

Rehabilitation of and compensation for the killing of refugee Hartmut Tautz on the border of Communist Czechoslovakia:

– Questions and answers regarding potential rehabilitation of further victims

Question:

On 13 March 2017 the district court Bratislava I. ruled on a judicial rehabilitation based on Act No. 119/1990 Coll. in the case of former East German citizen Hartmut Tautz who, in 1986, tried to cross the Czechoslovak-Austrian border. He was gravely wounded by specially trained dogs of the Communist Border guard and died because of non-provision of medical help. Can other refugees who died under similar conditions in Eastern Europe be rehabilitated in a similar way?

Answer:

Yes, it is possible, if the killing happened on the territory covered by Act No. 119/1990 Coll., i.e. the area of today's Czech Republic or Slovak Republic. If the actual killing happened on the territory of another state (the countries in question would be primarily the Federal Republic of Germany and Austria), it would have to be proven that the death was caused by the Czechoslovak Border guard.

Question:

Who can file such an application?

Answer:

Based on art. 5 par. 1 Act No. 119/1990 Coll. in the current wording, the application can be made by any relative in direct line (i.e. children, grandchildren, great-grandchildren as well as parents, grandparents, etc.), by siblings (own or step-siblings), by adoptive parents, adoptive children, spouses, life partners or by any person who can prove that the death of the aggrieved person violated their rights or their legally protected interests (e.g. foster parents, foster children, fiancés, etc.). Based on art. 5 par. 2 Act No. 119/1990 Coll., the application can also be filed by a state attorney in the Czech Republic and by a public prosecutor in the Slovak Republic.

Question:

Must the applicant be legally represented?

Answer:

Based on art. 10 par. 2 Act No. 119/1990 Coll. in the current wording, the person whom the application concerns must be represented by a defence lawyer in a public hearing. The defence lawyer can only be a lawyer who is registered with the bar association of the respective country (the Czech bar association for the Czech Republic, the Slovak bar association for the Slovak Republic). In other words, a Polish or German lawyer who does not have a special authorisation for representing clients in criminal proceedings in the Czech or Slovak Republics cannot act as the defence counsel in these countries.

Question:

Who pays the costs of the rehabilitation proceedings?

Answer:

Based on art. 19 par. 3 letter b) Act No. 119/1990 Coll. in the current wording, the costs are borne by the state if the application is "at least partially substantiated". In the case of lack of success the costs are borne by the applicant. If the application is filed by a state attorney or a public prosecutor, the costs are borne by the state "irrespective of the outcome" (art. 19 par. 3 letter c) Act No. 119/1990 Coll.).

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Question:

Who represented Hartmut Tautz?

Answer:

It was attorney-at-law JUDr. Lubomír Müller, registered both with the Czech and the Slovak bar associations. His contact address: Symfonická 1496/9, 158 00 Praha 5, Česká republika; e-mail: LMULLER@IOL.CZ; tel. (00420) 281 860 845 or (00420) 604 257 143.

Question:

Can he be addressed in particular similar cases?

Answer:

Yes, you are welcome to contact Dr. Müller. A potential collaboration will then depend on a personal agreement with him.

Question:

Can it be guaranteed that all similar applications will be successful in the same way as the one filed on behalf of Hartmut Tautz?

Answer:

The Hartmut Tautz case has the character of a legal precedent. However, Slovakia does not have precedent law, so that a one-hundred-percent guarantee cannot be given. Still, it follows from the logic of the matter that cases with the same content should be handled in the same way.

Question:

The court ruling on the participation in judicial rehabilitation has the character of a moral satisfaction. Can the bereaved demand a financial compensation as well in such a case?

Answer:

Yes, they can. The spectrum of entitled persons however is much narrower than that of those who can file the rehabilitation application. The ruling of art. 26 Act No. 119/1990 Coll. in the current wording delimits it in the following way: "The right to claim compensation is transferred to the heirs of the aggrieved person, as long as these are the children, spouse, parents and in their absence, siblings." In the case of death of the aggrieved person, art. 27 Act No. 119/1990 Coll. also gives this title to a "person to whom the deceased provided or was entitled to provide support".

Question:

How high is the compensation?

Answer:

Based on art. 27 Act No. 119/1990 Coll. in the wording valid in the Czech Republic, the sum amounts to 100,000 CZK and in the wording valid in the Slovak Republic, it is 3,319.40 EUR. Should this title arise to more persons, the said amount is divided among them in equal shares.

Question:

Isn't this a bit too little for a lost human life?

Answer:

Yes, so it may seem. However, the valid legislation regulates the issue as described above. The situation could be changed either by lawmakers or by the Constitutional Court.