

DESCRIPTION FOR THE GENERAL PUBLIC

It is obvious that elimination of miscarriages of justice is impossible to achieve. However, this must lead to conclusion, that wrongful deprivation of liberty, as a result of miscarriage of justice, should meet adequate reaction of the state. Indeed, mistakes are particularly harmful if due to the incorrect application of law they result in wrongful deprivation of liberty of a person involved in criminal case (especially an accused, but also e.g. a witness). The accused may be arrested, detained without any justified reason, wrongfully convicted or the witness may be arrested by mistake or wrongfully punished with the penalty of arrest. That problem cannot be waved aside. To the contrary, the state should be obliged to compensate the loss that resulted from wrongful deprivation of liberty. Each error undermines the trust to the criminal justice system. Admitting that the state made a mistake and providing compensation to the person that suffered from such error has a dual meaning. First of all, it compensates the loss the detained person suffered, at least to some extent. Secondly, it makes an impact on public opinion – by accepting the responsibility, the state strives to rebuild the trust strained by such error.

The project is aimed at establishing optimum legal regulation of state liability for wrongful deprivation of liberty and compensation procedure allowing to claim for damages. The state should take the responsibility for obviously unlawful acts (e.g. detaining a person in case where there is no danger of obstructing the proceedings or fleeing). But the responsibility should also be accepted for all wrongful deprivation of liberty even if not resulting from unlawful acts (e.g. when decision to arrest and detain the suspect was lawful at the time when it was made but turned out to be wrongful because the defendant was acquitted). Moreover, the procedure in which compensation claims are filed should be modified to become as informal as possible. This will allow not to deter people by multiplying excessive formalities. The procedure should also establish the environment in which the position of a plaintiff, who claims that deprivation of her liberty was wrongful, is strengthened. She should be equipped among other with an accessible right to be assisted by *ex officio* lawyer, right to information on how to claim damages as well as right to be exempted from all costs in order to facilitate obtaining compensation.

Three research methods will be engaged in the project. First of all, Polish law relating to the compensation for wrongful deprivation of liberty will be put under the scrutiny. The analysis will focus on regulations to that matter as stated in the Polish Constitution, relevant international treaties (European Convention on Human Rights and Fundamental Freedoms) and in the Code of Criminal Procedure. Secondly, the project assumes the use of comparative method. The regulations concerning compensation mechanisms adopted in four countries, i.e. England and Wales, the United States of America, France and Germany will be discussed to provide the comparative perspective on distinct models of compensation for wrongful deprivation of liberty. Finally, the study of practice will be carried out through case file analysis and survey among judges. Hopefully, this will allow for establishment of optimum model of compensation for damages resulting from wrongful deprivation of liberty in criminal proceedings in Poland.