

Hindsight effect (i.e. the tendency to overestimate the foreseeability of past events) is facilitated by two factors: the inability to disregard relevant information, and motivational factors – we want to perceive our cognitive capacities as best as possible. This psychological effect is one of the symptoms of so called “bounded rationality” (anchoring effect may be pointed out as the another) – it allows people to cope with complex environment under imperfect information and time limits, but often lead to systematic distortions of judgements as well. The operation of such cognitive phenomena may be much unwelcome in the domain of judicial decision-making, where choices should be based solely on the legally relevant factors. As the existing literature in behavioral science suggests, both professional judges and lay-jurors, rather than following a systematic reasoning scheme, may in fact rely on intuitive, heuristic reasoning. If so, judicial reasoning may be influenced by various extra-legal factors, including inter alia cognitive effects. Hindsight bias is exceptionally relevant in legal context. It may prove to be especially dangerous when the legal responsibility is based on the foreseeability of a negative outcome of an act. It can be a problem wherever some normative models of a prudent person or conduct are used, for example in tort law. The existing empirical literature in hindsight bias is focused (with couple notable exceptions) with either common law system or lay-people in civil law system. The civil law oriented empirical literature lacks systematic studies of this effect. Poland, as one of the country within this legal tradition could serve as a field to conduct the analysis of susceptibility of hindsight bias in judiciary.

The above characterisation of the tension between the theoretical model of judicial decision making and empirically demonstrated susceptibility of judges to various cognitive biases leads to the following research problem:

There is an urgent need to assess to what extent judges in the Polish legal system are susceptible to the hindsight effect and whether this susceptibility is systematically reduced by factors related to legal training or institutional design of Polish judiciary.

The project will first integrate these conceptual elements to the legal studies expertise and then relate the conceptual system to judicial decision-making. Core concepts for the project such as legal reasoning, legal efficiency and justice, and hindsight bias will be worked out in an integrated common theoretical basis for the project.