

DESCRIPTION FOR GENERAL PUBLIC

Significant importance must be attached to search as an example of investigative action aimed at discovery of evidence. Failures in conducting lawful and reasonable searches have direct impact on admissibility of evidence during trial. Nonetheless, search in its nature significantly interferes with rights and freedoms of individuals guaranteed by the Constitution of Republic of Poland, such as right to privacy, personal inviolability and inviolability of home. Due to the obvious conflict between these values, the aim of this proposal is to shape legal provisions concerning search in a way that will reconcile effectiveness of investigation and adequate protection against unreasonable searches and unlawful interference with individual's rights and freedoms to that matter.

In order to develop an optimum model of reasonable search, several research problems have been identified. First, the discretion in adopting one of two available search regimes should be considered as a substantive problem. Apart from regular searches conducted for the purpose of criminal investigations (under regime prescribed in the Code of Criminal Procedure [CCP]), Police may conduct other activities of similar nature, e.g. personal control or border searches. Such activities (so-called ordinal searches) are regulated separately in Police Act in less precise manner and contain less stringent requirements (e.g. lack of requirement for court/prosecutor warrants). This creates significant risk of unlawful interference in rights and freedoms of individual. Therefore, researching phenomenon of Police use of ordinal searches as if in replacement of regular search is seen as crucial first step in development of the project.

Moreover, provisions of CCP and Police Act create the risk of unreasonable and disproportionate searches. Provisions aimed at minimizing risk of unlawful searches are unclear and cause major problems in their interpretation. Among number of provisions of quite a general nature directed at protection of rights of individual, several regulations are simply missing. No catalogue of offences that justify search is provided. Similarly, there is no statutory requirement to provide factual or evidentiary justification in a search warrant or to directly indicate who or what should be seized through search. Also circumstances allowing Police to search without a warrant are not clearly identified. The latter leads to situation in which searching without a warrant become a rule and the outcome of such mode of search cannot be undermined. Therefore, the primary aim of this project is to develop appropriate standard of normative regulation of search that would allow for effective investigation simultaneously guaranteeing protection for individual's rights.

Third, the law does not provide for sufficient control over conducted searches both regular (for criminal process purposes) and ordinal. It will be analyzed as to whether issuance of search warrants as well as confirmation of no-warrant searches should be left for exclusive competence of the court. It will be also discussed whether no-warrant searches should be subject to mandatory court confirmation or triggered by a motion. Finally, procedural consequences for admission of evidence resulting from illegal searches due to their disproportionality or unreasonability should be determined.

This research project will be implemented through three distinct research methods. The first one is the analytical method focused on legal provisions concerning search as prescribed in CCP and Police Act. Subsequently, the practice of conduct of search will be tested through case file study and survey among practitioners. The case file survey will concern closed cases covering nine district courts in Poland and three regional courts (together 1500 cases) in which searches have been conducted (i.e. concerning thefts, illegal possession of drugs and robbery). The survey among practitioners will involve judges, prosecutors and police officers. This will allow for a comprehensive evaluation of search practice. Since the aim of the project is to develop an optimum model of search, also comparative analysis is necessary to achieve this goal. The research will focus on legal provisions of common law and continental law states, i.e. UK, US, Italy, Germany and France to provide guidance to that matter.

The implementation of presented research methods should lead to development of optimum model of search that guarantees appropriate proportions between public interest as expressed through effectiveness of investigation and constitutionally protected rights of individual.