

Compensation for miscarriage of justice (article 14 §6)

In cases of **miscarriage of justice**, i.e. **wrongful conviction and punishment**, **compensations** should be paid according to law to the persons concerned, if it is conclusively established that:

- The person has been **convicted** of a criminal offence by a **final decision**;
- The person has **suffered punishment** as a consequence of that conviction; but
- The conviction has been **reversed**, or the person has been **pardoned**, on the **basis of a new or newly discovered fact**.

State parties have the **obligation to enact legislation** to ensure that such **compensation** is actually paid **within a reasonable period of time**.¹

However, it is not a miscarriage of justice and therefore no compensation is due, in cases where:

- It is proved that the non-disclosure of the relevant fact, which led to the reversal of conviction or pardon of the accused, in good time is wholly or partially attributed to the accused;
- The conviction is set aside on appeal, i.e. the judgement is not final;
- The pardon given is humanitarian or discretionary, or based on the consideration of equity.²

In practice – findings of the Human Rights Committee:

- **Lack of reversal of conviction or pardon: New Zealand³**

In this case, the author of the communication argued that the Court of Appeal of the country rejected his appeal and failed to provide him with an appropriate remedy in violation of the ICCPR article 14 §6. The Committee considered that the ICCPR article 14 §6 did not apply to his case, since his conviction had never been set aside by any later judicial decision, or he had never been pardoned.

- **Acquittance by final decision: Australia⁴**

In this case, the author of the communication was arrested in 1989 and convicted by the Supreme Court of New South Wales on three charges of murder and sentenced to an unspecified term of imprisonment in 1990. While the Court of Criminal Appeal, in 1991, quashed his conviction and he was released from jail, the author claimed that he did not have access to compensation 'according to law' in violation of the ICCPR article 14 §6. The Committee found that the ICCPR article 14 §6 did not apply to this case, since the final decision was the decision of the Court of Criminal Appeal which acquitted the author.

- **Acquittance by pardon motivated by consideration of equity: Finland⁵**

In this case, the author of the communication was sentenced by an ordinary court of first instance to 11 months' imprisonment in 1978, which was confirmed by the Eastern Finland Higher Court in 1979, and started his sentence in 1980. The author was pardoned and released from prison in 1981. The Committee found that the ICCPR article 14 §6 did not apply to this case, since his conviction had never been set aside by any later judicial decision and his presidential pardon was motivated by consideration of equity.

¹ Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §52

² Human Rights Committee, General Comment No.32 (CCPR/C/GC/32), §53

³ Human Rights Committee, Communication No. 1909/2009, *Taito Fa'afete v. New Zealand* (CCPR/C/114/D/1909/2009, 7 Sep. 2015)

⁴ Human Rights Committee, Communication No. 1367/2005, *Anderson v. Australia* (CCPR/C/88/D/1367/2005)

⁵ Human Rights Committee, Communication No. 089/1981, *Muhonen v. Finland* (CCPR/C/24/D/89/1981)