



The Supreme Court of Spain

WRITTEN OPINION

FAIR TRIALS EUROPE AND THE EUROPEAN CRIMINAL BAR ASSOCIATION

Background

1. Fair Trials Europe [**“Fair Trials”**] is a Brussels-based non-governmental organisation, focused on improving the right to a fair trial in accordance with international standards. Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns. Fair Trials has long advocated for improved protection of fundamental rights of defendants in criminal proceedings, and it has offered its opinion on procedural rights issues in cases before the European Court of Human Rights [**“ECtHR”**] including *Ibrahim and Others v. United Kingdom* (App. No. 50541/08 and others), *Čierny v. Slovakia* (App. No. 29384/12), *AT v. Luxembourg* (App. No. 30460/13), *Beuze v. Belgium* (App. No. 71409/10) and *Mikołaj Pietrzak v. Poland* (App. No. 72038/17) and *Dominika Bychawska-Siniarska and others v Poland* (App. No. 25237/18). Fair Trials also provides expert opinions in cases before higher domestic courts such as before the Supreme Court of Estonia (Case 1-15-6878), before the Italian Constitutional Court ([Judgment NO. 16/25](#)).
2. In relation to the specific legal principles at issue in this case, Fair Trials has conducted extensive research including the studies '[A Measure of Last Resort? The practice of pre-trial detention decision making in the EU](#)' and '[Assessing Flight Risk in pre-trial detention](#)

[decision-making: a European comparative study](#), published guidelines for practitioners and conducted trainings.

3. The European Criminal Bar Association [**"ECBA"**] is a leading group of independent criminal defence lawyers in the Council of Europe promoting the fundamental rights of persons under criminal investigation, suspects, accused and convicted persons. The ECBA has been involved in the legislative process leading to the adoption of Directive 2010/64/EU since the proposal of the European Commission in 2004 for a Framework Decision on certain procedural safeguards in criminal matters. The ECBA has contributed to numerous studies, conferences, training and tools.
4. Its objectives, as set out in its Statute, are: *"to represent the views of defence lawyers practising in the member states of the Council of Europe, and to promote the administration of justice and human rights under the rule of law within the member states of the Council of Europe and among the peoples of the world"*. Its *raison d'être* is therefore to promote the proper administration of justice and human rights through the instruments of the rule of law. Its strong European vocation makes ECBA one of the main interlocutors of the European institutions (both at the level of the European Union and the Council of Europe) on the issues of criminal justice and the protection of the right of defence and fundamental rights. The ECBA has offered its opinion on procedural rights issues in cases before the ECtHR, including the case of *Pietrzak and Bychawska-Siniarska and Others v. Poland*, application no 72038/17 et 25237/18 Judgment of 28 May 2024. The ECBA has also delivered a written opinion before the Italian Constitutional Court in case no. 194/2020 of the Register of Orders of this Constitutional Court. The ECBA has also delivered a written opinion before the Italian Constitutional Court (Order n. 216/2021, Sentence n. 171/2023 and Sentence n. 16/25).
5. In this opinion Fair Trials and ECBA are referred to as the **"Interveners"**.
6. In the instant case, Fair Trials and ECBA are seeking to provide the court with a written expert opinion on the issue of compensation afforded to persons who were held in pre-trial detention and were subsequently acquitted.
7. These written observations are drawn up in relation to the legal framework governing compensation for wrongful pre-trial detention in Spain, as it is set out in Article 294(2) of Organic Law 6/1985 of 1 July on the Judiciary, the wording of which was amended following the Constitutional Court's judgment of 19 June 2019. This ruling declared the provision partially unconstitutional insofar as it limited the right to compensation solely to cases where the alleged offence did not exist, excluding other cases of acquittal.
8. Currently, the right to compensation has been recognised for any person who has been held in pre-trial detention and is subsequently acquitted or has their case dismissed without further proceedings, provided that actual damages resulting from that precautionary measure are proven.

9. We are seeking to address the fact that there is no official scale in Spain that allows for the objective determination of compensation in such cases, neither issued by the Council of State nor set out in any statutory or regulatory provision; consequently, compensation is determined on a case-by-case basis, with exclusive reference to the criteria established by the case law of the Supreme Court.
10. This absence contrasts with other areas of the legal system, such as civil liability arising from road traffic accidents, where there is indeed a legal system for assessing personal injury (scale), provided for in Royal Legislative Decree 8/2004 of 29 October, which allows for the objective determination of compensation and is updated annually.

Submissions

11. The submissions of the Interveners will focus on the obligations rooted in Council of Europe and EU law, jurisprudence of the ECtHR as well as the practice of other European countries.
12. We submit that, where compensation schemes are provided for in national legislation, they must comply with the standards established by the ECtHR, in particular in respect to Article 5 § 5 of the Convention.
13. The compensation awarded should be in line with sums offered by the ECtHR in similar cases and it should not be negligible or disproportionate to the level of distress, anxiety and frustration that a person may have suffered as a result of deprivation of liberty.
14. We also submit that it is important to develop a compensation system that combines clear, objective baseline calculations with structured judicial discretion, ensuring both predictability and individualized assessment. Such compensation should be tailored in respect to existing standard of living in the country concerned.

Applicable international standards

15. The European Convention on Human Rights provides that:

Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation. (Article 5, para. 5)
16. The principles of Article 5 of the ECHR are also referred to in Article 6 of the Charter of Fundamental Rights of the European Union.
17. The European Court of Human Rights (ECtHR) established that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty

effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.¹

18. The applicability of Article 5 § 5 is not contingent upon a prior finding of unlawfulness at the domestic level, nor on proof that the individual would have been released but for the breach.² An arrest or detention may comply with domestic law and yet still violate Article 5 of the Convention, thereby triggering the application of Article 5 § 5.³ In the absence of a finding by a domestic authority of a breach of any of the other provisions of Article 5, either directly or in substance, the Court itself would first establish the existence of such a breach for Article 5 § 5 to apply.⁴
19. Article 5 § 5 of the Convention does not impose an “automatic” right to compensation solely on the grounds that the criminal proceedings have been concluded by an acquittal. However, whenever a country extends the compensation system to also cover persons who were acquitted, the principles from Article 5 § 5 would be applicable to these compensation systems.
20. For example, the ECtHR observed that under Armenian law a person is entitled to compensation as a consequence of his/her acquittal and the detention is also considered “unlawful” within the meaning of domestic law as a result of the acquittal. Therefore, the ECtHR found that Article 5 § 5 is applicable.⁴ It further found that the national compensation scheme does not comply with Article 5 § 5 because it only covered pecuniary damage and didn’t cover non-pecuniary damage.⁵
21. In considering compensation claims, the domestic authorities are required to interpret and apply domestic law in the spirit of Article 5, without excessive formalism.⁶
22. Article 5 § 5 of the Convention does not entitle the applicant to a particular amount of compensation.⁷ However, **compensation which is negligible or disproportionate to the seriousness of the violation would not comply with the requirements of Article 5 § 5** as this would render the right guaranteed by that provision theoretical and illusory. Moreover, a right to compensation for damage suffered which sets the levels of that so low as no longer to be “enforceable” in practical terms would not comply with the requirements of that provision.⁸
23. Compensation for detention imposed in breach of the provisions of Article 5 must include compensation for pecuniary damage, but also afford a right to compensation for

¹ ECtHR, *Stoichkov v. Bulgaria*, no. 9808/02, § 72, 24 March 2005

² ECtHR, *Blackstock v. the United Kingdom*, no. [59512/00](#), § 51

³ ECtHR, *Harkmann v. Estonia*, no. [2192/03](#), § 50

⁴ ECtHR, *Norik Poghosyan v. Armenia*, Application no. [63106/12](#), §§ 34, 35, 22 October 2020

⁵ ECtHR, *Norik Poghosyan v. Armenia*, Application no. [63106/12](#), § 40, 22 October 2020

⁶ ECtHR, *Shulgin v. Ukraine*, no. 29912/05, § 65

⁷ ECtHR, *Damian-Burueana and Damian v. Romania*, no. [6773/02](#), § 89

⁸ ECtHR, *Novoselov v. Russia (dec.)*, no. [66460/01](#), 16 October 2003, and *Cumber v. the United Kingdom*, no. [28779/95](#), Commission decision of 27 November 1996

any distress, anxiety and frustration that a person may have suffered as a result of a violation of other provisions of Article 5.⁹

24. The Court clarified that the assessment of damages **should take into account the standard of living in the country concerned** and suggested that national courts could refer to the amounts awarded at domestic level for other types of damage – personal injury, damage relating to a relative’s death or damage in defamation cases.¹⁰
25. The Court has found that that levels of compensation were not merely substantially lower than the Court’s awards in similar cases but also disproportionate to the duration of their detention and negligible in absolute terms, when looking at rates of:
 - EUR 7 (EUR 3,320 for the 472 days) and EUR 2.70 (EUR 324 for the 119 days) per day of wrongful deprivation of liberty and decided to award a total of EURO 5 000 to each applicant in respect of non-pecuniary damage;¹¹
 - EUR 43 per day of wrongful deprivation of liberty (EUR 478 for 11 days of detention) and decided to award the applicant a total of EURO 6 000 in respect of non-pecuniary damage ;¹²
 - EUR 21 per day of wrongful deprivation of liberty (EUR 63 for 3 days of detention) and decided to award the applicant EURO 6 000 in respect of non-pecuniary damage;¹³
26. **The procedure by which one seeks compensation may also raises issues relating to the presumption of innocence.**
27. The presumption of innocence can be viewed as a procedural guarantee in the context of a criminal trial itself but it also serves a second aim, to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged, affecting the person’s reputation and the way in which that person is perceived by the public.¹⁴
28. In general Article 6 § 2, on the presumption of innocence, does not guarantee the accused a right to compensation for lawful pre-trial detention or a right to reimbursement of costs where the proceedings are subsequently discontinued or result in an acquittal.¹⁵ The mere refusal to award compensation does not therefore in itself conflict with the presumption of innocence.¹⁶

⁹ ECtHR, *Khachatryan and Others v. Armenia*, no. [23978/06](#), § 157, 27 November 2012

¹⁰ ECtHR, *Cocchiarella v. Italy* [GC], no. [64886/01](#), § 80

¹¹ ECtHR, *Vasilevskiy and Bogdanov v. Russia*, Applications nos. [52241/14](#) and [74222/14](#), § 24

¹² ECtHR, *Cristina Boicenco v. Moldova*, no. [25688/09](#), § 43, 27 September 2011

¹³ *Ganea v. Moldova*, no. [2474/06](#), § 22, 35, 17 May 2011

¹⁴ ECtHR, *Allen v. the United Kingdom*, Application no. [25424/09](#), para 94, 12 July 2013

¹⁵ ECtHR, *Englert v. Germany*, 25 August 1987, § 36, Series A no. 123, *Sekanina v. Austria*, 25 August 1993, § 25, Series A no. 266-A, *Capeau v. Belgium*, no. 42914/98, § 23, ECHR 2005-I, *Yassar Hussain v. the United Kingdom*, no. 8866/04, § 20, ECHR 2006-III, *Tendam v. Spain*, no. 25720/05, § 36, 13 July 2010

¹⁶ ECtHR, *Minelli v. Switzerland*, 25 March 1983, §§ 34–35, Series A no. 62, *Nölkenbockhoff v. Germany*, 25 August 1987, § 36, Series A no. 123

29. However, the Court has found violations of Article 6 § 2 when the reasons given for refusing monetary compensation following the termination of criminal proceedings reflected an opinion that the accused was guilty of a crime, notwithstanding the absence of any actual conviction.¹⁷

Practice in other EU countries

30. In order to obtain an overview of compensation systems implemented across the EU, the undersigned organizations consulted their network of lawyers asking for information on the compensation procedures in their own jurisdiction. We sought to determine if these systems cover compensation for pre-trial detention when a defendant is acquitted, what the compensation covers and what are the rates applied.
31. We received information from: Albania, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Netherlands, Poland, Portugal, Romania, Sweden, Switzerland and the United Kingdom.
32. We compiled the main findings from each jurisdiction in **Annex 1**, which we submit for the Court's consideration.
33. Across the surveyed jurisdictions, compensation for pre-trial detention exists in most systems, but **significant divergence** appears in three key areas: (1) eligibility conditions, (2) methods of calculation, and (3) degree of judicial discretion.
34. Most countries surveyed grant compensation where proceedings end in **acquittal or dismissal**, provided the individual did not contribute to their detention (e.g. false statements, obstruction).
35. However, systems differ broadly, particularly in respect to how damages are calculated.
36. Four main models emerge:
- (a) Fixed or quasi-fixed daily rates**
- Albania (€10–30/day), Germany (~€75/day), Greece (€20–50/day), Netherlands (€100–130/day), Sweden (~€185/day equivalent)
- (b) Formula-based systems linked to objective indicators**
- Estonia: tied to **average national salary** (~€73/day)
 - Italy: structured **arithmetical formula** (~€235/day) with a statutory ceiling
- (c) Fully discretionary / case-by-case systems**

¹⁷ ECtHR, *Baars v. the Netherlands*, no. [44320/98](#), § 31, 28 October 2003, and *Del Latte v. the Netherlands*, no. [44760/98](#), § 33, 9 November 2004;

- Finland, Poland, Portugal, Romania,
- No fixed tariffs; courts assess fairness, impact, and personal circumstances

(d) France as a fourth model

- France: “réparation intégral” covering pecuniary and non-pecuniary loss where damage is proven
- No automatic award: acquitted person must show existence and extent of loss
- Burden on claimant follows general civil-liability rules, not a special “fence” model

37. While fixed daily rates promote clarity and administrative efficiency, they risk failing to capture the real impact of detention. Conversely, fully discretionary systems better reflect individual harm but can lead to inconsistency and uncertainty. Formula-based models, such as those in Estonia and Italy, represent a compromise, combining objective benchmarks with the possibility of adjustment. However, even these systems face criticism where statutory ceilings or outdated benchmarks limit adequacy.
38. From an EU perspective, none of these models is inherently incompatible with Convention requirements. However, ECtHR case-law suggests that compensation must be reasonable in relation to the seriousness of the violation and its consequences, raising concerns about systems with very low fixed rates or outdated statutory ceilings that may undermine adequacy.¹⁸
39. Notably, several systems explicitly refer to ECtHR practice when determining compensation (e.g. Albania), or incorporate flexibility mechanisms allowing courts to depart from standard rates (e.g. Estonia, Italy, Netherlands). These mechanisms are crucial in ensuring alignment with the Convention requirement of individualized and proportionate redress, particularly in cases involving reputational damage, psychological harm, or significant socio-economic consequences.
40. From an EU rule-of-law perspective, these varying approaches raise questions of equivalence and fairness, particularly in cross-border contexts where individuals may be subject to different standards of redress.

Conclusions

41. The Interveners respectfully submit that any national framework governing compensation for wrongful pre-trial detention must be interpreted and applied in light of the obligations arising under Article 5 § 5 of the European Convention on Human Rights as well as relevant European Union standards.

¹⁸ ECtHR, *Novoselov v. Russia* (dec.), no. [66460/01](#), 16 October 2003, and *Cumber v. the United Kingdom*, no. [28779/95](#), Commission decision of 27 November 1996

42. In order to ensure that the right to compensation is practical and effective, rather than theoretical and illusory, it must be adequate and proportionate to the gravity of the violation and the specific circumstances of the case.
43. Awards that are negligible, symbolic, or manifestly disproportionate to the harm suffered are incompatible with Article 5 § 5, as they undermine the effectiveness of the right guaranteed.
44. In assessing compensation, due regard must be had to:
 - the duration of the deprivation of liberty;
 - the severity of the interference with the applicant's rights; and
 - the personal consequences suffered, including psychological distress and reputational harm.
45. Compensation systems must encompass both pecuniary and non-pecuniary damage.
46. In particular, individuals must be entitled to reparation for: material losses (including loss of income and financial expenses) and non-material harm (including distress, anxiety, frustration, and damage to reputation).
47. The Interveners submit that neither purely rigid tariff-based systems nor entirely discretionary approaches, taken in isolation, sufficiently ensure fairness and consistency.
48. We advocate for a structured approach combining: objective baseline criteria (such as average salary) and a limited judicial discretion, allowing adjustment to reflect the individual circumstances of each case. Such hybrid systems are best suited to ensure both legal certainty and individualized justice.
49. The Interveners emphasize the importance of ensuring legal certainty and predictability in compensation regimes. Clear criteria and transparent reasoning are necessary to avoid arbitrariness and to promote consistency both within and across jurisdictions.
50. In determining the quantum for compensation, domestic courts should have regard to the levels of compensation awarded by the ECtHR in comparable cases, ensuring that national awards are not significantly lower without justification.
51. While ensuring compliance with Convention standards, compensation must also be assessed in light of the economic conditions of the respondent State. Relevant considerations may include:
 - the standard of living;
 - average national income levels; and
 - compensation levels awarded domestically in analogous areas of law, such as personal injury or defamation.
52. Compensation procedures must fully respect the presumption of innocence as guaranteed by Article 6 § 2 of the Convention. In particular, decisions refusing

compensation must not contain reasoning that imputes criminal responsibility to an acquitted person or otherwise casts doubt on their innocence.

Annex 1

Damages afforded around Europe

This annex is based on written submissions received from lawyers from across Europe in response to requests for information sent by Fair Trials Europe and The European Criminal Bar Association, in March 2026.

The two organizations consulted their network of lawyers asking for information on the compensation procedures in their own jurisdiction, if it covers compensation for pre-trial detention whenever a defendant is acquitted, what the compensation covers and what are the rates applied in their national jurisdictions

The annex summarises submissions received from lawyers from: Albania, Estonia, Finland, Germany, Greece, Italy, Ireland, Netherlands, Poland, Portugal, Romania, Sweden and the United Kingdom.

Albania

In Albania persons may be entitled to compensation if they were held in pre-trial detention and have subsequently been declared innocent or the case has been dismissed for lack of evidence. The detainee must not have caused the arrest through false statements or culpable behaviour.

Courts determine the level of compensation by taking into account the duration of pre-trial detention, the consequences on the individual's life, and the practice of the ECtHR. The law provides for maximum rates of compensation:¹⁹

- Approximately EUR 30 (3,000 lek)/day for pre-trial detention;
- Approximately EUR 20 (2,000 lek)/day for unjust imprisonment (after a final conviction is overturned);
- Approximately EUR 10 (1,000 lek)/day for house arrest.
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Estonia

Estonia has a compensation system for pecuniary and **non-pecuniary (moral) damages**.²⁰ Compensation for **non-pecuniary (moral) damages** for deprivation of liberty is calculated on

¹⁹ Albania, Law No. 9381, dated 28.04.2005, "On Compensation for Unjust Imprisonment", Article 5

²⁰ Estonia, Compensation for Damage Caused in Offence Proceedings Act, from 05 November 2014, available in English at : [link](#)

a fixed basis. Compensation for a day of detention is established by dividing by 30 the average gross monthly salary, from the last quarter, preceding the month during which the claim for compensation was made. For example, if the application for compensation would be submitted in March 2026 and the person was detained for 120 days, he/she would be entitled to a compensation of $(2155 / 30) \times 120 = 8620$ EUR (**approximately 73 EUR per day**)

The law also provides for the right of the acquitted person to claim compensation for **pecuniary damage (incl loss of earnings)** caused by deprivation of liberty. The maximum amount of such compensation according to the law is 48 times the last quarter-based average gross monthly salary figure that is published by Statistics Office of Estonia.

The law also provides for the possibility of awarding compensation that does not correspond to the above-mentioned amounts: “Where the amount of the compensation provided for in this Chapter is not fair, it may be varied by the proceedings authority, taking into consideration the material facts and legitimate interests of the case”.

Finland

Finland has a system of compensation which provides that²¹ a person arrested or detained on suspicion of a crime has the right to receive compensation from the state for the loss of liberty if:

- 1) the preliminary investigation is terminated without charges being filed;
- 2) the charges are dropped or dismissed;
- 3) the person is found guilty of a crime, but it is evident that, based on this conviction, the person could not have been arrested or detained; or
- 4) there were no legal grounds for the arrest or detention.

The right to compensation covers both actual deprivation of liberty and travel bans and pre-trial house arrest.

Compensation generally applies for situation when a person was deprived of liberty for more than a day, however, under certain circumstances – the right to compensation also for deprivation of liberty which falls below the length of one day.²²

If a suspect has attempted to flee, evades the preliminary investigation or trial, destroys evidence, or otherwise hinders the investigation of the case, the compensation shall not be paid, unless his or her conduct can be considered excusable due to mental distress, error, or some other such reason. Compensation shall also not be paid if the suspect, through a false confession or otherwise intentionally, has given cause for him to be held in custody or under

²¹ Finland, Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person, Section 1, available in Finnish at [link](#)

²² Finish Supreme Court, KKO 2013:52, available in Finish at [link](#)

arrest, nor in any other case where the circumstances are such that the payment of compensation would not be considered reasonable.²³

There are no fixed rates in Finland, but the Supreme Court has ruled that a usual compensation amount is 120 EURO/day of detention, when there are no special circumstances that would raise or lower the amount.²⁴ In exception cases the compensation can be even higher, in a high-profile murder case in which the accused had been wrongfully incarcerated for 611 days, the courts established compensation of 800 €/day.²⁵

The application for compensation is made to the State Treasury within six months from the legally final decision in which the suspect either has been found not guilty or the charges have been dropped/not brought at all.²⁶

France

French law provides for full compensation of damage, establishing a system of strict State liability (liability without fault) for the compensation of pre-trial detention²⁷, subject to the production of supporting evidence, regulated under articles 149 to 150 of the Code of Criminal Procedure.

With regard to pecuniary damage, compensation must take into account wages lost during the period of incarceration, but also during the period following release that is devoted to seeking employment.²⁸ The same applies to the loss of a serious chance of obtaining employment, paid leave entitlements, or income derived from the operation of a company.

With regard to non-pecuniary damage, compensation must take into account the detainee's personality, lifestyle, and criminal record, in particular any previous periods of detention²⁹, as well as the intensity of the psychological shock personally suffered by the individual³⁰. The conditions of detention—such as, in particular, the unsanitary state of the prison facility or overcrowding rates—may also be taken into consideration³¹. The detainee's family situation constitutes another aggravating factor, for example in cases involving separation from a newborn child³², or the impossibility of providing necessary support to a spouse suffering from severe psychiatric illness and to their three children living in the family home during the period of detention³³.

²³ Finland, Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person, Sections 2 and 3, available in Finnish at [link](#)

²⁴ Finnish Supreme Court, KKO 2025:105, count 10; , available in Finnish at [link](#)

²⁵ As reported in Finnish news, at [link](#) and [link](#).

²⁶ More information on procedures for claiming compensation in Finland, is available in English at [link](#)

²⁷ National Commission for the Compensation of Pre-Trial Detention, 19 September 2002

²⁸ National Commission for the Compensation of Pre-Trial Detention, 18 December 2006

²⁹ National Commission for the Compensation of Pre-Trial Detention, 24 January 2002

³⁰ National Commission for the Compensation of Pre-Trial Detention, 21 October 2005

³¹ National Commission for the Compensation of Pre-Trial Detention, 19 November 2012

³² National Commission for the Compensation of Pre-Trial Detention, 17 December 2004

³³ National Commission for the Compensation of Pre-Trial Detention, 14 April 2008.

Germany

In Germany compensation shall be paid to those who have been wrongfully detained.³⁴ A person is considered to have been wrongfully detained when the proceedings result in an acquittal, or they are closed due to a lack of evidence.

The calculation of compensation under the German scheme consists of two parts, namely a fixed amount for the deprivation of liberty and an individual assessment of the individual's further damages. Compensation is around €75 for each day of loss of liberty.³⁵

Additionally, one may claim compensation for loss of earnings and/or loss of income.

Greece

Greece has a statutory system of compensation for persons who were held in pre-trial detention and were later acquitted, on the basis of Articles 535–540 of the Greek Code of Criminal Procedure and Article 7(4) of the Greek Constitution.

Compensation may be sought only if all of the following conditions are met:³⁶

- Pre-trial detention was imposed;
- The person was finally acquitted, or the prosecution was definitively terminated (for example, dismissal of charges or annulment of conviction);
- The person did not intentionally cause the detention through fraudulent or culpable conduct (for example, false confessions or obstruction of justice).

Greek law provides fixed daily compensation limits, applicable nationwide, between 20 EUR per day to a maximum: 50 EUR per day.³⁷ Within these limits, the court determines the exact daily amount by assessing:

- The economic situation of the claimant;
- The family status and obligations of the claimant;
- The duration of the detention;
- The overall impact of detention on the person's life;

³⁴ Germany's statute on compensation for wrongful criminal prosecutions (*Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen* (StrEG)), § 2(1)

³⁵ Germany's statute on compensation for wrongful criminal prosecutions (*Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen* (StrEG)), Section 7 (3)

³⁶ Greek Code of Criminal Procedure, as codified and currently in force through Law 4620/2019, Article 535 CCP – Persons Entitled to Compensation (ΦΕΚ Α' 96/2019)

³⁷ Greek Code of Criminal Procedure, as codified and currently in force through Law 4620/2019, 540 CCP – Determination of Compensation (ΦΕΚ Α' 96/2019)

Compensation covers moral (non-pecuniary) damage and presumed material loss, without the need for detailed proof.

Italy

Italian law provides a specific remedy known as "*riparazione per ingiusta detenzione*" (compensation for unjust detention), governed primarily by Articles 314–315 of the Code of Criminal Procedure (CPP). The right to compensation is not contingent solely on acquittal: it covers both (a) cases where pre-trial custody was applied without the legal prerequisites being met (*ingiustizia formale*), and (b) cases ending with a fully exonerating judgment — i.e., the fact does not exist, the accused did not commit the act, or the act does not constitute a criminal offence (*ingiustizia sostanziale*).

Compensation is excluded where the detainee caused or materially contributed to the unjust detention through intentional conduct or gross negligence (*dolo o colpa grave*), for example by providing false statements or misleading the investigating authorities (Art. 314(1) CPP).

Italy has developed a well-established **arithmetic criterion** (*criterio aritmetico*), consistently applied by the Supreme Court (*Corte di Cassazione*) since the landmark *Sezioni Unite* ruling No. 1 of 1995.

The formula is as follows:

- Maximum statutory compensation: **€516,456.90** (Art. 315(2) CPP)
- Maximum duration of pre-trial detention: **6 years = 2,190 days** (Art. 303(4) CPP)
- **Standard daily base rate: approx. €235.82/day** for custodial detention (*custodia in carcere*)
- For house arrest (*arresti domiciliari*): approximately half that amount (~€117.91/day)

This arithmetic result constitutes a baseline, which the Court of Appeal may then adjust upward or downward to reflect the specific circumstances of the case — in particular, the personal, professional, family and reputational consequences of the detention. This equitable personalization (*personalizzazione dell'indennizzo*) is mandatory: the court must consider not only the duration of detention but also its concrete impact on the individual's life.³⁸

The statutory ceiling of €516,456.90 may never be exceeded, regardless of the personalization.

The Italian system offers a transparent, rule-based baseline that avoids purely arbitrary lump-sum awards. That said, the ceiling has not been updated since 1992 and is widely regarded as insufficient, particularly for lengthy detentions. The equitable adjustment mechanism, while

³⁸ See, *inter alia*, Cass. pen. Sez. III nn. 53734/2016, 25940/2014, 3912/2013; Sez. IV nn. 42510/2009, 40906/2009, 11950/2006

theoretically capable of remedying individual injustices, in practice produces highly variable outcomes.

Ireland

In Ireland, individuals can only be compensated for pre-trial detention in specific circumstances. A simple acquittal or *nulle prosequi* (when the prosecution drop the charges) do not entitle people to seek compensation.

Compensation (for pre-trial detention and post-conviction detention before acquittal on appeal) can only be sought if the person has been granted a certificate for miscarriage of justice pursuant to section 2 of the Criminal Procedure Act 1993. Section 9 of the same Act prescribes how to seek compensation.

A certificate of miscarriage of justice is granted by a judge, if the person is:

- acquitted (after trial or appeal) and;
- a newly discovered fact has led to their acquittal.

Compensation can also be sought if the person has been pardoned.

There is no formal scheme for compensation and no fixed amount. The application for compensation is made to the Minister for Justice. The Minister will decide the amount of compensation to be paid. If the person is not satisfied by the decision of the Minister or the amount offered, they can challenge that decision before the High Court.

Netherlands

Dutch law provides for compensation in cases where a suspect has been held in pre-trial detention and the case does not result in a conviction. The legal basis is found in Articles 530 and 533 of the Dutch Code of Criminal Procedure (Wetboek van Strafvordering).

In essence:

- Article 533 Sv provides for compensation for damage suffered as a result of pre-trial detention (police custody, remand detention, etc.).
- Article 530 Sv provides for compensation of costs, including legal costs and certain other expenses incurred in connection with the criminal proceedings.

Compensation may be awarded if:

- The criminal case ends without the imposition of a punishment or measure (e.g. acquittal, dismissal, or discontinuation), and
- The court considers that “grounds of equity” (billijkheid) justify such compensation.

This is a **discretionary assessment**: there is no automatic right to compensation. Courts may, for example, deny or reduce compensation where the suspicion against the applicant was largely self-induced.

In practice, Dutch courts apply **standard daily rates** for compensation for pre-trial detention. These are not statutory, but are well-established in case law and judicial guidelines:

- **€130 per day** for time spent in a police cell (inverzekeringstelling)
- **€100 per day** for time spent in a house of detention (remand custody)

These rates are intended to compensate **non-pecuniary (moral) damage** resulting from deprivation of liberty.

Although the system is largely standardized, courts retain discretion and may adjust compensation based on:

- The circumstances of the case (e.g. seriousness of suspicion)
- The conduct of the suspect (e.g. contribution to the suspicion)
- The impact of the detention on the individual
- Whether there are additional substantiated damages

Compensation for loss of income is not automatically included in the standard rates. It may be awarded in addition, but only if sufficiently substantiated and causally linked to the detention. In practice, courts apply a restrictive approach: claims must be concrete and supported by documentation.

Poland

Polish Code of Criminal Procedure covers compensation. According to Article 552 § 1 "An accused who has been acquitted or sentenced to a lighter sentence as a result of the resumption of proceedings, cassation or an extraordinary complaint shall be entitled to compensation from the State Treasury for the damage suffered and compensation for the harm suffered, resulting from the execution of the sentence against him in whole or in part, which he should not have suffered." Paragraph 4 of that Article states that compensation and redress are also due in the event of wrongful pre-trial detention.

An exception is the situation described in Article 553 § 1, i.e. "A claim for compensation or redress shall not be granted to a person who, with the intention of misleading the court or a law enforcement authority, has filed a false report on the commission of a crime or a false explanation and thereby caused an unfavourable decision on conviction, pre-trial detention, application of a precautionary measure or detention."

There are no fixed rates of compensation. In accordance with Article 553a of the Code of Criminal Procedure, when determining the amount of compensation, the court takes into account the crediting of the period of unjust application of penalties, precautionary measures,

pre-trial detention or detention to which the application for compensation relates towards penalties or precautionary measures imposed in other proceedings.

In order to apply for compensation, one must submit an application to the regional court with jurisdiction over the place where the release from custody took place. The application should indicate the circumstances of the case, describe the extent of the harm caused by the pre-trial detention and justify the amount of compensation claimed. Proceedings concerning compensation, in accordance with Article 554 § 4, are free of court costs. If the claims are accepted at least in part, the applicant is entitled to reimbursement of justified expenses from the State Treasury, including the appointment of one attorney.

Portugal

In Portugal the right to compensation is prescribed in Article 27(5) of the Constitution, which provides that deprivation of liberty contrary to the Constitution and the law gives rise to a duty on the State to compensate the injured party, under the terms established by law. Additionally, Article 29(6) grants citizens who have been unjustly convicted, the right, under conditions prescribed by law, to have their sentence reviewed and to receive compensation for damages suffered.

The primary statutory framework is Article 225 of the Code of Criminal Procedure (CPP), which contains four distinct grounds in its current paragraph 1:

- a) Manifestly illegal detention or pre-trial detention — covering deprivation of liberty carried out without legal competence, outside proper judicial procedure, or in flagrant violation of legal requirements.
- b) Gross error in assessing the factual prerequisites — where detention, though not formally illegal, proves unjustified due to a gross error (*erro grosseiro*) in the assessment of the factual grounds on which it depended.
- c) Proof that the defendant was not the perpetrator or acted justifiably — the most contested ground. This requires the claimant to demonstrate positively that they were not the agent of the crime or acted under justification.³⁹
- d) Deprivation of liberty that was unlawful or unjustified according to the ECHR or an international convention binding on Portugal.

The dominant position of the STJ (Supreme Court of Justice) is that neither the Constitution nor ordinary law impose a duty to compensate every acquitted defendant who was previously subjected to pre-trial detention. The circumstance of someone being subjected to lawful pre-trial detention and then being acquitted at trial, because the facts attributed to them were not proven, does not by itself give rise to a right to compensation.

³⁹ The Constitutional Court, in its landmark judgment No. 284/2020 of 28 May 2020, declared unconstitutional Article 225(1)(c) CPP when interpreted in the sense that a defendant who was subjected to pre-trial detention and was subsequently acquitted on the basis of the *in dubio pro reo* principle should not be considered as someone who was not the agent of the crime or acted justifiably. The ruling was based on violation of the principles of equality (Art. 13(1) CRP) and the presumption of innocence (Art. 32(2) CRP).

The Portuguese Code of Criminal Procedure provides for compensation only in cases where it is established that the defendant was not the perpetrator of the crime or that they acted justifiably — a standard that, in practice, creates a near-inversion of the burden of proof.

Portugal has **no fixed rates or daily tariffs**. There is no statutory schedule or per diem compensation. Compensation is determined on a case-by-case basis according to general civil liability rules (Articles 483, 496 and 562 *et seq.* of the Civil Code), assessed through equity (*equidade*). The criteria applied include: the duration of detention, the severity of the suffering, the personal circumstances of the claimant (age, health, family situation, professional impact), the gravity of the charges, and the social stigma endured.

Romania

Romanian criminal law⁴⁰ provides for the right of a person to receive compensation for:

- a judicial error if they have been finally convicted, regardless of whether the sentence was actually enforced;
- if a preventive custodial measure was ordered against them and that measure was later found to be unlawful, or if, for the offence that justified the taking of the measure, the case was dismissed or the person was acquitted.

Romanian law does **not establish a fixed method of calculation** (e.g., per day or per month). Instead, compensation is determined by the courts based on:

- the duration of the unlawful or unjust deprivation of liberty;
- the consequences suffered by the individual;
- the impact on the person's family and social life.

Compensation may include material damages (e.g., lost income, legal expenses) and moral damages (e.g., emotional distress, reputational harm)

Sweden

Sweden has a compensation system. One can claim damages through a special authority, [The Chancellor of Justice](#) (in Swe: Jusitiekanslern).⁴¹

According to the Chancellor of Justice's practice, which in turn is based on court practice, compensation for suffering is normally set at SEK 30,000 (approx. EUR 2775) for the first month. Compensation is then paid at SEK 20,000 (approx. EUR 1850) for each additional month up to and including the sixth month and thereafter at SEK 30,000 (approx. EUR 2775)

⁴⁰ Romanian Code of Criminal Procedure, Chapter VI: "*Procedure for compensation of material damage or moral harm in cases of judicial error or unlawful deprivation of liberty*", notably article 539.

⁴¹ The guide for how to apply for damages can be found here: [Jusitiekanslern - Frihetsberövande](#) (available only in Swedish).

per month up to and including the twelfth month. This means, i.e. that an unlawful incarceration of a 24 hours will award SEK 2 000 (**approx. EUR 185.**).

There is also a possibility to get other damages – for costs and/or loss of income, but they have to be proven and the applicant has the burden of proof.

Switzerland

Swiss law treats unjustified detention as a serious interference with personal integrity.

Based on Article 429 para. 1 lit. c of the Swiss Criminal Procedure Code (CPP), when pondering damages the Courts consider the duration, psychological suffering, and the impact of the proceedings on the individual's private and professional life.

Calculation Method: A benchmark of CHF 200 per day is generally considered appropriate for short-term detention. For longer durations (several months), the rate may be adjusted to between CHF 100 and CHF 200 per day, as the initial shock of arrest is weighted heavily.

United Kingdom

The United Kingdom does not provide general compensation for individuals who are detained pre-trial and later acquitted. Compensation is available in limited circumstances where the deprivation of liberty itself is unlawful, such as in situations of wrongful conviction. The relevant rules for compensation in wrongful conviction cases are stated in Section 133 of the Criminal Justice Act 1988. These rules would not however, provide compensation in cases where an individual was detained pre-trial and later acquitted but this detention was not in itself wrongful. Nonetheless, it might be noted that compensation has been held to be available in certain situations where an individual's parole board hearing has been delayed (see *R(Sturnham and Faulkner* [2013] 2 AC 254)) where this has violated rights protected under Article 5(4) ECHR.

