

Limitation periods in claims for wrongful conviction, temporary arrest or detention

by

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There is no justice system capable of avoiding errors, but there must be one to compensate them.

The most injurious example are miscarriages of justice resulting in the conviction, temporary arrest or detention of an innocent person. For these reasons, in a democratic rule of law there must exist a system to guarantee to such a person the possibility to claim compensation from the Treasury for the damage sustained and harm suffered in connection with the wrongful conviction and the execution of the penalty, as well as in any situation of undoubtedly wrongful temporary arrest or detention. This compensation may be pursued under the provisions of the Polish Code of Criminal Proceedings (hereinafter the CCP).

Furthermore, democratic standards require that the Treasury's liability on this account should not depend on proving the existence of guilt on the part of the procedural authority. Otherwise the efficiency of satisfying the compensation claims of injured persons would suffer a significant limitation.

The achievement of fair-trial standards is affected by regulations determining the position of a detainee participating in criminal proceedings. In accordance with Article 41.1 of the Constitution of the Republic of Poland personal inviolability and freedom shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only on terms and under procedures specified by statute.

'The right to personal liberty is one of the most important human rights, not infrequently constituting a precondition for the possibility of exercising other rights and liberties expressed in the provisions of the Constitution or Acts of Parliament. For this reason not

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only did the lawmaker constitutionalize it, he also introduced detailed regulation pertaining to the protection of it.²

The Constitution of the Republic of Poland mandates in its Article 41.5 that, 'Anyone who has been unlawfully deprived of liberty shall have a right to compensation.' This regulation is a further development of the general rule expressed in Article 77.1 of the Constitution of the Republic of Poland, which establishes the liability of the Treasury for damage inflicted by the actions of public authorities.

However, in bringing forth compensation claims it is necessary beyond doubt to bear in mind the time limits which are inseparable and of great significance to the trial. In Polish criminal procedure Article 555 CCP, in its chapter 58, provides for a one-year period to pursue claims, after the expiration of which a party, in this case the public prosecutor, may raise the limitation defence.

Limitation periods

Limitation of claims for wrongful conviction, temporary arrest and detention is regulated by Article 555 CCP. This provision mandates that claims regulated in the chapter are subject to limitation with the lapse of one year after the decision providing the basis for compensation becomes final.

For temporary arrest — one year after the ruling ending the proceedings in the matter becomes final; for detention — after the date of release. The parties of these proceedings are the public prosecutor as a representative of the Treasury, and the person pursuing claims as the petitioner.

The time limits provided in Article 555 CCP for bringing claims for compensation are civil-law³ limitation periods and are governed by solutions established in Articles 117.2 and 5 of the Polish Civil Code (hereinafter the CC). It is not a time bar, and therefore failure to submit the claim within the one-year period does not cause the claim to expire and be lost, nor does it close the path to its enforcement.

'The lapse of the time limit enables the obligor against whom the claim is available to avoid

² Constitutional Court decision of 10 July 2007, SK 50/06.

³ Cf. resolution of 7 justices of the Supreme Court of 19 February 1997, I KZP 38/96.

discharging it, while the debtor's raising the limitation defence usually results in the dismissal of the action encompassing the time-limited claim. While such a claim continues to exist, as a natural claim, as a time-limited claim it can no longer be pursued successfully before a court. As a result, there is no possibility of non-voluntary satisfaction of such a claim. The respondent's raising the limitation defence has the consequence of depriving the claimant of the right to enforce his claim.⁴

Thus, submitting a demand for compensation after the lapse of the aforementioned time limits leads to its dismissal. From this it follows that the court hearing the case cannot take account of the limitation *ex officio*. Submission of the compensation claim after the expiry of the one-year limit provided in Article 555 CCP leads to the dismissal of the claim solely where the public prosecutor raises the limitation defence, but not in an absolute way, i.e. on condition that reliance on that defence will not be deemed contrary to the principles of social cohabitation.⁵ It is beyond doubt that such an assessment must be made comprehensively and have regard to the entirety of the circumstances of the relevant case.

Submission of the compensation claim by the entitled person after the lapse of the one-year limitation period may be caused by different circumstances, such as receiving information about the right to be compensated when the limitation period has already expired or some other serious obstacles (e.g. long-term disease making the person bedridden). Also article 5 CC will find application where the time limitation of the claim was brought about by extraordinary circumstances⁶, e.g. wrong instruction of the injured party by the court or public prosecutor in a letter addressed to that party⁷.

Paradoxically, the CCP does not provide for the court's obligation to instruct a person wrongfully convicted, arrested or detained about the time limits for pursuing compensation. Granting the limitation defence and dismissing the claim in such a case could be at odds with a basic sense of justice. 'This type of further victimization — harm to the person entitled to compensation — is prevented by the abuse of right construct introduced in Article 5 CC. It is beyond a doubt that in some cases the limitation defence should not be granted; namely, that

⁴ Decision of the Court of Appeals in Łódź of 21 May 2013, II AKa 70/13.

⁵ Supreme Court decisions of 14 January 2004, III KK 207/03 and 18 October 2002, V KK 259/02.

⁶ Supreme Court decision of 17 March 2000, WA 7/00.

⁷ Supreme Court decision of 11 July 2002, IV KK 172/02.

should not be done where against the background of special circumstances of the relevant case the submission of the claim after the time limit is fully justified, in which connection the use of the limitation defence must be deemed contrary to the principles of social cohabitation (Article 5 CC).⁸

'In some situations, this might be at odds with a basic sense of justice. Such outcomes are prevented by the abuse-of-right construct established in Article 5 CC.⁹ In the face of the foregoing, 'in carrying out the directive stipulated in Article 5 CC, the court judging the merits should comprehensively consider and assess whether raising the limitation defence is not contrary to the principles of social cohabitation.'¹⁰

Furthermore, it should be noted that there arises from the provisions of international law a command to shape the institution of compensation for wrongful conviction, temporary arrest or detention in such a way as to give to those rights a real effect¹¹.

However, in those situations where there is a culpable lapse of the time limit for bringing claims in the proceedings for compensation for undoubtedly wrongful arrest, in the absence of other objective reasons justifying the delay, this means that the public prosecutor's reliance on the limitation defence cannot be regarded as abuse of a right¹². In such circumstances the claim is dismissed.

The course of the limitation period

The limitation period, being one year in all cases provided in chapter 58 CCP, commences to run depending on the claim it pertains to:

1) from the date the ruling giving basis to the compensation claim becomes final — in the case of wrongful conviction or imposition of a security measure;

⁸ Resolution of 7 justices of the Supreme Court of 19 February 1997, I KZP 38/96.

⁹ Article 5 CC: 'One may not use his right in a manner contrary to the socio-economic purpose of such a right or with the principles of social cohabitation. Such an action or omission on the part of the holder of the right shall not be deemed exercise of a right and shall not enjoy protection.'

¹⁰ Supreme Court decision of 7 October, III KK 312/03.

¹¹ Cf. Article 14.6 of the International Covenant on Civil and Political Rights, appendix; Article 5.5 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR), CETS no. 005; Article 3 Protocol 7 ECHR.

¹² Decision of the Court of Appeals in Łódź of 8 September 2011, II AKa 92/11.

2) the date the ruling ending the proceedings in the matter becomes final — in the event of undoubtedly wrongful temporary arrest;

3) the date of release — in the case of undoubtedly wrongful detention.

The course of the limitation period is calculated according to the principles defined in chapter 14 CCP, which regulates the calculation of time windows, and commences only when the party entitled to be compensated is notified in the manner prescribed by provisions of the Code of Criminal Procedures about the contents of the final judgement giving basis to the pursuit of such a claim against the Treasury¹³.

The fact is worth noting that: 'the limitation period runs after the judgment ending the proceedings in the matter becomes final; this has the consequence that the submission of a complaint in cassation against the final ruling giving basis to the pursuit of compensation for wrongful conviction or undoubtedly wrongful temporary arrest does not withhold the finality and enforceability of such a ruling, nor does it prevent the pursuit of the aforementioned claims or belong to those events or actions set out in the provisions of the Civil Code which could result in a suspension or interruption of the course of the limitation period provided in Article 555 CCP for the pursuit of such claims.'¹⁴ Thus, where: 'a complaint in cassation against the final sentence of acquittal is dismissed, the limitation period provided in Article 555 CCP runs from the date such an acquittal becomes final and not the date of the Supreme Court decision dismissing the appeal.'¹⁵

Is the one-year limitation period for the pursuit of claims for compensation for wrongful temporary arrest consistent with the Constitution of the Republic of Poland?

In 2012, the Constitutional Court of the Republic of Poland ruled on a complaint concerning the constitutionality of Article 555 CCP to the extent it introduces a one-year limitation period for the pursuit of compensation against the Treasury for undoubtedly

¹³ Supreme Court order of 9 January 1996, WRN 106/95.

¹⁴ Cf. Supreme Court order of 8 December 1980, KZ 216/79.

¹⁵ Supreme Court order of 12 January 1990, WZ 67/89.

wrongful temporary arrest. In its judgment the Constitutional Court found that Article 552 was consistent with Article 41.5 of the Constitution of the Republic of Poland¹⁶.

The matter concerned Henryk C., who on 19 May 2012 brought a constitutional complaint to determine the inconsistency of Article 555 CCP, to the extent the provision introduces too short a one-year limitation period for the pursuit of compensation from the Treasury for undoubtedly wrongful temporary arrest of a citizen of the Republic of Poland, preventing the compensation to be pursued in a longer period in a state ruled by law, with Articles 2, 41.1 and 41.5, 31.1 and 32.1 of the Constitution¹⁷.

The constitutional complaint was filed in connection with the following facts¹⁸¹⁹:

'The complainant was detained on 20 July 2000 and, under the 21 July 2000 order of the District Court in Z., temporarily arrested for three months. The Regional Court in P., in its 9 August 2000 order, modified the challenged order of the District Court in Z. by rescinding the preventive measure of temporary arrest and imposing Police supervision instead.

In the 11 July 2002 decision of the District Court in K., the complainant was convicted of the crime defined in Article 292.1 of the Criminal Code. The Regional Court in K., in the 1 July 2003 decision, modified the 11 July 2002 decision of the District Court in K. and acquitted the complainant of the act charged in the indictment.

On 30 June 2006, the complainant filed an action for compensation from the Treasury. In regard to the amount of compensation pursued, being PLN 300,000, the matter was remitted to the Regional Court in K., Criminal Division II, to be disposed of in accordance with the provisions of chapter 58 CCP.

During the proceedings the public prosecutor raised the defence of limitation arising from Article 555 CCP. The complainant indicated that he had not been aware of the contents of Article 555 CCP and that no one had instructed him that for the pursuit of claims for wrongful temporary arrest he had had only one year after being acquitted by the Regional Court in K.

¹⁶ Constitutional Court decision of 11 October 2012, SK 18/10.

¹⁷ *Ibidem*.

¹⁸ *Ibidem*.

The Regional Court in K., in its decision of 27 June 2008, dismissed the complainant's petition under Article 555 CCP. The Court found that the complainant could pursue his claim until no later than 1 July 2004. Filing the claim on 30 June 2006 did not allow for the petition to be granted, due to the time limitation of the claim.

The complainant appealed against that decision, alleging infringement of substantive law arising from Article 555 CCP and pointing out that the one-year period for the pursuit of the claim was too short relative to other limitation periods. In the 18 February 2009 decision, the Court of Appeals in S. sustained the challenged decision, finding the appeal filed by the petitioner's counsel to be manifestly ill-founded.²⁰

In consequence, a constitutional complaint was filed in order to test the consistency of:

Article 555 CCP, to the extent the provision introduces too short a one-year limitation period for the pursuit of compensation from the Treasury for undoubtedly wrongful temporary arrest of a citizen of the Republic of Poland, preventing the compensation to be pursued in a longer period in a state ruled by law, with Articles 2, 41.1 and 41.5, 31.1 and 32.1 of the Constitution.

Having considered the matter, the Constitutional Court ruled that the one-year limitation period for the pursuit of compensation from the Treasury for undoubtedly wrongful temporary arrest was consistent with the Constitution. In its opinion, the Constitutional Court noted that: 'the issue of the length of limitation periods may not be regarded as testing the law for compliance with the equality principle. This is because there is no constitutional right to the equal treatment of subjects in regard to the limitation periods of their claims. Despite the general tort liability, the limitation period of claims arising from this liability may be set differently depending on the identification of a relevant criterion delimiting the category of similar subjects.'²¹²² Additionally, the Constitutional Court found that: 'the time limits for the pursuit of compensation claims of which the Treasury is the sole addressee are usually shorter than the 10-year period (...),' provided in the Civil Code (Constitutional Court decision of 14 July 2004, SK 8/03, OTK ZU no. 7/A/2004,

²⁰ *Ibidem*.

²¹ *Ibidem*.p.22.

item. 65, where the one-year limitation period for claims against the Treasury, provided in Article 6.1 of the Act of 15 November 1956 on the Liability of the State for Damage Inflicted by State Officials; Dz. U.54.243 as amended, was not found insufficient for the pursuit of claims).¹²³

Furthermore, the Constitutional Court found that: 'Article 555 CCP affords equal treatment to all subjects pursuing compensation for undoubtedly wrongful temporary arrest. There is here therefore no non-proportionality of the length of limitation periods.'¹²⁴

The Constitutional Court also found that: 'the regulation challenged does not violate the essence of the right to be compensated. The compensation may be awarded under the provisions of chapter 58 CCP. The way the time limitation is shaped in Article 555 enables the pursuit of the claim also after the lapse of this period. This constitutes a guarantee that in situations where the principles of social cohabitation so require, and therefore where the petition for compensation is filed when the limitation period has already lapsed, the compensation may be granted due to special circumstances. Ignorance of the law, however, may not be such a circumstance.'¹²⁵

A dissenting opinion was submitted by Justice Teresa Liszcz, who submitted that she did not: 'find in the materials of the case any argument in favour of the limitation period for claims arising from wrongful infringement by the public authority of such an important constitutional value as the personal liberty of a human person being shorter than the limitation period for all other claims in tort. That means the pursuit of such claims, against the manifest will of the constitutional lawmaker, stressed in the jurisprudence of the Constitutional Court up to date, faces significant obstacles, and the Treasury as the subject obliged to repair the damage has been afforded a significant privilege compared to other cases of liability for wrongful actions of the public authority. In the light of the above, it seems obvious to me that the challenged provision of Article 555 CCP is inconsistent with Article 41.5 in connection with Article 41.1 and Article 32.1 of the Constitution.'¹²⁶

²³ *Ibidem.*

²⁴ *Ibidem.*

²⁵ *Ibidem.*

²⁶ *Ibidem.*

It should not escape attention that: 'the right to be compensated, available under Article 41.5 of the Constitution, belongs to economic rights, which are subject to equal protection for everyone, as guaranteed by Article 64.2 of the Constitution. A restriction on the protection of this right through a limitation period shorter than for other claims of this kind (in tort) means at the same time a violation of the provision of Article 64.2 of the Constitution.'²⁷

The argumentation provided in the rationale of the dissenting opinion merits full agreement.

On 16 July 2013 the Civil Rights Ombudsman petitioned the Constitutional Court to determine the inconsistency of Article 555 with Article 77.1 in connection with Article 32.1 of the Constitution of the Republic of Poland and with Article 64.2 in connection with Article 32.1 of the Constitution of the Republic of Poland. The petition has not yet been disposed of by the Constitutional Court.

Summary

It is beyond a doubt that the current limitation period for claims for compensation for wrongful conviction, temporary arrest or detention is too short, considering that the court has no obligation to inform a party about the time window to pursue the claim. In civil law general limitation periods for claims are 10 years, and this is the group to which the limitation arising from Article 555 CCP belongs, in which connection it is impossible to understand the lawmaker's motivation in setting such a short limitation period, being one year only.

Furthermore, considering that the Constitution of the Republic of Poland mandates in its Article 41.5 that anyone wrongfully deprived of liberty has the right to be compensated, the elevation of this right to the rank of a constitutional right and at the same the imposition of such a short limitation period is completely incomprehensible and begs the question why the Treasury has been privileged so.

²⁷ *Ibidem*, p. 26.

'The rule should be for the liability of public authority to be shaped on the basis of the general standard of compensation liability, protecting the injured party and consistent with the principle of full compensation.'²⁸

With July 2015 comes into force a significant overhaul of the CCP, introducing an adversarial process. At the same time, it extends the limitation period provided in Article 555 CCP to 3 years²⁹.

Beyond a doubt, this is the right direction headed by the Polish criminal procedure.

²⁸ Constitutional Court judgment of 1 September 2006, SK 14/05.

²⁹ 1 July 2015, amendment of Dz.U.2013.1247, Article 1.