

The aim of my research project is to reconstruct the 'mechanism for adjudicating the undoubted wrongfulness of pre-trial detention' and to verify if and when courts find that pre-trial detention was already wrongful at the time of adjudicating its use or extension. The draft addresses the issue of the State Treasury's liability for damages for wrongful pre-trial detention from both a theoretical and practical perspective. This issue is important insofar as "errors of criminal procedure authorities" in the use of pre-trial detention result in unjust interference with the fundamental rights and freedoms of the individual.

Unfortunately, in spite of numerous rulings of the European Court of Human Rights against Poland, further examples of abuse in this area continue to emerge, also in the context of the availability of compensation for undoubtedly wrongful pre-trial detention. The increase in the number of pre-trial detainees and increasingly frequent cases of extending pre-trial detention beyond the basic periods provided for in the Code of Criminal Procedure are cause for concern. This problem negatively affects citizens' trust in judges and the judiciary, as well as the international perception of the rule of law in Poland.

The project aims to answer specific research questions, including the standards of compensation for unfair pre-trial detention derived from Strasbourg jurisprudence. The project also examines whether compensation rulings take into account unfairness caused by unjustified prolongation of criminal proceedings.

The project proposes several hypotheses. The first suggests that the unfairness of pre-trial detention may exist at the time of the decision to use or extend it, but may not always be recognised by the courts. The second hypothesis suggests that the reasons for such errors are not only legal but also extra-legal, including time pressure, routine and public expectations of penal populism. The third hypothesis assumes that Polish courts do not apply the Strasbourg interpretation of the Code of Criminal Procedure in compensation cases. The fourth hypothesis suggests that courts do not take into account previous omissions related to pre-trial detention when deciding on compensation claims based on other grounds.

The project fills a gap in research by conducting a comprehensive analysis of the basis of judicial reasoning in cases of wrongful pre-trial detention and comparing it with the Strasbourg standards. Using a triangulation of research methods, including analysing case files and interviewing judges, the project aims to provide a comprehensive understanding of pre-trial detention decision-making.

So far, a study combining theory and practice using the contexts, methods and sample size proposed by the principal investigator has not yet been conducted. The mentioned Strasbourg context on pre-trial detention has only been analysed by K. Wisniewska (2020). The results also contain conclusions from case analyses, but completed in the first half of 2016, and therefore cannot be considered fully up-to-date at present. Especially given the change in the dynamics of pretrial detention after 2015.

The research was also undertaken at a socially and politically important moment. The ongoing transformation of the position of judges since 2016, as well as the political pressure exerted on members of the profession (e.g. the conduct of disciplinary proceedings against judges), mean that a matter covered by the rather broad scope of judicial discretion, such as the adjudication of pre-trial detention, may constitute a field for analyses of changes in the sense of judicial independence. It is worth noting that this problem does not only concern Poland. It is one of the features of penal populism, which is generally gaining popularity at present.

The findings and results of the research may contribute to a better understanding of how the law works in practice and may have an impact on potential improvements in pretrial detention practices.

The results of my analyses will be published in the form of scientific articles in international and national journals and presented at national and international scientific conferences.