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THE LOST SPEED OF CRIMINAL PROCEEDINGS A LIGHT IN THE TUNNEL

Summary

1. In the introduction to the book, St. Waltoś draws attention to the fact that drawn-out court trials always weaken the effectiveness of the justice system; they deepen the conviction about the impunity of criminals and encroach on the interests of victims. Unfortunately, criminal proceedings in Poland last far too long. Poland also belongs to a group of countries which for this very reason have lost most of the lawsuits before the European Tribunal of Human Rights.

For the above reasons, the Chair of Penal Procedure of the Jagiellonian University decided to carry out a complex study on the problem of delayed criminal process. A certain inspiration for this type of research was the empirical research conducted by the University of Heidelberg, devoted to the issue of the duration of court procedures in the land courts (Landgerichte) in the 90s of the twentieth century.

The research project financed by the Ministry of Science and Informatization was conducted in the years 2003–2007. The researchers applied several research techniques. First of all, on the basis of a questionnaire drawn up jointly with the Criminological Institute of the University of Heidelberg, they carried out comparative studies in 9 different countries. The study revealed that out of the examined legal systems, it was only in Austria, Germany and Switzerland that the speed of the legal procedure was regarded as satisfactory. In other countries, the speed of the legal procedure raises serious reservations and hence many steps are undertaken there so as to speed it up.

After the completion of the above project, an international conference devoted to the issue of the speed of the criminal process, was organized in Cracow in the year 2004. The materials from this conference appeared in German in the yearbook Archivum Iuridicum Cracoviense No XXXVII–XXXVIII.

The authors of this publication analyzed in detail the existing legislation and literature relating to the principle of promptness of court proceedings, as well as the past judicature in this respect in Poland. The statistical speed of criminal court proceedings in Poland was also calculated. Subsequently studies of court files were carried out and interviews with legal experts were conducted. Finally, debates within the so called „focus groups" were carried out.

A detailed plan of the publication which in fact constitutes a second part of the book entitled *Zagubiona szybkość procesu. Jak można ją przywrócić?* /The Lost Speed of Legal Proceedings. How Can It be Restored?/ published by LexisNexis Publications in Warsaw, was presented in the introduction.

2. In the first chapter, the author Piotr Hofmański analyzes the influence of the EU instruments on the effectiveness of the penal procedure. It is commonly known that the appearance of the so called „foreign element" in a penal case always leads to a complication and consequently, to the lengthening of the legal procedure. Poland's opening up to Europe and the world, has certainly led to an increase in the number of legal proceedings which necessitate looking for suspects and evidence abroad, securing foreign property etc. For this reason, from the point of view of the efficiency of the penal procedure, the way in which international legal assistance is being organized is becoming increasingly important. For many years, efforts have been made by the Council of Europe to ensure greater efficiency in this respect; yet from the perspective of nearly fifty years, the results of these efforts turn out to be quite disappointing. It seems that more hope should be associated with the dynamically developing cooperation in cases relating to criminal proceedings between the member states of the European Union. And although the principle of mutual recognition, declared at the EU summit in Tampere in 1999 as a *panacea* for the ineffectiveness of the mechanisms of international mutual assistance in penal cases, is still far from being fully implemented, nevertheless a number of mechanisms of cooperation based on the new philosophy have already been introduced. Most important among these are the European arrest warrant and the freezing of property on behalf of forfeit. Further instruments which are to be of assistance in mutual cooperation in penal proceedings are currently being prepared (in particular the European evidence warrant); they are to be introduced through implementing framework decisions of the EU Council; in this way, the obsolete and impractical system of cooperation based on bilateral and multi-lateral international agreements is gradually being abandoned. Yet, one will be able to talk about unproblematic cooperation in penal cases the moment when the efforts aiming at harmonizing the national legal systems are fully successful. For at the present moment, the existing far-reaching differences, both in the sphere of substantive criminal law as well as rules of procedure, make criminal proceedings particularly in cases where there occur trans-border elements, extremely difficult.

3. Chapter two, entitled „The reform of the criminal procedure as a way of acceleration of criminal proceedings", was written by St. Waltoś. The author begins his analysis by reminding the readers that when in the year 1997, the currently binding legal codes, namely the penal code, the code of criminal procedure and the punishment execution code, were introduced, the main priority was the humanization of the criminal law as well as creating guarantees of human rights. And although in the final phase of the codification process, a few important changes were introduced whose aim was to make the criminal proceedings more efficient, yet the latter did not prove to be sufficiently effective. Whereas the crisis of the administration of justice had reached its peak which found its expression, above all, in considerable slowing down of criminal proceedings.

In response to this, a team of experts appointed by the President of the Polish Republic prepared a draft of a thorough reform of the code of criminal procedure, whose main goal was, above all, to speed up the criminal proceedings. The above draft was passed by Parliament on the 10 January 2003 and on the 1 July of the current year, it came into force. The parliamentary Act has amended as much as 37.7% of all the articles of the criminal code. The measures mentioned in the Act of 2003 can generally be divided into those which speed up criminal proceedings in a direct way, and those which do so indirectly.

The measures which accelerate criminal proceedings directly are among others: a reconstruction of the model of preparatory proceedings consisting in its radical simplification, leaving the formal investigation conducted by the police as well as a very simplified inquiry under the supervision of the prosecutor, extending the option of consensual conclusion of court proceedings, liquidating the monopoly of the Polish Post Office on the delivery of court summons, permitting electronic delivery of summons, introducing procedures facilitating the reading of reports and documents drawn up outside the court and extending the possibilities of recognizing them as read out, liquidating the possibility of returning the case from the court to the phase of preparatory proceedings in order to supplement evidence, allowing certain restrictions on the presentation of reasons for the judgment in certain cases.

The measures which speed up criminal proceedings indirectly are chiefly: mediation and rigorism in the sphere of justifying absences on the basis of physician certificates (as of now, it is only certificates issued by the so called court physician that will be recognized).

Following the amendment of the 10 January 2003 that accompanied the coming into power of the nationalist right-wing government which used excessive penal populism as a way of winning over new supporters, there appeared a series of successive amendments of the code of criminal procedure. The most characteristic of them is the Act of the 16 November 2006 which reinstated the well-known and compromised solution of the so called speeded-up proceedings, popularly known as proceedings before 24-hour courts. The proceedings in question severely restrict the right of the accused to defense and in practice, they are limited to sentencing drivers and cyclists who drove their vehicles under the influence of alcohol. Decisions in those cases had been reached very quickly anyway, even before the introduction of the speeded-up procedure.

Among the numerous amendments (only in the year 2007, there were eight of them up until the 1st July!), one should mention the amendment of the 9th May 2007 which introduced very severe penalties for breach of order, in particular for unexcused absence; the above amendment reinstated the possibility of charging the barrister or legal adviser with the obligation to cover the additional costs of court proceedings associated with their unexcused absence.

4. In the chapter entitled „The act on the complaint against the violation of a party to a process have the case heard without undue delay in the light of jurisprudence and empirical data", Dobrosława Szumiło-Kulczycka presents the most important judicial decisions issued in connection with the act in question as well as the empirical data which illustrate its functioning. The author recalls the decisions of the Supreme Court concerning: 1) the single instance character of proceedings relating to the complaint, 2) the scope of cognizance of the court adjudicating in cases relating to such complaints, 3) the problem of continuing the proceedings *ad quo* in the case of lodging a complaint shortly before adjudicating, 4) the role of the prosecutor in proceedings relating to the complaint in question.

The author presents general empirical data which indicates that: 1) in the years 2005–2006, altogether 8943 complaints against protraction of proceedings were lodged in appeal and district courts. The predominant number of complaints concerned civil proceedings. Complaints relating to criminal proceedings constituted in the individual years, approximately 20% of the total number of complaints. 2) The effectiveness of the lodged

complaints was relatively small. Merely 20% of them were settled positively, 70% were settled negatively and around 10% were settled in another way (e.g. withdrawal of complaint). A relatively high percentage of complaints were rejected on formal grounds (30%). 3) In the years 2005–2006, the appeal and district Courts granted the plaintiffs who complained against a breach of the right to cognizing their cases, a joint compensation sum of 2.065.698,00 zł. The majority of the compensation sums were paid out to the plaintiffs in connection with the protraction of civil proceedings. 4) The mean value of a single compensation was approximately 2.000,00 zł. Yet, in the case of criminal proceedings, the compensation sums were higher. 5) Geographically, the biggest number of complaints were lodged in the district courts in: Warsaw, Poznań and Gdańsk, whereas as regards the appeal courts: in Warsaw, Gdańsk and Katowice. 5/as reported by the plaintiffs, the most common causes of protracted criminal proceedings were: too long intervals between the individual proceedings (49% of complaints), too distant date of the first trial (13.4% of complaints), failure of the court to undertake court proceedings (10.3% of complaints).

The study ends with conclusions concerning the consequences of the Act and its role as an effective appeal instrument required by the European Convention on Human Rights.

5. In the fourth chapter, Janina Błachut presented the methodological principles of the examination of court files, which was conducted in the district courts in Cracow and Katowice. The examination comprised altogether 800 cases, whose indictment acts (or else their surrogates) were brought to the courts in the year 2002 and 2004. The analysis of the files of cases conducted in the period before and after the amendment of the year 2003 of the code of criminal proceedings, created the possibility to observe whether and to what extent the duration of the preparatory and subsequently court proceedings had changed.

The analysis of the speed of preparatory proceedings, in the light of the examination of court files, was conducted by Janina Błachut and Szymon Majcher. The authors of this part of the study, focused on the presentation of the duration of the preparatory proceedings in the year 2002 and 2004, in the light of the results of the examination of the court files; they also drew attention to the factors which exerted a major influence on the duration of these proceedings. The chapter was divided into three fundamental parts.

The first part presents the data defining the duration of the preparatory proceedings in the year 2002 and 2004. As one can infer from the presented data, compared to the year 2002, the time-span of the preparatory proceedings in the year 2004, had lengthened.

The crucial element of the discussed chapter is its second part in which the authors present the factors determining the duration of the preparatory proceedings, both in the year 2002 and in the year 2004; among others, they describe how the duration of the preparatory proceedings has been influenced by factors such as: the legal qualification of the criminal act, the number of criminal offences the suspect is charged with, the fact of modification of the decision to present the charges, the form in which the preparatory proceedings were initiated (whether it was an inquiry or an investigation), as well as the fact of changing the form of preparatory proceedings in the course of its duration, the suspect's failure to attend criminal proceedings and the need to issue a warrant, the use of preventive measures, with special emphasis on preventive detention, the participation of defense lawyers in the proceedings, the degree of complication

of the hearing of evidence, including the number of witnesses who have to be heard as well as the need to hear evidence from court experts, and finally decision to prolong the duration of preparatory proceedings and to suspend it. The authors also pointed out to certain correlations; thus for instance, they described what influence the individual factors exerted on the duration of the preparatory proceedings in the two research periods – 2002 or 2004.

In the second part of the chapter, the authors also examined the influence of the individual episodic time intervals making up the preparatory proceedings on the duration of the entire preparatory proceedings. They pointed out to the crucial points making up nearly all preparatory proceedings (e.g. the first activity undertaken in connection with the case, the issuing of the decision concerning the commencement of preparatory proceedings, the questioning of the suspect and many others) and examined first of all what is the duration of the time intervals which separate these points. Subsequently, they examined what factors influenced in a statistically significant way the duration of these individual episodic time slots and in this way influenced in a significant way the overall time of the entire preparatory proceedings. Also in this case, it was pointed out how the individual dependencies under discussion were changing in both periods which were subjected to analysis – that is in 2002 and in 2004.

The third and last section of the chapter constitutes an attempt to sum up the presented research results. The authors discuss the obtained results and in particular the differences between the results obtained for the individual research periods – i.e. for the year 2002 and 2004; they analyze the results from the point of view of the influence of the legislative changes, with particular emphasis on the amended Act on the code of criminal procedure of the 10 January 2003. The authors also draw attention to organizational issues as well as to the functioning of the institutions responsible for conducting preparatory proceedings, including the police force which is chiefly responsible for conducting them; they also discuss the influence of the above factors on the lengthening of the time needed to complete preparatory proceedings which is exactly what happened in the year 2004.

6. In chapter 6, Dobrosława Szumiło-Kulczycka and Wojciech Dadak present the speed of court proceedings in the light of an examination of court files. Right at the beginning, the authors point out that an analysis of court proceedings from the point of view of its duration may be conducted from several perspectives, out of which at least two are especially interesting. Within a general framework, one may take into consideration the time of court procedure from the moment of lodging the act of indictment until the moment of passing the judgment by the court of the first instance, as well as the factors which exert an influence on this process. In this situation, the subject-matter of analysis are all aspects of the proceedings, regardless of the application of measures aimed at introducing limitations on the use of court proceedings. Whereas within a more detailed framework, the subject of analysis are the length and course of proceedings including the main court session. Both of these perspectives constituted the subject of analysis and in both cases, one could observe clear symptoms of the shortening of court proceedings. In the case of the majority of the analyzed cases, between the year 2002 and 2004, the average time of court proceedings was shortened from 6.4 to 4.7 months. In relation to court proceedings in which the main trial had taken place, the same rate amounted to 6.9 months for the year 2002 and only 5.6 months for the year 2004.

The above effect is to a large extent associated with the changes of regulations facilitating the shortening of court proceedings and the changes introduced by the amendment of the code of criminal procedure of 2003, and specifically those allowing to extend the use of simplified procedures, those which facilitate conviction without trial, those which introduce more flexible regulations with regard to obligatory defense, those which extend the possibility of applying voluntary subjection to punishment, those which under certain conditions permit the court to conduct proceedings in spite of the absence of the accused and incidence of changes in the course of the evidence gathering procedure which may lead to the shortening of court proceedings. Apart from the above considerations, one should also draw attention to the equally important changes relating to the practice of taking advantage of the individual measures which exert an influence on the duration of court proceedings. Above all, this concerns the far more frequent use of the institution of conviction without trial. This institution which was nearly defunct in the year 2002, was used in as many as 1/5 of the examined cases two years later. A marked change has also occurred in the sphere of discipline of the participants of court proceedings, specifically as regards the decrease of the number of defendants who fail to turn up at court trials or the number of those who are not escorted to court from custody by the police; the number of trials called off due to the failure of attendance of a witness, has also decreased considerably. On the other hand, it is quite justifiable to assume that in the more recent period, the courts conducted proceedings in a more rational way, which found its expression, among others, in the decrease of the percentage of cases in which no evidence had been gathered, as well as cases in which evidence provided by court experts was permitted barely during main trial. However, it seems that despite a considerable shortening of court proceedings, there are still areas in which it is possible to obtain a further shortening of the duration of court proceedings. This concerns, among others, restrictions concerning court recesses and adjournments through improving certain technicalities, such as e.g. the effectiveness of document deliveries, but also more fundamental issues, such as the consequences of having to examine evidence by the court and the limited activity of the prosecutor in the hearing of evidence. One should also underline that despite the shortening of court proceedings, the entire lawsuit has become lengthened, due to the lengthier process of preparatory proceedings. Thus it seems that in this phase of penal proceedings, there are still possibilities for shortening the entire criminal process.

Yet, one should remember that the, no doubt, positive consequences of the changes in the legislation concerning court proceedings, as well as the more general changes in the practice of conducting them, allowing one to shorten this part of the criminal process, cannot be treated as the only plane on which one may assess the rationality of the amendments of the Polish criminal procedure in recent years. The speed of the criminal process, including no doubt the speed of the court proceedings, constitutes a value, but one cannot treat it as an absolute value. What is equally important, is the fundamental goal of a lawsuit, which is a just judgment of the perpetrator of a crime. Quickly – may also mean justly. Yet, one should beware that the whole procedure is not exclusively quick. The above-presented results of the research allow one to conclude that these two values may co-exist, in this way contributing to a more effective use of the regulations defining the course of court proceedings.

7. In chapter 7, Janina Czapska presented the problem of protraction of criminal proceedings in the light of qualitative research which consisted of interviews with experts (a group of 20 prosecutors, lawyers and policemen from Cracow accompanied by a similar group from Katowice; prosecutors and judges from Berlin) as well as a focus discussion. The goal of this research was to shed light on the experiences and opinions of the experts on the selected problems associated with the duration of penal proceedings – in particular regarding the regularities which had been observed in the course of the selected penal cases. That is why, the interviews with experts were conducted only after the conclusion and subsequent analysis of the court files and their results constitute a supplement to the former analyses. On the basis of the interviews, the authors formulated their propositions of changes to be introduced into the organization of the administration of justice in the sector of penal cases. Detailed solutions and postulates relating to the Polish administration of justice had been presented against the background of the situation in the Berlin courts. One should emphasize here that qualitative studies do not allow one to make generalizations, yet they help one draw attention to certain phenomena, look for certain regularities and explanations as well as point out to phenomena which have so far been undiagnosed.

More than half of the experts admitted that the amendment of year 2003 to the code of criminal procedure, has speeded up penal process. Regardless of the role played by them in the administration of justice in criminal proceedings, the experts emphasized, above all, the positive impact of Art. 387 and 335 of the Code of Criminal Procedure; other opinions were more role-related (e.g. approval for the so called register inquiry expressed by the policemen).

In spontaneously expressed opinions on the most important causes of protracted preparatory proceedings (an open question), the respondents, regardless of their status and place of employment, pointed out to a very bad condition of the Police, which was the consequence of, among others: the weakness of the cadres, the catastrophically bad conditions of work and the improper organization of work. Therefore, in their opinion, the most important step on the road to the improvement of the situation, should be the strengthening of this institution. A number of issues relating to the role of the Police in the course of preparatory proceedings, was also being associated with the function of the public prosecutor's office. For instance, if exempting the suspects from participation in the preparatory proceedings, does not significantly protract the proceedings, the situation is much worse in the case of witnesses with regard to whom disciplinary measures are used too rarely, too late and too inconsistently. The prosecutors, layers and even policemen were to a large extent unanimous in their assessment of the possibility of finding a suspect who persistently evades turning up at hearings; they agreed that the legal possibilities for doing so are quite adequate, but in fact their effectiveness is insufficient, mainly due to reasons to do with the police, such as inadequate and old-fashioned equipment, but also routine and lack of conscientiousness in performing one's duties. In this context, a growing problem is the rapidly increasing number of people who go abroad and who are most difficult to find.

It is thought that the main causes of protracted criminal proceedings are to do with organizational issues, above all with the overburdening of the judges with cases, an archaic system of delivery of court summons and notices, difficulties in escorting the accused to trials from jail etc. In this context, attention is also drawn to specific be-

havior of the judges, such as a striving to hear all the witnesses mentioned in the act of indictment, for fear of being charged with failure to explain all the circumstances of the case, insufficient knowledge of the case or lack of ability to organize the case. There were also very critical opinions as regards the application of Article 366 § 2, in accordance with which the presiding judge should strive to reach the judgment during the first court session.

Modern technology should play an ever increasing role in criminal proceedings and it should be an ally of both the court and the institutions conducting the preparatory proceedings. The importance of the new technology is revealed, above all, in two major areas, namely: in the sphere of electronic access to information (which in various contexts was assessed as insufficient and even catastrophic) and in the use of modern technologies for the purpose of sending summons to an investigation or court trial or else for recording the course of the proceedings. In the opinion of the experts, the regulations which relate to the above issues are complied with but rarely, and in both cases, it is the institutions conducting preparatory proceedings that take advantage of them, rather than the courts.

A lot needs to be done in the courts, in the public prosecutor's office and in the Police as regards the attainment of the satisfactory numbers of administrative personnel, prosecutors and policemen, as well as their adequate preparation to the tasks which have been imposed on them by the legislator. Yet, the possibilities of improving the situation by merely increasing the number of personnel, are clearly limited, unless they are accompanied by a simultaneous provision of the necessary technical equipment. On the basis of the analysis of the everyday practice in the sphere of counteracting the protraction of penal proceedings, one may come to the conclusion that in such a situation, the law may soon reach the boundary-line of its effectiveness, to a large extent, regardless of the existing regulations.

8. Chapter 8 presents a dialogue between a Polish and a German judge on the topic of the links between the process of deciding about guilt and the duration of the proceedings in penal cases. The complex of issues relating to the problem of the organization of work in the criminal courts and the duration of proceedings in penal cases, may be analyzed on many different planes. For practitioners, it seems particularly important to emphasize the following areas:

a) The influence of the human factor.

This refers both to the people who are employed as court officials as well as to judges. In the case of court officials, special attention should be paid that those who are employed on these posts are adequately educated and determined to make a successful career in the sector of the administration of justice;

b) the importance of the internal organization of work within the courts.

It is extremely important to introduce modern solutions relating to the management of institutions in the administration of justice sector as well as in the sphere of the circulation of documents; these solutions should be suited to the conditions and needs of the 21st century. One should definitely reject reforms which consist exclusively in the division of bigger courts of justice into smaller ones. As an example, one ought to mention here the need to take advantage of all available modern technical equipment, including phones, fax machines and especially computers which are to be found in the courts. An important problem which also belongs to the organizational sphere is that

of making it possible for the courts to access information relating to the accused and witnesses, without the need of requesting other people for information. The system of files and the register of penal cases also calls for a fundamental reform. The solutions in this respect should rely on modern information technologies and a resignation from paper documentation, following the example of present-day banking systems;

c) complex of problems relating to the efficiency and speed of proceedings.

The speed of penal proceedings (and not only) depends to a large extent on the efficiency of the message delivery services. In connection with this, G. Kiełbasa postulates a change of the system of deliveries by introducing the so called „theory of dispatch". An indirect solution to this problem could be the introduction into the Polish criminal procedure of the possibility of scanning delivery errors, e.g. as it happens in the case of proceedings concerning contraventions. Preliminary sessions may contribute to the speeding up of the penal procedure as well as to making it more efficient, provided that the court is equipped with instruments which may discipline parties to make motions as to evidence within a strictly defined time-frame, as it happens in civil proceedings relating to economic issues. Motions as to evidence which are reported later, would be admitted only on condition that they fulfill certain strictly defined conditions.

To sum up the most important issues which are presented in both parts of chapter 8, including the observations recorded during the visits to the Land and Amt Courts in Berlin, as well as the experiences of one of the authors from the Regional Court in Cracow-Śródmieście /City Center/, one should conclude that in the normative sphere, the Polish code of criminal procedure and its German counterpart StPO, represent similar solutions as regards the efficiency and speed of penal proceedings. Yet, one can also observe some important differences (e.g. as regards the system of message delivery). A particularly significant difference occurs in the sphere of the social perception of legal norms, where in one society we observe a deeply-rooted imperative to observe the law and the injunctions of the organs which execute it (even if it concerns exclusively the obligation to report in court in reply to summons), whereas in the other, there persists a deeply-rooted resistance against any injunctions and imperatives, even if they have been issued by the organs of the judiciary and concern the obligation to report in a court of law as a witness, so as to give testimony, inform the court about a change of the address or lodging a motion as to evidence within a reasonable time span.

9. In the last chapter, St. Waltoś summed up the results of the research project. He emphasized that the main objective of the study was to examine the actual speed of criminal proceedings, the factors which exert an influence on it as well as the means which could contribute to the acceleration of the criminal process in Poland. A lot of attention was devoted to an analysis of the regulations contained in the Polish law, the way of treating and interpreting the issue of speed in Polish literature in a historical perspective, the application of the jurisprudence of the European Tribunal on Human Rights to the cases adjudicated in Poland, as well as to the social consequences of the delayed justice.

Another element that played a considerable role here was the empirical research. It turned out that a change of the model of preparatory proceedings in the year 2003, did not exert an overall influence on the speeding up of this phase of proceedings. The situation was quite different as regards court proceedings. The latter took up less time, and one could clearly see the influence of the amendment of 2003. Unfortunately, the duration of the entire process, counting from the moment of instituting preparatory proceed-

ings to the moment of issuing the verdict by the court of the I instance, became lengthened. It turned out that if in the year 2002, court proceedings lasted on average 17.7 months, then in the year 2004, they lasted on average 19.9 months. In this way, the effects of the considerable shortening of court proceedings themselves, have become to a large extent annihilated.

As was revealed by the interviews with the lawyers and the discussions within the so called focus groups, the technological equipment, the organization of work, the level of experience and professional education of the employees of the justice sector, were also of considerable significance. In the summing up, one finds conclusions *de lege ferenda* as well as organizational ones. The most important conclusion is that the speeding up of criminal proceedings depends not so much on the changes and amendments of the legislative system (the majority of the amendments introduced after 2003 were unsuccessful), but on filling up the dramatic personnel shortages within the police force, as well as ensuring better logistics and good organization of work, and above all – on ordinary human conscientiousness.