

Right to Effective Legal Remedy against the Abuse of Law by the Prosecutor or the Court in Criminal Proceedings. Constitutional and European Perspective.

Abuse of law by state organs in criminal proceedings has been grown up under the expanding scale of wrong practice in previous years. Those practices relates to execution of temporary detention, admission of wrongfully achieved evidence, limitation of access to the court, access to legal aid. Permission to such action for gaining efficiency of a trial, and frequent impossibility of opposing effective methods have a huge impact on the criminal process. The research focus on right to effective legal remedy against the abuse of law by state organs in criminal proceedings from constitutional and European perspective. The basic of the research is the analysis how to ensure the right to effective remedy in the event of improper implementation of the rights of the parties, resulting from the abuse of law by the prosecutor or court. These studies have a pioneering status in the Polish science.

1. Research project objectives/Research hypothesis

1) The concept of abuse of law by state organs in criminal proceedings is not sufficiently investigated. 2) Abuse of law by prosecutor and the court is a source of significant restrictions on the rights of participants to the proceedings and has a negative impact on the fair trial standard. 3) Effective legal remedies for individuals in criminal proceedings shall be of a different nature, having regard the nature of limitation of individual rights resulting from abuse of law by state organs: a) it may be an appeal or another judicial remedy; b) it may be an obligation to repeat the activities; c) it may be an obligation to complete activities; d) it may result in inadmissibility of evidence or restriction of use in trial; e) another way of recuperation. 4) Obligation to introduce an effective legal remedy should be the principle in a case of a violation individuals' rights resulting from abuse of law by prosecutor or the court in criminal proceedings.

2. Research project methodology

- Critical analysis of EU legal instruments, including; critical analysis of other European legal instruments, relevant to the determination of the essence of the "effective legal remedy" concept;
- Comparative analysis of English, Belgium and US legal systems and the concept of abuse of law;
- Study on the case law of the European Court of Human Rights and on the enforcement of judgments imposing obligation to introduce "effective legal remedy";
- Investigation and clarification of a constitutional standard of effective legal remedy and constitutional standard of protection from abuse of law by state organs;
- Study on the case law of the Supreme Court and Research on the case law of national courts
- Internal and external consultations with experts, which are as follows: Judges of the Supreme Court of Poland; Judges of the Constitutional Court of Poland; Judges of the European Court of Human Rights; Department for Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs; the Cambridge Center for Criminal Justice, University of Cambridge; the Institute for International Research on Criminal Policy, Belgium; the College of Law, Syracuse University, United States.

3. Expected impact of the research project on the development

- 1) Indication of the phenomenon of abuse of law in criminal proceedings.
- 2) Implementation of the concept of "effective legal remedy" as a possible efficient measure for abuse of law by prosecutor and the court in criminal proceedings.
- 3) Creating the coherent system of protection from abuse of law by prosecutor and the court in criminal proceedings based on the "effective legal remedy" concept.
- 4) Concept of the abuse of law transferred from civil law and from legal systems of other member states of the EU to the Polish criminal proceedings.
- 5) Introducing the concept of "effective legal remedy" and an element of the right to a fair trial of the individual in the criminal proceedings.