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An Appraisal of Compensation for Illegal Detention and Malicious Prosecution under Cameroon Criminal Procedure Code

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ABSTRACT

The prosecution for malicious prosecution and illegal detention stand to be the only remedies available for a defendant who has been wrongfully prosecuted under Cameroonian Criminal Law. These remedies give the defendant the legal right to obtain redress for such illegal detention or malicious act of the civil party. While the defendant can prosecute an administrative official for illegal detention, the same gravel can be heated on the civil party for malicious prosecution. The problem however, is whether the Cameroon Criminal Procedure Code (herein after CCPC) has effectively provided for these remedies to be exploited with acute readiness, so as to protect defendants from wrongful prosecution. Thus, it can be said that, the provisions of the Criminal Procedure Code with respect to these remedies seems to be full with lots of controversies as well as ambiguity, making its effective implementation almost impossible. In such a case, the rights of defendants are tempered with and the respect for the rule of law becomes a myth rather than a reality. It is therefore observed that the proper objective of this paper is to question whether the Cameroonian Criminal Procedure Code has properly put forth effective provisions for the proper implementation of these remedies. The work therefore calls for an effective implementation and a proper look at the level of ambiguities and controversies that beset the procedures for illegal detention and malicious prosecution under Cameroon Criminal Procedure Code.

Keywords*: Compensation, Illegal, Detention, Malicious, Prosecution.*

I. INTRODUCTION

During and after police investigation and/or preliminary inquiry procedure, defendants/ suspects may incur certain damage. While the public prosecutor (State Counsel) and Examining Magistrate are immune to malicious prosecution; they can however be held accountable for illegal detention. Though the civil party can be a victim of malicious prosecution, he can never be held accountable for illegal detention given that the civil party is

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not any of the judicial authorities empowered with the powers to arrest or detain. Therefore, only the judicial authorities vested with such powers can be held accountable for illegal detention. Illegal detention can occur at any stage of the pre-trial procedure. Illegal detention is that which disregard procedure or that which does not respect the laws put in place[2]. The corpus of our criminal procedural law is the CCPC. This law has made provisions for compensation to the victim of an illegal detention in its section 137 (2), 236 and 584 et seq of the CCPC. These sections of the law must be read in tandem with other laws notably the law on Military Code of Justice and the 2014 law on the Suppression of Acts of Terrorism. A mastery of these texts will permit us determine illegal detention. The nuance is whether victims of illegal detention powers in a situation where they obtain swill hall the opportunity to have their cases heard and certainly obtain redress[3] are actually respected. The accused/ suspect/ defendant may also institute an action against any personactio for malicious prosecution against the civil party. This is the terno of section 162, of the CCPC. This rights is vested to the victim only in cases of a complaint with a civil claim which ends with a no case ruling, a verdict of non-guilt in direct summons at the instant of civil party[4]. In essence, while compensation for illegal detention frowns at the legal errors of judicial authorities and guards against their abuses, malicious prosecution protects the suspect/defendant/ accused from the stigma of an unfruitful public litigation. The law to this, discourage situation of arbitrary arrest and unwanted claims by complainants that may affect the peaceful or quite enjoyment of the defendant. Thus, while malicious prosecution seeks to institute an action for lack of proper *legal standi* in bringing the defendant before the Examining Magistrate/trial court, illegal detention seeks to discourage abuse of power and judicial errors. By Sections 236 (1) and 162 of the CCPC, any person (defendant) who after a no-case ruling has been issued in his favour thinks that his detention was illegal can either bring an action against the State for illegal detention or against the complainant for civil damages if he so desires[5].

Our paper therefore, aimed at appraising the Cameroon Criminal Procedure Code with respect to its provisions on malicious prosecution and illegal detention.

II. COMPENSATION FOR ILLEGAL DETENTION

Being an internationally recognized principle within the United Nation system, the United

[2] Section 236 of the Cameroon Criminal Procedure Code.
[3] Ngnintedem Jean-Claude, (2007), « La Détention Provisoire dans le Nouveau Code de Procédure Pénale Camerounais », Annales of the Faculty of Law and Political Science, University of Dschang, Tome 11, p. 149.
[4] *Ibid*.
[5] Chamboli, C., (2021), *Justice Administration under the Cameroon Criminal Procedure Code: An Appraisal,* Faculty of Law and Political Science, University of Dschang, at p. 82-180.

 [ISSN 2581-5369]

Nations (UN) has set up two recognized entities with the primary responsibility of setting the international standards against the use of arbitrary detention: the International Covenant on Civil and Political Rights (ICCPR), an International Human Rights Treaty, and the Working Group on Arbitrary Detention (WGAD), a charter-based body under the United Nations Human Rights Council (UNHRC).

The ICCPR is the primary legal instrument prohibiting illegal detention. Article 9 (1) establishes that:

> *"Everyone has the right to liberty and the security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by the law"*[6].

In addition, Article 6 of the African Charter on Human and People's Rights provides that: "*Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained"*[7].

The International Court of Justice (ICJ) too has conferred significant weight to the ICCPR and its complementary treaty body, the Human Rights Committee (HRC), as standard bearing texts of International Customary Law. Though not authoritative, the ICCPR is highly persuasive according to the ICJ. In *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*[8], the ICJ applies "great weight to the interpretation adopted by the Human Rights Committee", since it was established specifically to surprise the application of the ICCPR. "The point here", writes the Court, "is to achieve necessary clarity and the essential consistency of international law, by granting the HRC such persuasiveness in international customary law, the ICJ makes the ICCPR binding on states regardless of their membership status to the treaty".

In her Fact Sheet, the International Justice Mission, defines illegal detention as "detention that occurs when people are arbitrarily arrested or imprisoned without charge or trial for an indefinite length of time. Without a voice, victims of this crime can remain trapped in prison systems, where they may suffer disease, malnutrition or abuse. Families also suffer in the separation, and may face severe economic hardship as the result of the imprisonment of a

[6] Article 9 (1) of the International Covenant on Civil and Political Rights.
[7] Article 6 of the African Charter on Human and People's Rights.
[8] (2010), Para. 66, 46 I.L.M. 712, available at: http://www.icj-ij.org/docket/files/03/16244.pdf. Accessed on 24th of April 2020.

breadwinner[9]. It is essential therefore, that the legal rules that exist in international law to remedy and prevent those kinds of human rights violations be adhered by national judges and prosecutors, and that lawyers are aware of these contents, to enable them act effectively on behalf of their clients.

This light was never far away from the legislators of the Cameroon Constitution and the Cameroon Criminal Procedure Code. Being a constitutional right, the preamble of the Cameroon Constitution which as per section 65 is part and parcel of the said Constitution[10] affirms that, "no person shall be prosecuted, arrested or detained except in the cases and according to the manner determined by law. Section 236 (1) of the Criminal Procedure Code, is to the effect that: "*Any person who has been illegally detained may, when the proceedings end in a no-case ruling[11] or in an acquittal[12] which has become final, obtain compensation if he proves that he has actually suffered injury of a particular serious nature as a result of such detention*[13]." The Criminal Procedure Code went further to define illegal detention as: "detention by the Judicial Police Officer in disrespect of the provisions of Sections 119 to 126 of the Criminal Procedure Code; detention by the State Counsel or the Examining magistrate in disrespect of Sections 218; the reimbursement of the security deposited at the treasury during remand in the police custody[14] and where the defendant is under judicial supervision or is placed to the court having jurisdiction as per Section 262 of the Criminal Procedure Code".

(A) What will amount to illegal detention/Factors necessary to prove illegal detention?

From the wordings of Section 236 (2) (a) of the CCPC, any detention done by a Judicial Police Officer in disrespect of Section 119[15] to Section 26[16] of the CCPC. Therefore, the custody of

[9] International Justice Mission 2010 Fact Sheet, Para. 1.

[10] Law N°. 2008/001 of 14th April 2008 to amend and Supplement some provisions of Law N°. 96/6 of 18th January 1996 to amend the Constitution of 12th June 1972.

[11] By the wordings of Section 256 (6), a no-case ruling simply means, a ruling that the Examining Magistrate enters where he finds that the facts do not constitute an offence or that the author of such offence is not identified or that there is insufficient evidence to attest that the defendant took part in the commission of the offence. For more on no-case ruling, see, Njulefac Protinus, (2019), "Discharge and Committal for Trial under Cameroon Criminal Procedure Code", *National Journal of Criminal Law*, Vol. 2, Issue 2, at p. 15-25. See also the case of *Onagoruwa v. The State of Nigeria*, (1993) 7 NWLR (Pt. 303) 49. See also the case of *The People v. Terence Fon Acha Alias Bongolo & 4 Others*, (Appeal No. CASWR/03 ICC/2016 (Unreported).

[12] An acquittal is a complete discharge from an accusation.

[13] Section 236 (1) of the CCPC.

[14] *Ibid,* Section 235.

[15] The above Section is to the effect that, where the Judicial Police Officer intends to remand the suspect in police custody, the said officer shall inform the suspect on the grounds for the suspicion and request to make any explanation, if any. Furthermore, Section 119 (2) of the CCPC provides that, time allowed for remand in police custody shall not exceed forty-eight (48) hours renewable once or twice, upon the approval of the State Counsel as provided in Section 119 (2) (c) of the CCPC. Such remand, therefore cannot be ordered on a Saturday, Sunday or any Public Holiday except it has been commenced on the eve of a these days as provided for by Section 119 (4) of the CCPC.

[16] See generally, Sections 120-126 of the CCPC.

a person for a particular claim cannot amount to illegal detention, except such detention supersedes the ordinary time period fixed for investigation by the CCPC for such offence. Section 236 (2) (b) is to the effect that, a detention can be considered as illegal detention where a State Counsel or an Examining Magistrate disrespected the provisions of Section 218 to 235 and 262.

The question one may ask is whether acts carried out by other administrative personalities not mention by Section 236 (2) (a) and (b) does not constitute illegal detention. Base on the above Section, one may agree that the legislator of the Cameroon CPC felt short of listing all personalities whose action in disrespect of procedure can amount to illegal detention. The question thus can be answered in the affirmative as Divisional Officers, Senior Divisional Officers as well as Governors can also detain persons in custody following Section 2 of Law N°. 90/54 of 19th December 1990 Regulating the Powers of Administrative Authorities in Cameroon. Such detention is therefore known as "Administrative Detention" and although, such administrative personnel's cannot be sanction for such act because the CPC fails to make provision to this effect. However, they may face moral sanctions. Such sanction entails an order requesting them to release such detained person. This therefore will go a long way in making them weaker before the public.

(B) Who determines illegal detention?

Reading from Section 236(1) seems the determination of illegal detention is easier and simple to appreciate after a successful no-case ruling or an acquittal. This however is not the case as illegal detention can only be determine as provided for in Section 584 (1) of the CCPC, which thus gives the Judge of the High Court the power to determine illegal detention upon the perusal of an application for *habeas corpus adsubjiciendum* tendered by the applicant[17]. Thus, it is only after the President of the High Court or any Judge of the said court has made an order determining that the action was illegal giving rise to compensation that the party (applicant) can now bring an action for illegal detention. Such decision of the judge ordering for the release of the person detain is subjected to appeal when it is an interlocutory judgment. By the wordings of Section 586(3)(b), such appeal shall be lodged in accordance with the provisions of Section 174 of the said CPC. The section therefore, requires the appeal to be made by way of an unstamped application in four copies and addressed to the President of the Inquiry

[17] Dashaco, J. Tambutoh & Ewang S. Andrew, (2007), "Habeas Corpus under the Cameroon Criminal Procedure Code, in Reading in the Cameroon Criminal Procedure Code, Yaounde, Presses Universitaires d'Afrique, p. 156-157.

Control Chamber. A copy of the ruling appealed against shall be attached to the application[18].

Following Section 236(3) of the Criminal Procedure Code, the compensation for illegal detention shall be paid by the state which may recover same from the Judicial Police Officer, State Counsel or the Examining Magistrate at fault. The claim for compensation shall be awarded at First Instance by the decision of a commission[19]. In a situation where the claim is against a Magistrate, the Commission shall be composed of: A President who shall be a judge of the Supreme Court, two magistrates of the Court of Appeal; a representative of the Ministry in charge of Higher State Control; a representative of the Ministry in Charge of Finance; a Member of Parliament designated by the Bureau of the National Assembly and lastly the President of the Bar Council or his representative[20].

Where the action is against a Judicial Police Officer, the Commission shall be composed of; A President who shall be a judge of the Supreme Court, two Magistrates of the Court of Appeal; a representative of the Ministry in charge of Public Service; a representative of the Ministry of in charge of Higher State Control; a representative of the Ministry in Charge of Finance; a member of parliament designated by the Bureau of the National Assembly; the President of the Bar Council or his representative and a representative of the Department in charge of National Security or the Gendarmerie, as the case may be[21].

Each substantive member shall be designated with an alternate member. They shall be designated for a period of three (3) judicial years. Those from Government Departments and Institutions shall have at least the rank of a Director of the Central Administration. The Commission shall be seized of the matter by application within six (6) months from the date of the end of the illegal detention or from the date when the no-case ruling or acquittal decision becomes final[22]. The procedure to be followed shall be the application before the judicial bench of the Supreme Court[23]. The proceedings shall be in camera[24]. Based on the above provisions, it can be said that, the CPC has made no provision as to when the decision of this bench should be available to the defendant who made the application. This makes it very difficult for aggrieve party to make application for illegal detention, knowing fully well that, redress is far-

[18] Section 274 (1) of the CCPC.
[19] Timtchueng, M., & Assontsa, R., (2007), "Le Nouveau Visage de la Garde à Vue dans la Procédure Pénale Camerounaise", Annales of the Faculty of Law and Political Science, University of Dschang, Tome 11, at p. 109. (pp. 95-110)
[20] Section 237 (2) of the CCPC.
[21] *Ibid*, Section 237 (3).
[22] Section 237 (4 & 5) of the CCPC.
[23] Fonkwe J. Fongang & Eware Ashu, (2019), *Cameroon Criminal Procedure and Practice in Action*, Douala, Édition Veritas, at p. 146.
[24] Section 237 (7) of the CCPC.

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fetched. In addition, after a kin observation of the constitution of the commission to hear matters of illegal detention, it can be affirm that the Code did not make provision for the duration of it constitution. This also, negatively affects the procedure as it makes it a sham, knowing fully well that, such constitution shall be difficult without any precise text for its constituted duration. Furthermore, the Code makes hearing for such a claim which is absolutely against the State non-public. This makes it difficult to understand the bases for the decisions of the commission which as per common sense, shall definitely not be costly to the state, or not even positively awarded to the defendant since his presence or that of his lawyer is not mandatory in the hearing.

III. APPEAL AGAINST THE DECISION OF THE COMMISSION IN CHARGE OF ILLEGAL DETENTION

The Commission shall deliver a reasoned decision, subject to appeal before the Judicial Division of the Supreme Court. The decision from this division shall be considered a civil judgment. The time-limit for such an appeal shall be ten (10) days with effect from the day following the date of the decision from the Commission. The functions of the Legal Department are performed by the Legal Department of the Supreme Court and the judgment of the Judicial Division of the Supreme Court on appeal shall be final[25].

IV. COMPENSATION FOR MALICIOUS PROSECUTION

The tort of malicious prosecution recognises the individual's interest not to be subjected to unjustified litigation[26]. Declining to expand the tort of malicious prosecution a unanimous California Supreme Court in the case of *Sheldon Appel Co. v. Albert & Oliker*[27], observed: "*While the filing of trivial lawsuits is certainly improper and cannot in any way be condoned, in our view the better means of addressing the problem of unjustified litigation is through the adoption of measures facilitating the speedy resolution of the initial lawsuit and authorizing the imposition of sanctions for trivial or delaying conduct within that first action itself, rather than through an expansion of the opportunities for initiating one or more additional rounds of malicious prosecution litigation after the first action has been concluded*".

Although similar to abuse of process (illegal detention), malicious prosecution consists of the malicious institution of a groundless action while illegal detention entails the use of legal

[25] *Ibid*, Section 237 (11).
[26] Byrd, G. Robert, (1969), "Malicious Prosecution in North Carolina", *North Carolina Law Review*, Vol. 4, Iss. 2, at p. 285.
[27] (1989) 47 Cal. 3d 863, 873.

process, which has been validly issued, to accomplish objectives for which it was not intended[28]. As the prosecution of legal action may result in harassment, annoyance, inconveniences, loss of time, legal expenses, confinement, injury to reputation, interference with property, and, perhaps, the invasion of other interest such as tempering with correspondences, the interest protected by a malicious prosecution action may not be regarded as trivial[29].

Under the CCPC, where the complaint involving a civil claim results in a no-case ruling, the defendant may bring a civil action for damages against the civil complainant for malicious prosecution. This is so because, Section 163 (1) of the CCPC relieves or refrains the State Counsel from being responsible for statements of offences given by a complainant who files a claim for damages and also because the Examining Magistrate shall not be bound by the said statement of offence in the complaint or that stated by the State Counsel[30]. To succeed a claim for malicious prosecution therefore, a plaintiff must prove four elements:

- That the original case was terminated in favour of the plaintiff;
- That the defendant played an active role in the original case;
- That the defendant did not have probable cause to support the original case; and,
- That the defendant initiated or continued the initial case with an improper purpose[31].
- WHERE THE ORIGINAL CASE WAS TERMINATED IN FAVOUR OF THE PLAINTIFF

The original case must end before the defendant or respondent in that case may file a malicious prosecution suit[32]. This requirement is relatively easy to prove. The original case qualifies as a prosecution if the defendant or respondent had to appear in court. Hence, it is unclear whether a complaint that is filed, but not served constitutes "commencement" for purposes of malicious prosecution. In *Adams v. Superior Ct.*[33], the court held that, "the tort of malicious prosecution requires a full-blown action … the mere filling of a complaint without service thereof on an opposing party does not constitute action or tactics". The original case need not have gone to trial; it is enough that the defendant or respondent was forced to answer to a complaint in court. If the original case is being appeal, it is not considered terminated and the defendant or respondent must wait to file a malicious prosecution suit.

[28] Byrd, G. Robert, *op. cit*. note 19 at p. 287.
[29] *Ibid*, at p. 285.
[30] *Ibid*, Section 163 (2) of the CCPC.
[31] David, B. Parker & William K. Mills, (2014), *Malicious Prosecution Handbook*, USA, Parker Mills LLP, at p.1.
[32] *Ibid.*
[33] (1972), 2 Cal. App. 4th 521.

To proceed with a malicious prosecution claim, the plaintiff must show that the original case was concluded in his or her favour[34]. Generally, if the original case was a criminal prosecution, it must have been dismissed by the court[35] or the Examining Magistrate, rejected by the Examining Magistrate or the ICC, abandoned by the prosecutor, or decided in favour of the defendant at the preliminary inquiry or on appeal by the decision of the ICC. As a civil claim, the respondent must have had a no-case ruling at preliminary inquiry or upon its appeal at the ICC, it must have disposed of the case in favour of the respondent (now the plaintiff).

If recovery by the plaintiff in a civil action was later reversed on appeal, this does not mean that the action was terminated in favour of the respondent. However, if the plaintiff in the original case won by submitting fabricated evidence or by other fraudulent activity, a reversal on such grounds may be deemed a termination in favour of the respondent. Likewise, the Examining Magistrate will not consider a withdrawal of the complaint lodging the prosecution as a final termination in favour of the defendant.

It still remains a problem under the CCPC whether the entry by the Attorney General of a *nolle prosequi* to an indictment would be a sufficient termination of the proceedings in favour of the defendant to enable him bring an action for malicious prosecution. Following the decision in the American case of *Gilchrist v. Gardiner*[36], it was held that, a *nolle prosequi* is a sufficient termination of proceedings given grounds for malicious prosecution[37]. If this is the case, and taking into consideration the wordings of Section 64 (1) of the CCPC which is to the effect that, "the Attorney General is empowered to enter on express authority of the Minister of Justice, a *nolle prosequi* at any stage of the proceedings before judgment on the merits is delivered, such proceeding can seriously imperil social interest or public order"[38], and can be affirmed that, the entering of a *nolle prosequi* is not an accurate prove that, the defendant had no case against him, since this safeguard aims at protecting State's interest and not that of wrongdoers. To this, we opine that, the legislator of our CCPC should modify and cancel the practice of believing that, a *nolle prosequi* is an actual termination of a criminal proceeding against a defendant, as a *nolle prosequi* only turns to protect "State Order or Public Interest" and not necessarily a prove that the defendant had no case against him[39].

[34] Byrd, G. Robert, *op. cit.* note 19 at p. 1.
[35] See, The 1984 Eighty-Third Report of the Law Reform Committee of South Australia to the Attorney-General, Relating to Civic Actions for Perjury Committed in Criminal Proceedings and to the TORT OF Malicious Prosecution, at p. 8.
[36] (1891) 12 NSWLR (L) 184.
[37] See, Nah Thomas F., (2020), Lecture notes on Criminal Procedure, Faculty of Law and Political Science, University of Dschang, at p. 19.
[38] See generally, Section 64 (1) of the CCPC.
[39] See, Njulefac Protinus, (2019), "Discharge and Committal for Trial under Cameroon Criminal Procedure Code

V. THAT THE DEFENDANT PLAYED AN ACTIVE ROLE IN THE ORIGINAL CASE

In a malicious prosecution suit, the plaintiff must prove that the defendant played an active role in procuring or continuing the original case[40]. He may as well base his mind on the damages levied against him by the civil party. The plaintiff must prove that the defendant did more than simply participate in the original preliminary inquiry. False testimony alone, for example, does not constitute malicious prosecution[41]. Moreover, witnesses are immune from suit for defamation, even if they lie on the witness stand. Such is the case because the concept of a fair and free trial requires that witnesses testify without fear of having to defend a defamation suit owing to their testimony[42].

An action for malicious prosecution focuses on the abuse of legal process, not on defamatory, untruthful statements[43]. If a person helps another person launch a baseless case or takes action to direct or aid such a case, the first person may be held liable for malicious prosecution. The defendant must have been responsible in some way for the institution or continuation of the baseless case. This position of responsibility does not always include criminal prosecutors and civil plaintiffs. For example, if a prosecutor bringing criminal charges is tricked into prosecuting the case by an untruthful third party, the deceiving party is the one who may be found liable for malicious prosecution, not the prosecutor[44].

VI. SITUATION WHERE THE DEFENDANT DID NOT HAVE PROBABLE CAUSE TO SUPPORT THE ORIGINAL CASE

The plaintiff must prove that the person who began or continued the original case did not have probable cause to do so[45]. Generally, this means proving that the person did not have a reasonable ground to support or believe in the plaintiff's guilt or liability. In examining this element, a court will look at several factors, including the reliability of all sources, the availability of information, opportunities given to the defendant to offer an explanation, the reputation of the defendant, and the necessity in the original case for speedy judicial action.

Failure to fully investigate the facts surrounding a case may be sufficient to prove a lack of

", National Journal of Criminal Law, Vol. 2 (2) at p. 22.
[40] David, B. Parker & William K. Mills, *op. cit*. note 24 at p. 2.
[41] *Ibid*.
[42] Tepi S., (2007), "L'indemnisation des detentions provisoires abusives dans le nouveau Code de Procédure Pénale", *Annales of the Faculty of Law and Political Science*, University of Dschang, Tome 11, pp. 179-188.
[43] Byrd, G. Robert, *op. cit.* 15 at p. 288.
[44] See, Njulefac Protinus, (2021), Pre-trial Procedures under Cameroon Criminal Procedure Code: An Appraisal, Ph.D Thesis, Faculty of Law and Political Science, University of Dscahng, at pp. 332-336.
[45] *Ibid.*

probable cause[46]. The termination of the original case in favour of the original defendant (now the plaintiff) may help to prove a lack of probable cause, but it may not be decisive on the issue. The plaintiff should be present to infer that the defendant acted without a reasonable belief in the plaintiff's guilt or liability in the beginning or continuing the original case or inquiry[47]. In a criminal case, an acquittal does not constitute a lack of probable cause[48]. A criminal defendant stands a better chance of proving lack of probable cause if the original case was dismissed by prosecutors, an Examining Magistrate, or the ICC. The criminal process provides several safeguards against prosecutions that lack probable cause, so a full preliminary inquiry tends to show the presence of probable cause.

VII. WHERE THE DEFENDANT INITIATED OR CONTINUED THE INITIAL CASE WITH AN IMPROPER PURPOSE

In a malicious prosecution, the plaintiff must prove with specific facts that the defendant instituted or continued the original inquiry with improper purpose[49]. Sheer ill-will constitutes an improper purpose, and it may be proved with facts that show that the defendant resented the plaintiff or wanted somehow to harm the plaintiff. However, the plaintiff does not have to prove that the defendant felt personal malice or hostility towards the plaintiff. Rather, the plaintiff needs only to show that the defendant was motivated by something other than the purpose of bringing the plaintiff to justice[50].

Few defendants admit to improper purposes, so improper purpose usually must be inferred from facts and circumstances. If the plaintiff cannot discover any apparent purpose, improper purpose can be inferred from lack of probable cause[51].

In *Hodges v. Gibson Products Co.*[52], all the elements for malicious prosecution were observed. According to Chad Crosgrove, the manager of Gibson Discount Center West Valley, Utah, store money was noticed missing during the afternoon of September 4th 1981. Both Crosgrove and part-time bookkeeper Shauna Hodges had access to the money, and both denied taking it. On the 9th of September, Crosgrove and Gibson officials went to the local police station where

[46] *Ibid.*
[47] Boeschen C., (2021), "What is malicious prosecution?" at https://www.allaw.com-nolo-law, accessed on 3st January 2021.
[48] The 1984 Eighty-Third Report of the Law Reform Committee of South Australia to the Attorney-General, Relating to Civic Actions for Perjury Committed in Criminal Proceedings and to the Tort of Malicious Prosecution, at p. 8.
[49] https://en.m.wikipedia.org-wiki, accessed on the 3rd of January 2021.
[50] Thurston L., (2019), "Malicious Prosecution", at https://www.lopeslaw.com, accessed on the 20th of May 2020.
[51] Jonathan, K. Van Patten & Willard E. Robert, (1984), "The Limits of Advocacy: A proposal for the Tort of Malicious Defence in Civil Litigation", *Hastings Law Journal,* Vol. 35, Iss. 6 at p. 924.
[52] (Utah 1991) 811 P.2d 151.

they lodged an accusation for theft against Hodges. Crosgrove was not accused. Hodges was arrested handcuffed, and taken to jail. After a preliminary inquiry, she was released on bail and ordered to return for trial on May 12th 1982.

After Hodges was formally charged, an internal audit at Gibson revealed that Crosgrove had embezzled approximately nine thousand (9,000) dollars in cash and goods from the store. The theft had occurred over a time period that included 4th September 1981. Gibson still did not charge Crosgrove with theft. Instead, he allowed him to resign with a promise to repay the money. The night before Hodge's trial began, and almost two months after Crosgrove's embezzlement was discovered, management at Gibson notified Hodge's prosecution of Crosgrove's activities. The prosecutor immediately dropped the charges against Hodges. Hodges then filed a suit for malicious prosecution against Gibson and against Crosgrove.

At trial, Hodges was able to prove all the elements of malicious prosecution to the jury's satisfaction. That is, in the first place, she had been subjected to prosecution for theft, and the matter had been terminated in her favour. Secondly, she had sued the correct parties, because Gibson and Crosgrove were responsible for instituting the original proceedings against her. Thirdly, she had ample evidence that the original prosecution was instituted without probable cause because Gibson failed to investigate Crosgrove until after she had been arrested and because the prosecutor dismissed the charges against her and lastly, there were enough facts for the jury to infer that both Gibson and Crosgrove had acted with improper motive: Gibson had acted with an apparent bias against Hodges, and Crosgrove apparently had accused Hodges for self-preservation. The jury awarded Hodges a total of eighty-eight thousand (88,000) dollars in damages; seventy-seven thousand (77,000) dollars from Gibson, and eleven thousand (11,000) dollars from Crosgrove. The verdict was upheld on appeal. Thus, it should be noted that each of these elements presents a challenge to the plaintiff[53].

VIII. CONCLUSION

Despite its lengthy nature, the Criminal Procedure Code has endeavour to ensure that persons who are not actually involved in a matter should not stand trial. As if that is not enough, the Code has made possibility for a claim of right by any person who thinks their rights were violated during their prolong stay in custody, to bring a claim after the final decision of the Examining Magistrate must have ended in a no-case submission. This can be done by establishing proceedings for malicious prosecution or for illegal detention against the complainant and state authority respectively. However, the procedure to obtain redress for

[53] https://law.jrank.org. Accessed of the 22nd of April 2020.

illegal detention and malicious prosecution are so wide and ambiguous, making these remedies difficult to obtain. Another problem the Code is yet to address as far as the remedy for malicious prosecution is concerned is whether sanctions are a substitute for malicious prosecution. In *Andrus v. Estrada*[54], it was held that, sanction may be invoked to remedy trivolous lawsuits. Another worry is that the CCPC fails to provide for tort-type damages such as emotional distress damages. Despite this, one may assume that, by the wordings of Section 162 of the Code, the word "damages" entrust to the party making the malicious prosecution suit, to exhaust claims for tort damages. Lastly, it is a problem knowing whether sanctions awarded and actually paid to the malicious prosecution plaintiff in the prior proceedings should be subject to an offset. However, we opine that, such should not be the case as it would amount to a double recovery.

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[54] (1995) 39 Cal. App. 4th 1030.

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