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Compensation of Political Convicts in Albania as a Challenge to the Rule of Law and Human Rights

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Abstract

The change in the political and legal system in Albania gave birth to great hope, not only for the triumph of dignity but also for the correction of injustices towards former political prisoners. In Albania, from 1991 to 2008, a series of legal measures addressed the issue of former political prisoners. Their purpose was not only to legally consider punishment for crimes of a political nature as unjust but also to award compensation. But, in the span of 17 years, they remained a formal statement on paper, an inadequate legal solution that in very few cases became effective. At the beginning of 2008, with the entry into force of the law on the compensation of former political convicts, an administrative compensation process was sanctioned that offered a reasonable solution in terms of time and amount of compensation. However, the subsequent legal changes recognized the right of the state to carry out a compensation process based on budgetary possibilities and did not condition the realization of this process in terms of time. The paper aims to analyze the concept of transitional justice in international and domestic law, highlighting its main instruments, as well as focusing on compensation for former political prisoners in Albania. The work through the analytical and comparative method supports the hypothesis that the compensation of political prisoners designed as an effective tool for correcting the injustice caused during the years of communism is bringing back new injustices, which are incompatible with the principle of the rule of law and human rights. The compensation scheme for political convicts in Albania has created not only legal uncertainty regarding the time of compensation but also that such duration can lead to inequality and discrimination. The paper recommends the need for immediate legal changes to build a fair, fast, and effective compensation mechanism.

Keywords: *Transitional Justice, Rehabilitation, Compensation Scheme, Ex-Political Prisoners*

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Introduction

The developments that followed the Second World War represent the most important moment in the reformation of the conceptual framework of international law. From a right that addressed issues and elements of relations between states, as its subjects, to a right that as a subject also included individuals who are under the jurisdiction of a state. Precisely, this moment marks an important turning point in the approach of international law, from a right that was an instrument of states, to a right that turned into an instrument of human dignity and basic human values. This shift is undoubtedly dedicated to a new ideology on human nature, basic values, needs, and relationships that characterize it from birth to death, and the role and functions of the state. This ideology was embodied in the regime of basic human rights and freedoms, which were first sanctioned in the Universal Declaration of Fundamental Human Rights and, subsequently, in several other international and regional law documents.

This new approach brought important implications in two aspects. First, if a state has ratified legal documents of international or regional law, the doctrine of fundamental rights and freedoms makes the state automatically responsible for fulfilling the negative and positive obligations associated with the application of any right in its jurisdiction. internal. Secondly, the effectiveness of the guarantee of fundamental rights is no longer only a matter of domestic jurisdiction with the fact, but also of international law, paving the way for the possibility to address violations through the mechanisms of international or regional law.

In the large range of fundamental rights, an important place is occupied by the status of the right to redressal from illegal actions and acts of public bodies. Its legal nature is the object, not only of a series of legal documents of international and domestic law but above all of the jurisprudence of the International Courts and the constitutional ones of the special jurisdictions.

The right to redressal in international law and Albanian Constitution

The right to redressal, which in Roman law is considered a fundamental right based on the principle of redressal, where there is a right there is also a remedy (Laplante, 2007). In international law, for the first time, it was formulated by the Permanent International Court of Justice in the Chorzow Factory case. (Chorzow Factory Case, Germany vs Poland, PCIJ, 1928) This Court, interpreting the principle of redressal, states that it represents a principle of international law and a general concept of law, which means that every violation must be compensated. This principle, as most

treated in international law, according to the Permanent International Court of Justice, is based on the restoration of the situation that existed before the violation occurred. At its core is making, as soon as possible, the reparation for the damage suffered as a result of the violation, the elimination of all the consequences that have come as a result of the illegal activity, and the restoration of the previous state as if the violation had not occurred. The redressal consists of the return in kind or, if this is impossible, in the payment of an amount corresponding to the value of its return (Chorzow Factory Case, Germany vs Poland, PCIJ,1928, p 47). This principle formulated in the Chorzow Factory case and applied later in other disputes that regulate relations and responsibility between states in case of violation of international treaties or customary international law has had a great influence in the field of human rights (Shelton, 2005).

For the first time, in the field of human rights, the right to redressal was sanctioned in the Universal Declaration of Human Rights. Article 8, this document guarantees every person "the right to have effective legal remedies before competent national courts to redress actions that violate fundamental rights guaranteed by the constitution or by law" (UDHR, Art 8). Later, this right was also provided for in the European Convention on Human Rights, which, in Article 13, sanctioned: "the right of every individual who has been violated the rights and freedoms defined in this Convention, to be offered an effective solution before a national body, even though the violation was committed by persons acting in the fulfillment of their official functions.". A few years later, the right to effective legal remedies was affirmed in the ICCPR, which imposes on member states the obligation to enact laws where necessary to make the rights recognized by the Convention effective. and provide effective remedies for their violation (ICCPR, art. 2, para. 3). Also, Article 14 of the Convention against Torture and Inhumane Treatment sanctions the obligation that "Each State Party, in its legal system, ensures the victim of an act of torture the right to seek reparation and to be compensated fairly and adequately, including the necessary means for rehabilitation as soon as possible. In the event of the death of the victim as a result of an act of torture, those who suffered from it have the right to remedy" (Convention against Torture, art 14). Although the International Convention on Economic, Social and Cultural Rights does not include the concept of domestic legal remedies, the UN Commission on Economic, Social and Cultural Rights has repeatedly stated that the obligation to realize economic and social rights "by all appropriate means" means the internal provision of legal remedies or other effective means.

In the Constitution of the Republic of Albania, the right to redressal from illegal acts and actions of public bodies is included in the chapter on personal freedoms and rights. The Constitution recognizes everyone's right to be rehabilitated and/or compensated by the law, in case they have been harmed due to an illegal act, action, or inaction of state bodies (Albanian Constitution, art 44). It was not without purpose that the constitution maker created the provision, that for the damage suffered by the illegal acts, actions, or inactions of the state bodies, persons have the right to raise two claims a) rehabilitation, and/or b) compensation of financial interests. Dictionaries of the Albanian language define rehabilitation as the official return to someone of the rights they had lost or were unjustly taken away; restoring the good name or honor that was tarnished; call it good or valuable again (Albanian Dictionary, 1998). Therefore, the right to redressal is closely related to the cause of the damage and the resulting obligation to compensate it. It is a legal institute that finds special treatment in our Civil Code (Albanian Civil Code, art 608) and other legal acts. The obligation to redressal leads to the birth of legal responsibility, the purpose of which is to protect the subject and his property from the consequences of the illegal and harmful actions of the persons who commit such an action (Nuni, 2012). Responsibility means that a subject must be liable on a human, moral, or legal level for facts, actions, or events committed by him or that he is a participant in them and answer to the consequences derived from them (Sherifi, 2023).

If we analyze its purpose and content, we notice that the right to redressal has a complex nature. It is presented as a procedural right, where the victim must be given the right to complain and be heard before an impartial decision-maker regarding the violation of a right, as well as a material right that implies making adequate reparation for the damage suffered. As such, the right to redressal is closely related to another right, the violation of which results in the arising of the right to redressal. The right to redressal, as a separate right, can have a mixed nature, i.e. personal (non-property) and property at the same time, because it aims not only to protect the financial interests of the subject but also personal ones, dignity, reputation, personality, etc.

The right to redressal of former political prisoners, as an instrument of transitional justice

One of the main challenges of the democratic state during the transition period is how to achieve social justice, how to build a future of peace and economic and social prosperity, and serving the interests of society in general. In this phase of great political, economic, and legal transformations, the realization of the constitutional aspiration of justice requires taking as a basis, not only certain

economic and social circumstances or values such as needs, merits, and services but above all also valuing the protection and respect for basic human rights and freedoms, such as freedom, private property, etc., violated for decades during the communist system. This view is based on the presumption that in a democratic order, human rights and freedoms are considered as rights of a natural character, indivisible and inalienable from him. This view, which is known in doctrine as transitional justice, was an expression of the conviction that a country based on democratic values cannot be built and developed without looking at the historical background to see the violations suffered by basic human rights and freedoms, as well as without repairing as much as possible the consequences of this violation (Williams, 2007).

In 1996, the Parliamentary Assembly of the Council of Europe, through Resolution 1096/1996 "On measures to eradicate the communist totalitarian past", made a valuable contribution to the drafting of a conceptual framework on transitional justice. The importance of this document lay in the fact that it specifically addressed the nature of the reform measures that former communist states must undertake to build a future of peace and social harmony and the effects they bring to the construction and consolidation of the democratic state. One of the main measures that former communist states must undertake as part of transitional justice reforms, is reparative in nature and is related to "...rehabilitation of persons convicted of "crimes", which in a civilized society do not constitute criminal acts and those who have been unjustly punished. Material compensation should also be given to these victims of totalitarian justice and should not be (much) lower than the compensation given to those unjustly convicted of crimes under the current standard Penal Code" (PACE 1096/1996, Art. 8).

Only in 2004, the United Nations Human Rights Committee analyzing the legal obligations imposed on states by the International Covenant on Civil and Political Rights made a clear definition of the right to redressal sanctioning, among others, that "the obligation to provide effective legal remedies to individuals whose rights have been violated as defined by the Covenant, is not fulfilled if those individuals are not offered compensation." Resolution 60/147/2006 of the General Assembly defined what the right to redressal includes, specifically including:

- restitution, measures aimed at returning victims to the initial situation before the serious violations of international human rights law occurred, such as restoration of liberty, enjoyment of human rights, restoration of employment, return of the property, etc.

- compensation, economic measures for physical or mental injuries, lost opportunities, and material and moral damages caused by massive violations of human rights.
- rehabilitation, as measures of medical and psychological care, provision of legal and social services,
- the moral satisfaction of the injured, as measures that shift the focus from the victims to the perpetrators through efforts to prosecute them and establish the truth at the political, legal, scientific, and cultural levels.
- guarantees of non-repetition include institutional reforms and measures aimed at consolidating democracy and rule of law mechanisms, which can minimize the chances that other massive human rights violations will be repeated.

As discussed above, the right to effective remedy that is sanctioned in several documents substantially includes the obligation of states to address past injustices. The wording in the above acts of international law of terms such as effective means, fair means, or appropriate means gives the decision maker great flexibility in repairing as long as there is no concrete definition of these means based on the type and nature of the violation.

Such a legal framework is considered as a source of corrective justice, as part of the doctrine of transitional law. Corrective justice tells us, among other things, what the law essentially allows or requires if someone has been denied, violated, or violated a good that belongs to them. Undoubtedly, it is impossible to completely correct all violations or infringements of rights. For example, life and liberty lost are irreversible and irreparable. A rapist cannot undo the violation, or dictatorial states cannot erase the damage they have caused to generations. However, these damages can be compensated at least partially, firstly, by an apology, as a measure of moral reparation, as an indicator of feeling, remorse, and reflection, which acknowledges the injustice and takes steps towards the restoration of moral relations. Corrective justice provides grounds for such pardons. Therefore, first, corrective justice requires measures of moral reparation. The demand for a large and deep social, political, and legal apology to those whose lives were taken or their freedom was taken away for criminal figures provided for in the legislation of the communist state, which represents postulates of freedom in a democratic order, represents an obligation essential of the new democratic state.

Second, these measures may also include providing compensation for the injustices suffered. Redressal refers to financial and material compensation. The main goal of correctional justice reforms is to restore justice and social dignity of the victims of communist violence, alleviate suffering, and create favorable conditions for their social reintegration. According to Cohen (2016), the reasons that justify undertaking a reform with a corrective character should not be turned into reasons for the justice of another character, that of distribution (Cohen, 2016). This is because the compensation of former political convicts should not be seen as a benefit in the framework of distributive justice measures, which has as its object the causes of how and why people in a group can have benefits and certain responsibilities regarding the distribution of various goods in society.

In this perspective, the right to redressal includes, on the one hand, the obligation of states to guarantee at the law level the necessary measures that guarantee the rehabilitation of victims of communist violence, as well as ensure the effective procedures for the realization of this right. The purpose of this mechanization of transitional justice, as stated in the Albanian law, is the commitment of the democratic state to the punishment of the crimes of the totalitarian communist regime, the restoration of justice and social dignity or the creation of favorable conditions, for their social reintegration, as well as guaranteeing them a better life. (Law no. 9831/2007, Art. 2) It is unimaginable that the right to an effective remedy, which itself emphasizes the "effective" character of this right with a corrective nature in many international documents, would not be successfully implemented in practice. Such a thing would lead to situations incompatible with the principle of the rule of law that the contracting states undertook to respect when they ratified the ECHR (Kennedy v. Hungary, 2006, Kaic, etc. v. Croatia, 2008).

The right to redressal of former political prisoners given the jurisprudence of the Constitutional Courts of the SEE countries

For the former communist countries, the unjust punishments that occurred during the period of the communist regime became a matter of justice. The Lithuanian Constitutional Court held the position that: "the primary goal of law in a democratic state, and therefore of the law "On determining the status of politically persecuted persons during the years of the communist regime and Nazism" is justice and its assurance." (LCC, Case no. 04-01(99), 1999). Meanwhile, the German Federal Constitutional Court about this topic has stated that "the state and society, by the

principle of social justice, must share the burden or concern that has been inflicted on certain social groups by sanctioning by law concrete rights for redressal of the victims" (GCC, Decision December 12, 2000). According to this Court, the compensation of political prisoners should have both symbolic and financial value. This means that these people who suffered so much during the communist regime, should not only benefit from something concrete as a sign of the obligation, attention, and commitment of, the state and society towards them. (GCC, BvR 1804/03, 2004). The German Constitutional Court takes the position that: "In the construction of such a compensation system, the legislator has a wide scope of the evaluation, taking into account the nature and purpose of the repair that will be made. In this way, the legislator can determine the amount of compensation according to the financial means available, as well as take into consideration other expenses (ECHR, Von Maltzan etc vs. Germany).

The Romanian Constitutional Court, speaking on the nature of redressal for former political prisoners according to Romanian legislation, emphasizes that the objective of the Law No. 221/2009 is not to return to the same situation before the serious violations of the law of human rights. The goal is rather to produce a moral satisfaction, through the recognition and punishment of the previous measures that brought about the violation of human rights. (RCC, Decision no.1354/2010) Furthermore, the Court assessed that the obligation to assign compensation to persons persecuted by the communist regime has only a moral nature. This point of view, according to this Court, is motivated by several decisions of the European Court of Human Rights, which found that the provisions of the European Convention on Human Rights do not impose specific obligations on member states to remedy injustices or damages caused by previous regimes. (ECHR, Appl. no. 14849/08, Ernewein and Others v. Germany", 2009; Appl. no. 7975/06 "Klaus and Yuri Kiladze v. Georgia", 2010).

The Hungarian Constitutional Court invested in the constitutionality of the compensation scheme for former political prisoners, emphasizing the necessity of respecting the dignity and equal treatment of every person who is subject to the law (HCC, Decision, 1-001-1995). According to it, the compensation scheme should have as its central idea the respect of the equal dignity of every person who, due to imprisonment or persecution for political reasons during the communist regime, benefits from the Constitution or the law the right to compensation. Even according to this court, the legislator was not obliged to give compensation to those who were deprived of their life

and liberty. In regulating this issue, the legislator has wide discretion both to grant or not such compensation, as well as to determine how much budget funds should be provided for this purpose. (HCC, Decision no. 46/2000).

The right to compensation for political prisoners has been the subject of review and analysis by the Albanian Constitutional Court (ACC, Decision no. 34, 2005). Analyzing the context of the transition, the Court emphasizes that regardless of the many problems inherited from the communist past and the difficulties faced by the state, Albanian society has the moral and historical duty and responsibility to respect the right of redressal of political convicts within the possibilities dictated by the economic and social conditions, taking concrete measures to find a quick, suitable and sustainable solution in this direction (ACC, Decision no. 34, 2005). The Constitutional Court maintains that the compensation of political prisoners cannot be based on the legal framework of the period before the transition, confirming the retroactive character of this legal reform.

Our Constitutional Court offers the legislator an orientation on the amount of compensation for former political convicts when it states that: "Compensation of ex-political prisoners should be more than symbolic and financial evaluation. The value must take into account the many sufferings of political convicts, their dignity, and the troubles and problems they face in their daily life. Redressal as a whole should be understood as a positive obligation of the state to take appropriate measures that facilitate as much as possible the rehabilitation and reintegration of this category of people in Albanian society" (Ibid). According to the Court, the democratic state compensates these persons according to the conditions of economic and financial opportunities, based mainly on the important principles of justice and equality. This is because... The principle of justice, in essence, requires taking into consideration the interests of other members of society as well as the public interest as a whole. It is impossible to eliminate all the many and deep injustices done over the years to these people by the communist regime. The main goal should be to reduce the consequences of these injustices as much as possible (ACC, Decision no. 30, 2005).

Expressing itself on the nature of the right to redressal, the Constitutional Court emphasizes that "...the right to compensation cannot be treated as a subjective right.". The Court emphasizes the importance of respecting the principle of non-discrimination and equal treatment of all victims of serious human rights violations. According to the practice of the Court, discrimination happens when subjects in the same situation are treated differently without reasonable and objective legal

justification. Of course, the definition of any criterion to qualify objective reasoning depends to a large extent on the value assessment and cannot be precisely defined (ACC, Decision no. 78, 2015). According to it, only in exceptional cases and for reasonable and objective reasons can the different treatment of certain categories of persons who benefit from this right be justified. Such could be the case of differentiation in the treatment of persons who have suffered longer and more in the prisons of the communist regime, differentiation due to age, differentiation of relatives of persons who died or were shot for political reasons, etc. However, what is important to note is that in this case, the principle of equality "... does not mean that all of them should receive the same amount in money, but that all should equally benefit from the same rights, within the space defined by the law" (Kritz, 1995).

The nature of the legal framework on the compensation of former political prisoners

As discussed above, there are essential reasons in international and domestic law that justify the creation of an effective legal remedy, at the level of the law, that will address the issue of compensation for former political prisoners. In the framework of the construction of a scheme of an effective remedy, the main problem faced by the legislator is what nature, and above all, the content will there be such a reform that will address this issue. Its content is closely related to some important characteristics that have a fundamental impact on the construction of a fair, reasonable, and, above all, effective mechanism. It would be completely illogical and counterproductive for the creation of an effective tool to fail in its functionality, turning into an ineffective tool, holding hostage the realization of the aspiration of social justice towards former political convicts.

Analyzing in turn the main elements that are evident in such a legal reform, we can say that, first, as a transitional justice reform, it has a retroactive or retroactive character. The retroactive character is related to the fact that it refers to legal facts that happened in the past, that is, criminal punishments based on court decisions for political criminal offenses or acts of investigative or administrative bodies in the time of communism. This fact is also clear in the position held by our Constitutional Court, which states that: "reparation and compensation of political prisoners for their suffering or unpaid work during the previous regime, cannot be based on the legal framework of the pre-transition period.". In the function of building the compensation scheme, such punishments are considered unjust (Law no. 9831/2007, Art. 3), and elements such as type and measure of punishment, category of the subject (parent or heir), etc. serve as a basis for its

construction. This essential issue of the compensation mechanism, in itself, answers the question of what are the types of punishments that will be considered unjust, and consequently, what are the concrete legal acts, court decisions, acts of the prosecutor's office, investigation, or administrative acts that have served for giving these punishments? Therefore, the legal fact of the past: the decision of punishment, exile, deportation, and treatment in health institutions for crimes of a mainly political nature serves as a basis for rehabilitation and further compensation, that is, as a basis for making a corrective justice.

Secondly, the right to redressal has a personal, non-pecuniary character (Art 6, 7). So, it is part of the personal rights. For this reason, this feature makes it non-transferable to other persons, unless otherwise provided by law (Nuni, 2012). As we have stated above, the nature of this right is defined directly by the law as a non-pecuniary right. Even in cases where the law has not determined the nature of this right, the Constitutional Court has considered it as such. So, the Romanian Constitutional Court considered it as a personal non-pecuniary right (RCC, Decision no. 1354/2010). Also, the Albanian Constitutional Court, examining the unconstitutionality of the law no. 9260/2004 "On the status of former political convicts", considered such a right as a personal right (ACC, Decision no. 34, 2005). Undoubtedly, the main purpose of such a setting is to limit the effects of this right only to the titular person, or to the category of heirs up to a certain level according to legal definitions.

Thirdly, the nature of the compensation process for former political convicts represents another issue in the discourse of the construction of the compensation mechanism. At the heart of this discussion is whether the law will construct it as a judicial or administrative process. Undoubtedly, the legislator has the margin of appreciation based on such criteria as suitability, effects, costs, speed, nature of the procedures, and burden to decide about jurisdiction. In most countries of Southeast Europe, this mechanism is built as an administrative process, but there are countries, such as the Czech Republic, that have entrusted the compensation process to judicial jurisdiction. The Czech Republic represents one of the South-Eastern European countries that have completed this transitional justice reform, not only because of the positive commitments of the state to financially support its realization but also because of the legal nature of the decisions judicial.

Fourth, another essential issue is the definition of the categories of its beneficiary entities. This issue is closely related to the first issue, with the object of compensation, that is, with the nature

of unjust punishments. When talking about capital punishment, then naturally the question is up to what hereditary degree can the right to compensation be extended? More or less the same question arises for other cases. Therefore, even though the right to redressal is considered a personal right, the scheme should answer the question of to what extent it will extend according to the nature of the punishments. Undoubtedly, this is also a matter where the legislator enjoys a wide margin of appreciation, but circumstances such as the type of capital punishment, the long time that has passed since the fall of communism, and the undertaking of the reform have meant that a large part of the persons who suffered the consequences of communism is no longer alive. This circumstance is a sine qua non for a wider scope of redressal and also for the category of their heirs. Therefore, it is at the discretion of the legislator the right to determine to what degree of inheritance this right should be realized, and to what degree it is extinguished. In these cases, it is important to respect the standard of equality in the treatment of categories of beneficiary entities.

Fifth, the other important element of the mechanism is the value of compensation. To construct a reasonable value, it is important to consider elements such as the type and length of punishment. Such elements may condition the different financial treatment of categories of beneficiary entities. The margin of appreciation enjoyed by the legislator in this case, must be carefully evaluated about the financial possibilities of the state. The ECHR and the Albanian Constitutional Court emphasized that the democratic state compensates these persons according to the conditions of economic and financial opportunities. (ACC, Decision no. 34, 2005). However, acts of international law, such as the Resolution of the Parliamentary Assembly of the Council of Europe 1096/1996, have provided essential guidelines on the amount of compensation for former political prisoners, which should not be (much) lower than the compensation awarded to those wrongfully convicted of crimes under the current standard Penal Code (Pace, 1996, Art. 8).

Finally, another issue underlying the construction of the mechanism is the criteria and conditions for granting compensation. These conditions should be considered as a limitation, a) legal, b) based on public interest, and c) proportional to build a compensation mechanism that guarantees the right balance between the public interest and that of protecting the rights of the social category of former political convicts. These criteria can be seen in two perspectives, the broad and the narrow. In the narrow sense, the conditions of the compensation scheme are those related only to the way of granting or executing the compensation, its division into installments, and the duration of the

compensation execution procedure. Whereas, in a broad sense, they include, in addition to the above, such limitations as the deadline for submitting the claim for compensation, considering it as a preclusion deadline, the inclusion in the scheme of only a certain category of subjects, and the exclusion of other categories (e.g. of the heirs of the third order), the determination of an amount of compensation even smaller than those given for the current unjust imprisonments, etc. Undoubtedly, the state has the right to set different criteria for a compensation mechanism. This is because the circumstances of the general economic and social development condition the economic possibilities of the state in providing financial compensation to former political convicts (ACC, Decision no. 34, 2005). In the formal legal aspect, they should only be established by law and serve a legitimate purpose based on the public interest. While in the substantive aspect, the conditions and criteria of compensation must respect the principle of proportionality. This means that the restrictions must not be a disproportionate interference. In the present case, the limitations that come as a result of the criteria established by a legal mechanism, be it compensation, cannot create inequality, discrimination, legal uncertainty, and an unjustified duration of compensation for the category of beneficiary subjects, or even more so excessively or extinguish the right for these reasons. The inadequacy or unjustifiability of each of them may constitute a reasonable cause for violating the right to compensation of former political convicts.

The legal framework on compensation for former political prisoners in Albania

The issue of rehabilitation and compensation of former political prisoners in Albania has been in the attention of the Albanian state immediately after the change of the political and legal system in 1991. Characteristic is the fact that it has been addressed several times in a fragmented manner by a series of laws undertaken especially during the period 1991-1997, but without bringing concrete effects (Law 7514/1991, Law no. 7598/1992, DCM no. 40/1993, Law no. 7748/1993, DCM no. 184/1994, Law 8246/1997). The instrument for the rehabilitation of the politically persecuted in Albania through the form of compensation for unjust imprisonment or persecution was materialized with the approval of law no. 9831, dated 12.11.2007 "On the compensation of former political prisoners of the communist regime". This is because, until 2007, i.e. for about 16 years, the issue of compensation for former political victims remained a statement on paper. This law began to be implemented in 2009, while its partial effects began in 2011 and followed.

Analyzing in turn the elements of the compensation mechanism sanctioned by the Albanian law, we note that the retroactive character of this scheme is related to the very nature of the law, its object, and purpose and is embodied in the first provisions of the law, from Article 1 until article 5 thereof. Retroactivity is specifically expressed in Article 4 of the law entitled, the criteria for compensation, where the law refers to past legal facts such as capital punishment, deprivation of liberty, exile, and deportation, or having been isolated in the investigator or a psychiatric medical institution proven through relevant legal acts such as court decisions, acts of administrative bodies, etc. Secondly, the law defines the right to compensation for former political convicts and even for their heirs as a personal right (Law 9831/2007, Art 6,7). The purpose of this provision is to limit the transfer of the right in all hereditary degrees as defined in the Civil Code, giving priority to the implementation of the special law according to the old principle, *lex specialis derogate lex generalis.*

Thirdly, Albanian law has built the compensation mechanism as an administrative process. Albanian law divides the administrative procedure of compensation into two stages. The first phase is characterized by the submission of the claim for compensation by the beneficiary subjects who have the burden of proof. Further, the examination, approval (including the financial assessment), or rejection of the right to compensation is carried out by the public body, the Minister of Justice. (Law 9831/2007, Art. 29). As a transitional justice reform, with a temporary character, the law sets a deadline for starting the process of submitting claims for compensation (Law 9831/2007, Art. 19) and a final or preclusive deadline for their delivery. Based on the way Albanian law has built the compensation mechanism, it should be said that the final legal act on compensation is the collective administrative act, the decision of the Council of Ministers for the approval of the list of compensation for former political convicts (Law 9831/2007, art 9). Whereas, the second phase of the administrative procedure of compensation, the one related to the execution of the right, is left to the competence of the Minister of Finance (Law 9831/2007, Art. 13).

Fourth, as far as the beneficiary subjects are concerned, the legal framework for the compensation of former political prisoners divides them into two categories of beneficiaries. The primary one includes the former political convicts of the communist regime, who remained alive, and the non-primary one includes his family members, when the convict is no longer alive, as well as the family members of the executed victims and persons interned or deported to camps (Law 9831/2007, Art.

6). The law allows the right to compensation for the heirs of former political convicts up to the second degree and extinguishes this right for other degrees of inheritance (Law 9831/2007, Art. 8). As discussed above, this is the right of the legislator to extend the right to compensation to a certain category of subjects where the purpose of the compensation itself, which is to restore justice and social dignity of this layer or the creation of favorable conditions for their social reintegration, as well as guaranteeing them a better life (Law 9831/2007, Art 2).

Fifth, the Albanian law on the compensation of former political prisoners determines a reasonable amount of compensation according to the nature of the political punishments. The law stipulates that every political prisoner, for each day of the sentence served, in prison, psychiatric hospital, prison hospital, isolation in the investigator, from 30.11.1944 to 1.10.1991, shall be compensated in the amount of 2,000 (two thousand) ALL per day, while the persons who suffered internment in the barbed wire fenced camp until 1954, the compensation value is 1,000 (one thousand) lek per day, and other recently interned or deported persons a scheme is provided pension, which is regulated by the decision of the Council of Ministers. Thus, as discussed above, it is at the discretion of the legislator to determine an appropriate amount of compensation. The amount of compensation that the law determines is by the orientation given by the legal acts of regional political institutions, such as the Parliamentary Assembly of the Council of Europe for a compensation equal to that of current unjust imprisonments (Peace Resolution 1096/1996).

Finally, the conditions and criteria for the compensation of former political prisoners represent the last, but not least, element of the mechanism itself. This is because the execution of the right to redressal, as an effective tool for doing justice to these subjects, is closely related to the nature and content of these restrictions. In the conditions when the legislator encounters objective circumstances such as the impossibility of immediate repayment of the financial obligation for the compensation of former political prisoners due to budgetary implications, it has discretion to build a compensation mechanism that imposes such limitations. But, it is important that such restrictions, as we mentioned above, given the constitutional jurisprudence and that of the ECHR, cannot extend to an unreasonable duration that conditions the essence of the right itself, cannot cause inequality or discrimination between subjects, they cannot create legal uncertainty on the execution of compensation decisions or, even worse, they cannot extinguish the right.

Discussion on the legal issues of the compensation scheme

The conditions and criteria for the compensation of former political prisoners in Albanian law are sanctioned in articles 12 and 32. According to the law, the entire process of compensation in the value of the politically persecuted would be completed in 8 years (Law 9831/2007, Art 32, initial version), according to some criteria or general principles that were defined in Article 12, such as the priority of submitting the request and the equal distribution of funds to all beneficiaries, provided that the value of the compensation is not below 100,000 ALL and greater than 1 million ALL. The sanctioning at the legal level of the general deadlines for granting compensation, according to some criteria and principles, constituted a very important element of the principle of the rule of law, and legal security, in the context of redressing the rights and human dignity of former political prisoners unjustly violated by the communist regime. But, before the implementation of the compensation law had started yet, in 2009, the compensation scheme underwent radical changes, which hit the legal expectations created in about two decades of the category of politically persecuted, sanctioned two years ago, creating a confusing situation (People Advocate, Annual Report 2013).

The legal changes of 2009, firstly, struck the principle of equality of compensation distribution, sanctioning that of proportionality. Secondly, according to these changes, the compensation scheme is no longer determined by the law itself, but by the sub-legal act, DCM. Thirdly, most importantly, the legal changes repealed the provision on the general 8-year term, according to which the state was obliged to carry out the entire compensation process, no longer having a term on the completion of the process (Law no. 10111/2009). In April 2011, within the framework of the determination of the compensation scheme, the Council of Ministers approved VCM no. 419/2011 "On the approval of the terms and scheme for the distribution of compensation funds for the politically persecuted", which sanctions that the compensation that this category benefits from will be divided into 8 installments, but without giving any deadline on the duration or completion of the process (People Advocate, Annual Report 2013).

The by-law changes of 2014, despite bringing some positive aspects regarding the acceleration of the compensation of the primary category, worsened the normative framework of the compensation scheme and deadlines (DCM, 684/2014). If we analyze their content, we do not find any sanctioned deadline for the realization of the compensation process, nor elements that regulate the scheme as required by law (People Advocate, Annual Report 2015). This decision delegates

the right to the Minister of Finance to order the distribution of the next installment according to the budget he makes available, leaving no legal answer and no guarantee at the law level when and how the promised compensation will be received.

The legal framework does not make it clear when subjects have the right to benefit from the indemnity installment. Even, in the conditions where the right to redressal is a private non-pecuniary right, the state's inability to executive compensation decisions may result in the extinction of the right due to the termination of the second heirs. When talking about persons of relatively old age who lost their lives in the first years of the installation of the communist dictatorship, there can undoubtedly be cases of extinguishing the right to redressal as a result of the non-execution of compensation by the state. Such a situation can lead to inequality and discrimination in the treatment of subjects. Precisely, such inequalities cannot be created due to the ambiguity of the legal framework to determine a reasonable compensation scheme, which could eventually be extended for another 30 years. In 2023, that is, about 16 years after the adoption of the law, the distribution of the fourth installment of compensation has not yet begun. If we analyze the periodicity of compensation, the time that would be necessary to complete this process is about 30 more years from this moment. This would have two serious implications. The first implication is related to the unjustified duration of the execution of compensation decisions, in an extremely unreasonable time of around 50 years, which violates the very essence of the right. The second implication concerns the inequities that the compensation scheme can create. The non-execution of decisions due to the unavailability of funds from the state for such a long time may lead to the extinguishment of the right, due to the suppression of all or some of the heirs of the second rank.

The enforcement of the right to redressal now, according to the law and the by-laws, extends to an indefinite duration. Abolition of the legal deadline for the completion and the continuation of this process conditioned only by the legal and sub-legal determination that connects the execution with the available budget fund and has violated the principle of the rule of law, and especially the legal certainty. The principle of legal certainty as an aspect of the rule of law includes, in addition to the clarity, comprehensibility, and stability of the normative system, also trust in the legal system (ACC, Decision 25/2014, and 15/.2016). According to the jurisprudence of the ECHR, the predictability and clarity of legal acts and, in particular, the automatic nature of the norm, the

alleged vagueness of some of its concepts are closely related to the principle of proportionality (ECHR, apply no. 27238/95, Chapman vs United Kingdom, 2001). According to this jurisprudence, the standard of reasonable duration that applies to most administrative procedures or judiciary is an essential element of the right to due process (ECHR, 2021). In its jurisprudence, the ECtHR stated that it is up to the state to organize its legal system in such a way that it is capable of managing the technical and logistical infrastructure to guarantee that the compensation scheme is at all times " effective and fast" (ECHR, Broniowski vs Poland, 2004). ECHR in its decisions has emphasized that the scope of assessment enjoyed by the state, although considerable, cannot be unlimited and that the exercise of legislative discretion, even in the context of the most comprehensive reform complex of the state, cannot bring consequences contrary to the standards of the Convention (ECHR, Broniowski vs Poland, 2004).

This problem has also been ascertained by the People's Advocate, who, while handling the complaint of a subject for the delay of his request for compensation as an heir of a former political convict, takes a position in his recommendation on the compensation scheme, according to him, the process of compensation has become more difficult and has not progressed at the desired rates, for reasons mainly related to the changes that the legislation has undergone over the years and the non-determination of a reasonable deadline for its completion (Recommendation People Advocate, 2013). The Albanian state, through the restoration of a free and democratic society, has undertaken the commitment to create a legal system for the protection of basic human rights, where Albanian citizens are guaranteed the exercise of these rights. Also, these rights must be recognized and realized by the state, within a reasonable time, to make possible the benefit, in the concrete case of damages (Rekomandim i Avokatit te Popullit, 2013).

Conclusion

At the center of the doctrine of transitional justice lies the principle that it promotes democracy, revealing the dominant character of basic human rights and freedoms and strengthening the rule of law. The purpose of corrective reforms of transitional justice is the adoption of concrete measures that repair, as much as possible, the injustices of the past. As Teitel points out, these reforms have a functional and symbolic role in the transformational processes of post-communist states (Teitel, 2000). The doctrine of transitional justice considers the time factor, both in terms of the undertaking of reforms, as well as in their progress and conclusion, as essential in their success,

in particular, harmony and social peace in general. The issue of transitional justice after about 3 decades after the fall of communism should have been a closed file. According to the doctrine of human rights, it should be a model in the archive of history that shows how the democratic state based on fundamental rights and freedoms challenges evil and manages to turn the course by becoming an example of their triumph. Indeed, the reparative reforms of transitional justice in Albania, such as the return and compensation of property, or the compensation of political prisoners, instead of being an example of forgiveness and justice, created new injustices, challenging the new order legal, in its basic principles, such as the rule of law and human rights.

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