete zbog neosnovanog lišenja slobode i neosnovane osude*, Institut za uporedno pravo, Beograd.

dures, a reasonable duration of the procedure and the possibility of receiving adequate compensation for the damage suffered. In the Republic of Serbia, there is a noticeable trend of approaching European standards through judicial practice and the interpretation of domestic regulations in accordance with the European Convention on Human Rights. However, there is still a need for greater standardization of court practice and more precise criteria for determining the amount of compensation. In the Russian Federation, an additional challenge is the reduced influence of European legal standards after the termination of membership in the Council of Europe. Therefore, the further development of the compensation system will depend to a greater extent on internal reforms and the practice of domestic courts. It can be concluded that the formal existence of the right to compensation for damages is not sufficient for the complete protection of persons who have been unjustifiably deprived of their liberty. The effectiveness of this right depends on the speed of the procedure, the consistency of judicial practice, the adequacy of the awarded compensation and the possibility to provide the injured person with real satisfaction for the consequences suffered. Therefore, the improvement of protection mechanisms remains one of the important tasks of modern legal systems.

8. Conclusion

The right to freedom and personal security is one of the most important human rights and a basic prerequisite for the realization of all other rights and freedoms. Therefore, any unfounded or illegal deprivation of liberty represents a serious violation of human dignity and requires appropriate legal protection. Modern legal systems strive to provide fair satisfaction to persons who have suffered harmful consequences due to unfounded restriction of freedom through various mechanisms of state responsibility, where a special place is occupied by compensation for non-material, i.e. moral damage.

The analysis of the legal framework of the Republic of Serbia showed that the domestic legislation provides a relatively developed system of protection of persons who are unjustifiably deprived of their liberty. The Constitution of the Republic of Serbia guarantees the right to rehabilitation and compensation for damages, while the Code of Criminal Procedure regulates in detail the conditions for exercising this right. Issues of the type and amount of compensation are regulated by the provisions of the Law on Obligations, which enable the awarding of fair monetary compensation for violation of freedom and other personal rights.

The research showed that the judicial practice of the Republic of Serbia recognizes the importance of protecting the rights of those unjustly deprived of their liberty and that when determining the amount of compensation, various circumstances of the specific case are evaluated, including the duration of detention, intensity of mental pain, consequences for reputation and family life, as well as other relevant factors. At the same time, certain problems related to the unevenness of court practice and different criteria for assessing the amount of fair compensation were observed.

Analysis of the legal system of the Russian Federation showed that the right to compensation for damages due to unjustified deprivation of liberty

occupies a significant place within the rehabilitation institute. The Constitution of the Russian Federation, the Criminal Procedure Code and the Civil Code together form a normative framework that enables the realization of the right to compensation for material and moral damage. The peculiarity of the Russian system is reflected in the broad concept of rehabilitation, which includes not only monetary compensation, but also the restoration of other violated rights and the restoration of the reputation of the rehabilitated person.

The comparative legal analysis showed that between Serbia and the Russian Federation there are significant similarities, but also certain differences. Both systems are based on the principle of the state's responsibility for damage caused by unjustified deprivation of liberty and recognize the right to compensation for non-material, i.e. moral damage. At the same time, the differences are reflected in the process mechanisms for exercising rights, the importance of rehabilitation institutes, the degree of influence of international standards and the amount of compensation awarded. While the Serbian system is largely aligned with the practice of the European Court of Human Rights, the Russian system primarily relies on internal protection mechanisms and the rehabilitation institute.

Special attention in the work is devoted to problems that arise in practice. It was established that the length of proceedings, uneven judicial practice, difficulties in proving non-material damage and the disproportion between the damage suffered and the compensation awarded represent common challenges of both legal systems. In addition, social stigmatization, media exposure and long-term psychological consequences often exceed the possibilities of monetary compensation, which further emphasizes the need for effective mechanisms of rehabilitation and protection of the reputation of injured persons.

The initial hypothesis of the work, according to which both legal systems recognize the right to compensation for non-material damage due to unjustified deprivation of liberty, but differ in terms of the extent of protection and the way to exercise this right, was confirmed through the analysis of legislation and court practice. It was observed that both systems strive to provide fair satisfaction to injured persons, but that there are differences in the efficiency of achieving that goal.

Based on the analysis carried out, it can be concluded that further improvement of the protection of the rights of those unjustly deprived of their liberty can be achieved through a more precise definition of the criteria for determining the amount of compensation, greater standardization of court practice, shortening the duration of proceedings and strengthening rehabilitation mechanisms. Continuous harmonization of national regulations with international standards for the protection of human rights is of particular importance, since the right to freedom is one of the basic characteristics of a democratic society based on the rule of law.

The authors of the paper believe that compensation for non-material damage due to unjustified deprivation of liberty is not only a form of civil protection, but also an important instrument for preserving citizens' trust in the judicial system and confirming the state's responsibility for the protection of basic human rights and freedoms.

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NADOKNADA NEMATERIJALNE ŠTETE USLED NEOSNOVANOG LIŠENJA SLOBODE-PRIMERI IZ PRAKSE REPUBLIKE SRBIJE I RUSKE FEDERACIJE⁵⁵⁾

Apstrakt

Nadoknada nematerijalne štete usled neosnovanog lišenja slobode predstavlja važan segment zaštite ljudskih prava i pravde u savremenim pravnim sistemima. Ovo pravo implicira obavezu države da nadoknadi štetu, jer štetnu radnju čine državni službenici u vršenju svojih dužnosti. Država odgovara objektivno, bez obzira na krivicu, ukoliko se dokaže da je šteta nastala protivpravnom radnjom službenog lica. Analiza prakse Republike Srbije i Ruske Federacije pokazuje različite pristupe u utvrđivanju odgovornosti

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države i visine naknade. Posebna pažnja posvećena je efektivnosti pravnih mehanizama za zaštitu ljudskih prava i pravima žrtava neosnovanog lišenja slobode. U Srbiji se naglašava značaj sudske zaštite i primena međunarodnih standarda, dok ruska praksa ističe proceduralne mehanizme i specifičnosti nacionalnog zakonodavstva. Upoređivanjem ovih praksi mogu se identifikovati prednosti i nedostaci oba sistema, što doprinosi unapređenju pravne zaštite građana i prevenciji povreda prava na slobodu.

Metodologija rada zasniva se na komparativnoj analizi pravnih propisa i sudske prakse u Republici Srbiji i Ruskoj Federaciji. Prikupljeni su i analizirani relevantni zakonski akti, sudske odluke i pravni komentari, kao i stručna literatura iz oblasti ljudskih prava i kompenzacije nematerijalne štete. Korišćena je deskriptivna i analitička metoda za identifikaciju ključnih elemenata i pravnih standarda, dok je komparativna metoda omogućila poređenje pristupa obe države. Takođe, deo istraživanja obuhvata analizu konkretnih sudskih slučajeva koji ilustruju praksu nadoknade nematerijalne štete usled neosnovanog lišenja slobode, što je i cilj istraživanja, da se detaljno sagledaju pravni osnovi, procedure i sudska praksa u vezi sa naknadom štete koja nastaje usled povrede lične slobode bez zakonskog osnova, kao i da se identifikuju sličnosti i razlike u pristupima dve pravne jurisdikcije.

Ključne reči: *naknada nematerijalne štete, sudska zaštita, neosnovana osuda, neosnovano lišenje slobode, prevencija*