

**Model of compensation for unlawful or wrongful deprivation of liberty
caused by defective criminal proceedings**

Summary

Deprivation of liberty is the most far-reaching restriction of the fundamental rights and freedoms in the course or in consequence of criminal proceedings. It may result from a miscarriage of justice (wrongful custodial sentence, stay in a psychiatric facility) or occur during the proceedings (detention on remand, arrest, psychiatric observation). It is necessary to distinguish between deprivation of liberty that was lawful at the time of its imposition, but seems unjustified in light of matters revealed afterwards (especially the issued verdict), and deprivation of liberty that was already unlawful at the time when it was applied. The first type may be described as wrongful, whereas the second one – as illegal.

The right to compensation for the deprivation of liberty by state authorities is derived from the Constitution of the Republic of Poland and from the acts of international law, such as International Covenant on Civil and Political Rights and European Convention on Human Rights. In domestic legislation, compensation for wrongful conviction, detention on remand or arrest is regulated in Chapter 58 of the Code of Criminal Procedure. Assigning this issue to the criminal procedural law has a long tradition – it was also regulated therein under the previous codifications of 1928 and 1969. A constant tendency to expand the scope of responsibility of the State Treasury for the deprivation of liberty related to criminal proceedings can be observed over the past century. Nevertheless, certain measures which involve the deprivation of liberty (e.g. psychiatric observation, disciplinary arrest) are still not subject to this liability. Doubts also arise when a cross-border element appears, as well as issues such as the possibility of excluding or limiting the liability of the State Treasury on the basis of the behaviour of the injured party and his or her contribution to the deprivation of liberty or the inclusion of the period of actual deprivation of liberty towards the penalty. Finally, calculating the amount of damages gives rise to significant discrepancies in judicial practice. Another area that has not been comprehensively developed is compensation proceedings, insufficiently regulated in Chapter 58 of the Code of Criminal Procedure. In recent years, it has been proposed in the legal writing to abandon a separate path for pursuing compensation claims and hear them in ordinary civil proceedings.

For these reasons, compensation for imprisonment related to criminal proceedings is an important theoretical as well as practical issue. The aim of this work is to reconstruct the current model of liability for illegal or wrongful deprivation of liberty, assess it and formulate a proposal for the optimal model.

The dissertation has been divided into five chapters. The first chapter presents an outline of the development of state liability for wrongful or unlawful deprivation of liberty both in European and Polish law (with special focus on the latter). The aim of these considerations is to demonstrate whether the institution of compensation for wrongful deprivation of liberty in its current form is historically determined. The second chapter is devoted to the constitutional and international legal framework of the State Treasury's liability. Its aim is to reconstruct minimum standards in the analysed area. In the third chapter, a comparative analysis has been conducted with regard to four selected legal systems: German, French, English and Welsh as well as Swiss. This analysis serves to present contemporary models of state responsibility and to critically assess their advantages and disadvantages. These considerations may be – and in fact are in further chapters – used to evaluate the Polish model and possibly transplant some specific regulations into Polish law. The fourth and fifth chapters present dogmatic and legal considerations regarding, respectively, the substantive principles of the State Treasury's liability and compensation proceedings. The analysis refers to legal scholarship and jurisprudence as well as to the previous conclusions of historical, constitutional and comparative considerations. Building upon the findings of these chapter, the author has formulated several conclusions and proposals for amendments to the Code of Criminal Procedure.

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