

The Issue of Compensation for Unjustified Pre-trial Detention

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Abstract:-

The goal of justice is to reach the factual truth, which is pursued by individuals who cannot inevitably attain it. Therefore, this truth remains judicial. Consequently, justice is not infallible, as errors may occur in collecting, linking, and evaluating the elements of a crime at any stage of criminal proceedings, especially since the legislator has authorised the investigating judge in particular. Judicial officers generally take all investigative measures necessary to uncover the truth. One of the most critical investigative measures is the order for temporary detention. For this reason, the legislature has surrounded it with numerous conditions, procedures, and guarantees in favour of the accused, in line with and reinforcing the principle of the presumption of innocence. This is all because the order to place the accused in temporary detention deprives an individual of their most cherished possession: their sacred freedom, a fundamental principle and a primary goal of international human rights law.

Keywords: Compensation; Temporary detention; Unjustified.

Introduction:

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It is not necessary for a conviction to be issued against an accused person who has been subject to temporary detention during criminal proceedings. The court may issue a judgment of acquittal if sufficient evidence is not available to establish the crime or if the elements of the crime are not present. This is by Article 364 of the Criminal Procedure Code, or even in cases where there is doubt regarding the attribution of the crime to the accused person, as doubt is always interpreted in favour of the accused. This also aligns with the rules of the presumption of innocence. The same applies to the investigating judge's right to issue an order for nonprosecution under Article 163, the first paragraph of the Criminal Procedure Code.

From this standpoint, we conclude that the possibility of temporarily detaining the accused is present at any stage of the criminal proceedings. At the same time, the chance of becoming accused is also possible. Therefore, the question arises regarding whether this person is entitled to compensation for the period of temporary detention they served, particularly after justice has declared their acquittal. This is especially important since detention deprives an individual of their constitutionally guaranteed freedom, separates them from their social life, disrupts their work, and may result in the loss of their livelihood and family support, not to mention the damage to their reputation, the impact on their family, and other potential harms. Furthermore, an acquittal does not erase all the doubts after temporary detention.² In the case of the possibility of compensating this individual, should the person who is subjected to detention in a flagrante delicto offence by the public prosecutor, by the flagrante delicto procedure, benefit from this compensation? Moreover, should this compensation also extend to the person who benefits from an acquittal due to doubt? Finally, which authority is responsible for granting this compensation?

This research addresses this topic through study and analysis concerning French legislation for comparative purposes.

Chapter One: The Composition of the Committee and Its Jurisdiction.

Investigating the committee's composition responsible for compensation for unjustified pre-trial detention is essential for understanding how well the committee's work and role align with its human composition. This will be discussed in the first section of this chapter. In the second section, we examine the most important element of our study, the concept of unjustified pre-trial detention. Given its importance, this will be preceded by a brief overview of compensation's legal and judicial background, as it represents the sole basis for our current study.

² Dr. Lakhdar Boukhil, *Pre-Trial Detention and Judicial Supervision in Algerian and Comparative Legislation* (Algiers: Directorate of University Publications, 333).

Section One: Composition of the Committee

The work of the Compensation Committee for Pre-trial Detention in Algerian law and the Committee for the Reform of Detention in French law is technical. It requires a thorough review of the case file for which compensation is sought. The committee must determine whether the pre-trial detention imposed on the accused was justified or unjustified. This determination can be made only after an in-depth examination of all the elements of the file and an assessment of the legality of the temporary detention ordered by the competent judicial authority.

The members of the committees above and judges forming this judicial body carry out this study and research. By understanding the composition of the French and Algerian committees, we can learn about them.

Subsection One: Under French Law

The Committee for the Reform of Detention, a specialised committee, is the competent judicial body responsible for determining the right to compensation under French legislation.³ to which compensation requests are submitted. This committee is composed of three judges from the Court of Cassation,⁴ who are as follows:

- The First President of the Court of Cassation or their representative as the Chair.
- Two judges from the Court of Cassation hold the rank of counsellor or advisor.

These judges are appointed by the Bureau of the Court of Cassation, which also appoints three reserve judges under the same conditions.

The Attorney General performs the public prosecutor's functions at the Court of Cassation and is the legal advisor for the public treasury
represents the state.

The registry tasks are carried out by a court registrar at the Court of Cassation, appointed by the Bureau of the Court of Cassation. This composition is stipulated by Article 149-3, after the recent amendment in 2000--1354 to the Criminal Procedure Code.

Notably, the committee members are selected from the highest judicial body, ensuring their competence, experience, and wisdom so that no one can question its rulings. This committee has a hybrid or mixed nature because the rules governing it are outlined in the Criminal Procedure Code, and it may base its decisions on the general principles of administrative law in addition to the civil nature conferred upon it by the law.⁵

³ Dr. Lakhdar Boukhil, *Ibid.*, p. 346.

⁴ George Levasseur, Albert Chavanne, Jean Montreuil, and Bernard Bouloc, *Droit Pénal Général et Procédure Pénale*, 13th ed. (Paris: Sirey, 1999).

⁵ Dr. Lakhdar Boukhil, *Op. cit.*, p. 346.

Subsection Two: Under Algerian Law

As previously mentioned, the compensation committee is responsible for reviewing requests for compensation for pre-trial detention under Algerian legislation. Its composition is defined by Article 137 bis 02 of the Criminal Procedure Code, and it consists of:

- The First President of the Supreme Court as Chair.
- Two judges from the Supreme Court, holding the rank of President of a Chamber, Head of Division, or Counselor, as members.

The Attorney General performs the public prosecutor's functions at the Supreme Court or as one of their deputies. One of the court's registrars, appointed by the First President of the Supreme Court, takes on the role of the committee's registrar. Members of the committee are appointed annually by the Bureau of the Supreme Court, which also appoints three reserve members to replace any original members who cannot perform their duties owing to any impediment.

We commend the legislator's approach to determining the committee's composition. The committee includes judges from the highest judicial authority, possessing significant experience, expertise, and qualifications that enable them to effectively study compensation requests and criminal files, ensuring that their rulings leave no room for doubt.

However, we question the meaning of the third paragraph of Article 137 bis 02, which states that the Bureau of the Supreme Court has the authority to decide, under the same conditions, that this composition may include several formations, as indicated in the paragraph's text.

There has been some confusion regarding this paragraph. Was the intention to allow the inclusion of other human elements in the committee's legal composition, or was it to appoint several judges according to the conditions above, thereby granting them the authority to form this committee? Thus, the committee could be composed of specific members to review the case (A) and then reformed with different judges to review the case (B).

In either case, the situation would not be ideal. If the intent was the first hypothesis, we see no objection to including other elements to complete the committee's composition if the Bureau of the Supreme Court finds it necessary. However, this is an unlikely scenario because the composition is defined by law, and such a formation is part of public order. It cannot be altered by increasing or decreasing the number of members or changing their qualifications.

On the other hand, if the intent was as stated in the second hypothesis, this could lead to conflicting decisions from the same committee. For example, formation (A) might consider temporary detention in case (A) to be justified and not eligible for compensation, whereas formation (B) might consider the same detention unjustified and entitled to compensation.

Section Two: The Jurisdiction of the Committee

After the contents of Article 137 bis of the Criminal Procedure Code are reviewed, the first question that comes to mind when this research is analysed is when pre-trial detention is considered unjustified, thereby establishing the jurisdiction of the Compensation Committee. We answer this question in the second subsection of this section after we outline the legal and judicial background of compensation for detention under French and Algerian law.

A. Procedural Conditions:

Since pre-trial detention is an exception, the Algerian legislature has surrounded its implementation with several conditions that must be met to be considered a legal and justified temporary detention. The legitimacy and legality of pre-trial detention are manifested in the following procedural conditions:

1. Justification of the order for temporary detention:

Article 123 bis of the Criminal Procedure Code stipulates the necessity of justifying the order for temporary detention. Justification is considered a safeguard for the defence, providing more effective protection for individual freedoms. This ensures the accuracy and effectiveness of the judiciary in performing its primary role, which is the administration of justice. Therefore, the judge must base their conviction on solid grounds, especially regarding such a severe measure as pre-trial detention. Justification surrounds the accused's freedom with a shield of guarantees, prompting the issuing authority to carefully consider the decision before making it.⁶

The order for detention must be based on the reasons outlined in Article 123 of the Criminal Procedure Code, which specify that judicial control measures are insufficient in one of the following circumstances:

- If the accused does not have a stable residence if they do not provide sufficient guarantees to appear before the court, or if the actions are considered very serious.
- Pre-trial detention is the only means to preserve the arguments or material evidence, prevent pressure on witnesses or victims, and avoid collusion between the accused and their accomplices, which could obstruct the discovery of the truth.
- When detention is necessary to protect the accused, to put an end to the crime, or to prevent its recurrence.
- When the accused violates the obligations resulting from the judicial control procedures imposed upon them.

⁶ Dr. Moawad Abdel Tawab, p. 170.

2. Notification of the Order for Temporary Detention

Paragraph 2 of Article 123 bis of the Criminal Procedure Code stipulates, "The investigating judge shall notify the accused of the order above verbally and inform them that they have three days from the date of this notification to appeal."

The text of this article clearly states that if the investigating judge deems it necessary to issue an order for the accused's temporary detention, they must verbally notify the accused after the interrogation and inform them of their right to appeal this order within the legally specified time. This notification must be duly recorded.

3. Limitation of the Duration of Temporary Detention:

The general rule is that the duration of temporary detention should not exceed four months. However, as an exception, this period may be shorter or longer depending on the nature and type of crime.

- Duration of Temporary Detention in Misdisciplinary Cases:

Article 124 of the Criminal Procedure Code states that the duration of temporary detention cannot exceed twenty days in cases of misdemeanours where the maximum penalty is imprisonment for no more than two years, provided that the accused resides in Algeria and has not been previously sentenced for a felony or misdemeanour punishable by a custodial sentence of more than three months.

The duration of temporary detention is four months and cannot be renewed if the maximum penalty prescribed by law is imprisonment for more than two years but not exceeding three years, as outlined in Article 125, paragraph 1 of the Criminal Procedure Code. Similarly, the detention period can last up to four months if the maximum penalty prescribed by law is imprisonment for a period ranging from a maximum of two years to at least four months and if the conditions specified in Article 124 of the Criminal Procedure Code are not met.

The duration of temporary detention may be extended by an additional four months, meaning that it may be extended once for another four months if the maximum penalty prescribed by law exceeds three years. This is by Article 125, paragraph 2 of the Criminal Procedure Code.

- Duration of Temporary Detention in the Felony Case:

The general rule is that the duration of temporary detention in felony cases is four months. However, the investigating judge, as well as the Chamber of Indictment, may extend this period upon the request of the investigating judge, subject to the following conditions:

- Investigating Judge: The investigating judge, based on the elements of the case file, may extend temporary detention in a reasoned order as follows:

- For felonies punishable by a prison sentence of 5--10 years, the investigating judge may extend the temporary detention twice so that the total duration reaches 12 months.

○ For felonies punishable by a prison sentence of 10--20 years, life imprisonment, or the death penalty, the investigating judge may extend the temporary detention up to three times for 16 months.

• Chamber of Indictment: The Chamber of Indictment may extend temporary detention once for four months upon the request of the investigating judge. This extension is not renewable, provided that the request is made by the investigating judge, accompanied by the case file, and presented to the Chamber of Indictment before the expiry of the initial detention period. The Chamber of Indictment must decide before the end of the temporary detention period. Thus, the maximum duration of temporary detention is 16 months for crimes punishable by imprisonment from 5--10 years and 20 months for offences punishable by longer sentences.

Chapter Two: Notification of the Committee

In this chapter, we study the notification of the Compensation Committee under Algerian and French law, starting with the latter, as it was the first to introduce compensation with Law 70--643. This chapter is divided into two sections: the first will examine the conditions of notification, and the second will discuss the situations in which the committee may be notified and the outcomes of such notifications.

Subsection One: Procedural Conditions

These conditions consist of a set of procedural requirements related to the petition for compensation, its submission deadline, and the initiation of the process. Significantly, these conditions have not been amended since Law 70--643 issuance. We address them as follows:

• The Compensation Petition: According to Article 126 of the French Criminal Procedure Code (regulatory section issued by Decree 78--50 dated January 9, 1978), it is clear that the committee is notified through a petition signed by the applicant. This petition is submitted or sent to the committee's registrar, who registers it and issues a receipt upon receiving it, which is then handed over to the petitioner. The petition must include the facts and all necessary information, particularly:

• The date and nature of the decision to order the temporary detention and the correctional facility where the detention was served.

• The judicial authority issued the decision to drop the charges, acquit, or release the accused, along with the date of that decision.

• The nature and extent of the damage suffered by the applicant as a result of temporary detention.

• The address where the petitioner can be notified.

Additionally, this petition must be accompanied by all supporting documents. Finally, the petition must be submitted in three copies: one copy is sent to the legal advisor of the public treasury

for review and response; the second copy is sent to the Attorney General at the Court of Cassation; and the third copy remains with the committee.

These procedures remained in place before the First President of the Court of Appeal after compensation began to be handled in two stages under the law of June 15, 2000. There have been several minor changes to align with this new compensation system. Articles 149--4 of the Criminal Procedure Code, amended by Law 2000--516, referred to regulations for determining these procedures, which were issued in Articles 129--140--3 of the Criminal Procedure Code through Decree 2000--1204.

The petition is the same as the petition submitted to the First President of the Court of Appeal, within whose jurisdiction lies the judicial authority that issued the decision of acquittal or dismissal of charges. The petitioner and the treasury's legal advisor may seek a lawyer's assistance. Article 129 also allows the claimant to obtain a copy of the case file without incurring any costs, and it permits their lawyer to view the file at the registry of the Court of Appeal, as well as the legal advisor for the treasury.

Deadline for Submitting the Petition:

This deadline is set by Article 149-2 of the Criminal Procedure Code, which stipulates that the committee must be notified by a petition within six months from the date the decision to dismiss charges, acquittal, or release becomes final. Following this, Article 128 applies after compensation was introduced in two stages

Algerian legislation followed the same procedures as French legislation did. Article 137 bis 4 of the Algerian Criminal Procedure Code provides that the committee must be notified by petition within a maximum of six months from the date the decision of dismissal of charges or acquittal becomes final.

This petition is submitted to the committee's registrar, which issues a receipt to the petitioner. It must be signed by the claimant or by a lawyer authorised to represent them before the Supreme Court. The petition should include the facts of the case and all necessary information, particularly:

- The date and nature of the decision ordered the temporary detention of the accused and the correctional facility where the detention took place.
- The nature and value of the damage claimed.
- The address of the claimant to which notifications can be sent.

It is clear from the text of this article that the formal conditions outlined are the same as those found in French legislation, as previously mentioned. However, we question certain unclear aspects found in France, which the Algerian legislature has adopted, specifically regarding the following:

The petition submission date is a six-month deadline from when the decision to dismiss charges or acquittal becomes final. Here, the deadline should be calculated from the date of notification of the final decision, not from the date it becomes final. A petitioner who fails to submit the petition within

this timeframe and was not notified of the decision to dismiss charges or acquit them faces the rejection of their petition due to being submitted outside the legally prescribed period, even though they were never notified in the first place.

Similarly, regarding the possibility of having the claimant represented by a lawyer, French legislation does not require the lawyer to be authorised to appear before the Court of Cassation. However, the Algerian legislature has imposed this condition, which we find difficult to justify. While the French legislature allows the claimant to be represented by any lawyer or legal representative, the Algerian parliament demands that the Supreme Court approve the lawyer. This requirement lacks a clear explanation. If we were to argue that the right to litigate before the Supreme Court must be exercised by a lawyer authorised to appear before it, as per the general rules, then Article 137 bis 4 grants the claimant the right to file and sign the petition personally, without needing a lawyer at all.

Subsection Two: Substantive Conditions

In addition to the procedural conditions outlined in the first subsection, substantive conditions must be met to notify the competent authority for compensation. We discuss these conditions in this subsection, beginning with French legislation, which has undergone significant development, especially regarding the most critical condition outlined by Law 1970—namely, the condition of harm caused by temporary detention. We will then examine these conditions in Algerian legislation as follows:

The compensation system introduced by Laws 70--643 established three conditions for compensation, one of which was amended in 1996 under Laws 96--1235 as follows:

- Issuance of an Order for Temporary Detention: This condition means that the right to claim compensation is reserved for the person against whom an order for temporary detention was issued. Therefore, this does not apply to individuals detained for investigative purposes under custody procedures at the level of the judicial police. Additionally, it does not apply to individuals subject to an executed arrest warrant.

- Issuance of a Decision of Dismissal of Charges, Acquittal, or Release: This condition is straightforward and relates to the issuance of a decision by the court dismissing the charges, acquittal, or a final release order.

- The Requirement of Harm to the Person Due to Their Temporary Detention: This condition has been amended. With the introduction of Law 70--643, French legislation required that the harm suffered by the individual subjected to temporary detention be severe and extraordinary. This aligned with the principle of equality before public burdens, as this form of responsibility is nonnegligent and depends on substantial and unusual harm, which justifies the need for compensation. Moreover, proving this severe and extraordinary harm rests on the claimant. This condition was outlined in

Article 149 of the French Criminal Procedure Code before its amendment in 1996 under Law 96-1235, where the phrase requiring "severe and extraordinary" harm was removed. The text now requires that the person temporarily detained must have suffered harm, with the assessment of this harm being left to the competent authority for compensation. From this amendment, the French legislature's keen interest in aligning with the developments in human rights law demonstrates a strong belief that judges are not infallible.

In addition to the causal relationship between the harm suffered by the person and the temporary detention, the claimant is responsible for proving that the harm they experienced was a direct result of the temporary detention.

Algerian legislation applies the same substantive conditions as those mentioned above. This is evident in the text of Article 137 bis of the Algerian Criminal Procedure Code.

Section Two: Cases in which the Committee May be Notified and the Results of Notification

The Compensation Committee established under Article 137 bis 01 of the Criminal Procedure Code is notified in two cases:

First case: This case is outlined in Article 531 bis, which addresses compensation for judicial error as understood by Article 531 of the Criminal Procedure Code, related to requests for the reconsideration of criminal judgments. In this case, a person who has been acquitted or whose legal heirs, after being convicted, may seek compensation for the material and moral damage caused by the conviction. This compensation is granted by the same compensation committee responsible for compensation for unjustified temporary detention.

The requests for the reconsideration of criminal convictions must be based on the circumstances outlined in Article 531 of the Criminal Procedure Code, which includes the following:

1. The presentation of new documents after a conviction in a murder case provides sufficient evidence that the alleged victim is still alive.

2. If the convicted person was found guilty based on perjury by a witness who had previously contributed their testimony to establish the conviction of the accused.

3. A conviction for the same crime (felony or misdemeanour) by another individual makes reconciling the two judgments impossible.

4. The discovery of a new fact or the presentation of documents unknown to the judges who handed down the conviction and which, upon review, appear to suggest the convicted person's innocence.

In brief, the procedures for submitting requests for reconsideration are as follows: in the first three cases mentioned above, the matter is brought before the Supreme Court to decide on the request directly, either by the Minister of Justice, the convicted person, or their heirs. In the fourth case, the

request is made solely by the Attorney General at the Supreme Court, which acts on the request of the Minister of Justice.

After the request is accepted, a designated counsellor is appointed to review the case file and take all necessary investigative steps. The Supreme Court then issues a decision either to reject the request or to accept it, declaring the conviction to be invalid.

The second case in which the compensation committee is notified is relevant to our study. It concerns requests for compensation for unjustified pre-trial detention after an order or decision to dismiss charges or acquittal. Harm remains essential, meaning the person must have suffered from this procedure for the committee to be notified. Owing to the importance of this condition, we have dedicated a section to examine it in detail within both French and Algerian legislation.

Subsection One: The Presence of Harm and Its Conditions

As a condition for notifying the Compensation Committee, the element of harm has undergone significant development in French legislation. The law of July 17, 1970, established as a condition for compensation that the accused must prove that the pre-trial detention caused them harm that was "extraordinary and of exceptional seriousness." In reality, the nature of this harm, being "extraordinary and of exceptional seriousness," refers to harm that entails nonnegligent liability in administrative law. The principles of this liability were borrowed to establish state responsibility for judicial actions.

Proving this harm rests on the claimant in a compensation claim. The committee will reject the claim if the claimant fails to prove harm. The French legislature intervened in 1996 under Law 96--1235 in response to significant criticism of this condition. It amended this condition, allowing the claimant to obtain compensation simply by suffering harm from pre-trial detention without the need to prove that the harm was extraordinary and of exceptional seriousness. This was a significant development, as it automatically compensated for unjustified pre-trial detention in French law. In other words, it became a right for the person when an unjustified pre-trial detention order was issued against them.

Therefore, compensation became a right, not a discretionary benefit or tax granted to the claimant. Harm of all kinds—material or moral—became eligible for compensation. As a result, the First President of the Court of Appeal and the Compensation Committee became obligated to independently assess the value of compensation for both material and moral harm.

This development in French law reinforces the presumption of innocence and further solidifies progress in human rights.

Algerian legislation, Article 137 bis of the Criminal Procedure Code, states that compensation may be granted to a person who suffers "a proven and distinguished harm" due to pre-trial detention.

This text is ambiguous. The researcher encountering this article faces two very unclear terms: What does "proven harm" mean? Is there "variable" or "changing" harm? What does "distinguished harm" mean? Is there "undistinguished" harm, and what criterion should be used to determine whether the harm is distinguished?

The legislator did not adequately choose the terms. We would have accepted the text with less reservation if the legislator had adopted the compensation principles laid out in French law, where the harm required for compensation is "extraordinary and of exceptional seriousness," without considering the development in the field of harm as described earlier. However, the Algerian legislature deviated significantly from this and used the terms "proven" and "distinguished harm," which remain unexplained.

In this context, the Algerian legislature should amend Article 137 bis to clarify or eliminate these two terms in alignment with comparative legislation.

Subsection Two: Results of Notification

Notifying the committee means that it becomes responsible for reviewing the compensation request. If the request is accepted, the individual will be granted compensation, which the public treasury will bear.

Concerning compensation estimation, since the compensation committee is a civil entity, determining compensation is subject to the general principles of civil law. In other words, compensation is at the discretion of the judges, who are committee members. This subjective matter depends on factors such as the individual's status, position, social role, and duration of time spent in detention.

A question arises about the possibility of requesting the appointment of an expert to assess the harm suffered by the individual and the amount of compensation they are entitled to, especially if we imagine that the individual, for example, runs a large business and has spent a year under temporary detention. In such a case, they may request the appointment of an expert to calculate the potential profits they would have earned during that year in their business.

This question remains unanswered in the current Algerian compensation system. However, in France, the request for compensation assessment through expert testimony is allowed. Paragraph 2 of Article 149 of the French Criminal Procedure Code permits the claimant to request the appointment of an expert to conduct a comprehensive evaluation of the damage they have suffered. This is also considered a significant development to ensure fair and equitable compensation for the individual.

Subsection Three: Estimation of Compensation

Article 137 bis of the Criminal Procedure Code states that a person is compensated for the "proven and distinguished harm" they have suffered.

Notably, the term "harm" is used in a general sense without specifying whether it refers to material or moral harm, unlike French legislation, which explicitly requires compensation for moral harm, separate from material harm. In Algerian law, despite the text's general nature, nothing prevents the committee from compensating for moral harm. The principles of justice demand that all types of material and moral harm be compensated for.

Harm, in itself, is the basis for estimating and determining compensation, and it comes in two forms: material and moral. Material harm is damage that affects a person's body, property, or financial rights or the loss of a legitimate interest that can be financially quantified.⁷ From this definition, it is clear that material harm has two aspects: the first concerns the person's physical well-being and life, known as bodily harm, whereas the second affects their financial rights or interests, thereby impacting their economic status.

In the case of temporary detention, the individual is affected primarily by the second aspect of material harm. In other words, harm does not occur to a person's body, as the state is responsible for the safety of detainees. However, the harm affects their financial status, as their work is interrupted, and in some cases, they may lose their job entirely. As a result, they may be unable to provide for their family due to a lack of income, leading to a decline in their financial situation. Therefore, compensation is granted based on this financial harm. The second type of harm is moral harm, which is any harm that affects a person's feelings, dignity, and emotions. The law does not specify the criteria for estimating compensation. Therefore, the committee is required to consider the general principles governing compensation. These include ensuring that the individual's harm is direct, specific, and personal, covering both the harm they have endured and the profit they have missed. The detainee's social status, position, and reputation should also be considered.

For example, a high-ranking state official who is temporarily detained should receive different compensation than a habitual criminal who does not engage in any productive activity. Additionally, a detainee who leaves behind a family of ten members is in a different situation than someone without family obligations. In conclusion, the committee members have complete discretion in estimating the compensation and awarding the individual a fair and just amount.

Conclusion:

Although the Algerian legislature has attempted to align with international agreements to enhance the protection of individual freedoms, it has not effectively formulated this protection. This is

⁷ Houcine Amer, *The General Theory of Responsibility Arising from Personal Acts (Fault and Harm)*, (Algiers: Oueidat Publications, Directorate of University Publications, 1984).

evident when examining Article 137 bis of the Algerian Code of Criminal Procedure, which requires that the accused suffer a clear and distinct harm due to their unjustified detention. These conditions are almost impossible to meet, making it difficult to obtain compensation even if all the criteria are fulfilled. The decision is left to the committee, which makes the granting of compensation discretionary. Furthermore, since the committee has the authority to grant compensation, its decisions are final and cannot be appealed, thus creating an injustice for those seeking compensation.

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