



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

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**Opinion no. 298/2004**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS ON THE AMENDMENTS  
TO THE LAW OF THE REPUBLIC OF ALBANIA  
ON THE STATUS OF POLITICALLY  
EX-CONVICTED AND PROSECUTED PEOPLE  
BY THE COMMUNIST REGIME**

**by**  
**Mr Peter PACZOLAY (Substitute member, Hungary)**

1. Pjeter Arbnori, a deputy of the Albanian Parliament, supported by 53 other deputies of all parliamentary groups, submitted a proposal to amend the “Law of The Republic of Albania Amending the Law On The Status of Politically Ex-Convicted and Prosecuted People by the Communist Regime” (Law no. 7748 dated 29. 07. 1993, amended with Law no. 7777 on 7. 12. 1993). In the documents the date of the submission of the present draft law does not appear.

The aim of the amendment is to implement the law of 1993 by providing financial compensation to persons convicted and prosecuted by the Communist regime. The amendment would secure once one million lek in cash to the inheritors of those who were executed or who died in prison (6300 persons). In addition, 10750 persons convicted and prosecuted would be given compensation partly in cash, partly in savings books. Those of age 65 and above would be entitled to 30 % in cash, the others to 20 % of the total compensation. For the remaining part the right to monthly withdrawal would be guaranteed. The compensation process should be completed within three years from the day of the approval of the amendments.

The deputies attached to the proposal the financial modalities of the implementation of the amended law.

2. The proposal to pay the compensation in cash and to finish the compensation process within three years is a justified idea. Once a law was adopted more than ten years ago on the compensation of those who were convicted by the Communist regime, there exists both legal and moral obligation of the State to implement the law. Articles 7 to 11 of the law regulate the right to compensation, and originally the law envisaged that compensation process would be completed by the end of 1994. The proposal would also satisfy the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UNO General Assembly resolution 40/34 of 29 November 1985). The Declaration provides that victims are entitled to prompt redress for the harm that they have suffered, and that States should endeavour to provide financial compensation.<sup>1</sup>

However, the execution of the law depends also on the economic capacity of the country. Thus, the amendment is more a financial than a legal or constitutional question.

From a constitutional point of view the prohibition of discrimination should be observed when deciding on the different modalities of compensation for the different groups (in accordance with Article 18 of the Albanian Constitution).<sup>2</sup> The different treatment of those persons who lost their life has a reasonable and objective justification, as well as differentiating between age groups.

3. In the following I sum up certain experiences of the Hungarian legislation and its constitutional review concerning compensation for past injustices. Certain similarities can be observed.

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<sup>1</sup> See also the ‘Final report concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms’ of Theo van Boven, Special Rapporteur of the UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities (1993). UN Doc No E/CN.4/Sub.2/1993/8 July 1993.

<sup>2</sup> The compensation procedures for victims of the Nazi regime in Germany (Wiederautmachung) was based on the principle that “equality of rights of all victims is of primary importance. This does not mean that they all should receive the same amount of relief, but it does mean that they should all receive the same rights within the scope of the claims laid down by the law”. Neil KRITZ (ed.), *Transitional Justice*. United States Institute of Peace, Washington DD, 1995. vol. 1. p. 538.

The Act on Compensation for Persons Unlawfully Deprived of their Lives and Freedom for Political Reasons (Act 32 of 1992) was passed by the Hungarian Parliament on 12 May 1992. The law regulated the question of compensation for those illegally deprived of their life and freedom due to political reasons, between 11 March 1939 and 23 October 1989.<sup>3</sup> Under the law compensation was made available for certain measures which resulted either in death or in loss of freedom for a period in excess of thirty years.<sup>4</sup> For the loss of life a compensation of 1 million forints (approx. 4000 €) was payable, for those who lost their life consequent upon a death sentence passed unlawfully by a Hungarian court. The law also specified the conditions of compensation for loss of freedom.

Several petitioners challenged the law, especially because they claimed that the law specified in an arbitrary and discriminatory way those who were entitled to compensation. The problems raised by this case differed from all previous compensation cases introduced before the Court because it did not concern compensation for property losses or material damage, but compensation for personal injury. The Constitutional Court had previously examined various questions on compensation for past injustices in six cases.<sup>5</sup> The issue was complicated further because the violations in question occurred under different political regimes. On a very broad generalisation, one previous regime perpetrated these violations on the ground of racism and nationalism, while the next regime followed mostly ideological and political motives. A further difficulty lies in the question how deprivation of life and liberty could be measured in money.

The Constitutional Court in its decision<sup>6</sup> declared that this type of compensation is not based on a legal obligation emanating from the time before the transition; the Government compensates according to equity, thus nobody has a subjective right to compensation. Therefore, the Constitutional Court upheld the constitutionality of the general principles of the compensation process, including the fact that the legislature passes different compensation laws periodically. The main concern of the petitioners was that the law restricted the possibility of compensation to those whose rights were arbitrarily violated in connection with a formal criminal procedure. Such a provision excluded from compensation those who were killed by Hungarian authorities without any formal judicial procedure (e.g. shot, or killed in forced labour camps). In order to redress this omission, the Court obliged the legislature to pass a further compensation law before the end of September 1995.

The Constitutional Court declared unconstitutional and annulled some specific provisions of the law. The law originally considered deportation as a mere form of deprivation of liberty. According to the Court, deportation during the Second World War meant far more, being an expulsion from the country by force, when Hungarian authorities, on racial, religious or political grounds, handed their own citizens to foreign authorities, who carried them off to concentration camps. Leaving these historical circumstances out of consideration violates the constitutional requirement of treating everybody with equal dignity. Deported people form a clearly defined specific group that the legislature has to respect. Therefore, the provisions whereby deportation to Germany and to the Soviet Union were regarded as mere deprivation of liberty were declared unconstitutional.

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<sup>3</sup> On 11 March 1939 was promulgated the Law on Defense that had authorised the introduction of compulsory labour service.

<sup>4</sup> For an overview of the law and the related Constitutional Court cases, see Istvan POGANY, *Righting Wrongs in Eastern Europe*. Manchester University Press, Manchester and New York, 1997. pp. 203-211.

<sup>5</sup> For a summary of these cases see Peter PACZOLAY, 'Judicial Review of the Compensation Law in Hungary', 13 *Michigan Journal of International Law* (1992), p. 806ff.

<sup>6</sup> Decision no. 1/1995. (II. 8.). See CODICES HUN-1995-1-001.

Another provision of the law differentiated between people compelled to undergo forced labour service - a form of unarmed military service for those pursued by the regime during the Second World War. The criterion for the difference in treatment was whether the forced labour camps belonged to combat force units or not. The Constitutional Court held arbitrary, and thus unconstitutional, the discrimination between those who had served in combat and in non-combat forces, because those belonging to non-combat forces were compelled to live in closed camps and were deprived of their liberty.

4. Following the Constitutional Court's decision, the legislature finalised the text of the bill amending the compensation law, and before the final vote the Human Rights Standing Committee submitted it to the Constitutional Court for preliminary review.

The Constitutional Court in its next decision<sup>7</sup> acknowledged that the legislature redressed its former mistake by creating a new group of persons entitled to compensation, specifically those persons deported either to Nazi Germany or the Soviet Union, because deportation, as explained already in decision no. 1/1995, is not merely a form of deprivation of liberty. The Court, however, found it to be unconstitutional for the bill to establish substantially different standards for similar grievances, namely for the loss of life. Loss of life is so serious a grievance that it «absorbs» all previous injustices. It would be arbitrary and at the same time would violate human dignity to differentiate among the diverse ways of losing life.

The Constitutional Court added that if as a result of this change the legislature had to enlarge the range of persons entitled to compensation (because of the above constitutional requirements), it would not be unconstitutional to redistribute the overall budget allowed for such compensation, thus reducing the amount of the original compensation for each individual.

5. The legislature expanded the personal scope to the persons required by the Constitutional Court's decision when it amended the law in 1997. But for budgetary reasons it considerably reduced the sum of the compensation from one million to 30000 Hungarian forints (approx. 120 €). This provision was part of the Budget Law for 1999 (Act 90 of 1998). Lots of petitioners requested the Court to annul the rule which allocated HUF 30,000 to victims of state terror as compensation for loss of life, arguing it was humiliating and discriminatory compared to another stipulation which approves HUF 1 million for those imprisoned in the years of terror. Compensation for loss of life is paid to the next-of-kin and relatives of those who died during deportation or forced labour in the years of state terror.

In its third decision related to the matter<sup>8</sup> the Constitutional Court underlined that in its previous decisions on compensation, the Court had held that the legislature was not bound to grant compensation to those who had been deprived of life and liberty. The legislature has discretion both as to whether or not to give such compensation, and on how much money to set aside for this purpose. However, when regulating the question of compensation, the law should take into account the equal dignity of each person, and those affected by the law should be considered with equal care and fairness.

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<sup>7</sup> Decision no. 22/1996. (VI. 25.). See CODICES HUN-1996-2-006, and László SÓLYOM and Georg BRUNNER, *Constitutional Judiciary in a New Democracy. The Hungarian Constitutional Court*. The University of Michigan Press, Ann Arbor, 2000. pp. 346-355.

<sup>8</sup> Decision no. 46/2000. (XII. 14.). See CODICES HUN-2000-3-009.

It is not unconstitutional if the legislature defines the amount of money to be used for compensation in harmony with the financial situation of the country and other financial responsibilities and tasks. The Constitution requires, however, that there should be no differences without rational reasons where compensation is granted for the same injuries. The sum of the compensation paid by the state should be proportionate with the damage caused by state terror.

Since the sum given to the relatives of victims of state terror was lower than compensation paid for imprisonment, the Court annulled the challenged provision of the 1999 Budget Act. It further ordered the legislature to revise the stipulation and apply a new sum retroactively including to those who have already been paid HUF 30,000.

The Court concluded that since the most important constitutional consideration in the implementation of personal compensation was equal treatment together with respect for the equal dignity of persons, a provision which allocated HUF 30,000 to relatives of victims of state terror as compensation was unconstitutional because the sum was lower than compensation paid for false imprisonment.

The sum of the compensation for the loss of life has not been settled yet, the respective amendment of the law is still under discussion.