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WORKING PAPER ON ARTICLE 84

Article 84

Compensation to an arrested or convicted person

1. Anyone who has been victim of unlawful arrest or detention shall have an enforceable 1/ right to compensation.
2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed, or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, 2/ unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

1/ The Rules shall address the procedures for enforcing this right.

2/ "Law" has the meaning attributed to it by article 20.

GE.98-72001 (E)

ROM.98-3237

3. Under exceptional circumstances, the Court in its discretion may award compensation, according to the criteria set forth in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings, where the Court finds conclusive facts showing that there had been a grave and manifest miscarriage of justice. 3/

3/ There are delegations which believe that there should not be an unfettered right to compensation where a person is acquitted or released prior to the end of the Trial. The text of paragraph 3 is intended to limit the right to compensation to cases of grave and manifest miscarriages of justice. Other delegations considered this text to be too restrictive.