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Summary: *Model of process versus justice, fairness and effectiveness of criminal proceedings* (dissertation written under the supervision of prof. dr hab. Piotr Kardas)

The dissertation concerns the question of the criminal process in a systemic perspective, emphasizing the relations and interdependence between the elements of the legal system. Attention was drawn to the issue of constitutionalisation, which focus issues related to the protection of legal rights immediately around the Constitution itself, and not only in the area of each branch of law. The phenomenon of constitutionalization might be regarded externally, as a link between the social system and the legal system, soaking the latter with important social values and setting the objectives of the legal system. In terms of internal meaning of constitutionalization , it transfers the issue of protection of legal goods to the center of the system. One of the consequences of the presented approach will be multi-tasking procedures, which consists of assigning the same procedure for the implementation of tasks resulting from several branches of substantive law. Looking at the issue of the procedures in this context, it turns out that at the contemporary criminal trial is a process with the dominant criminal function which fulfills the tasks of civil or administrative procedures as well. These observations have implications for the way the analysis of models of criminal procedure, which are formed on the one hand based on the diversity of the nature of the criminal case and legal interest, which is subject to criminal attack, on the other hand include indications of a multi-tasking procedures, combining the recognition of the criminal case, civil case and an administrative case.

It can therefore be stated that constitutionalization in its internal approach allows legislators to create the relationship of substantive law and procedural law quite flexibly, within the limits of the optimization criteria of justice, fairness and efficiency.

The overall analysis of the legal system also allows for the unification of certain standards related to the operation of the system. These are the aspects that concern the determination of the response of the system and the consequences of its actions, which are undertaken similarly, despite the differences occurring in the individual subsystems (branches of the law). It can be stated that the hearing of the case and the ruling should be done impartially, what is one of the fundamental guarantees of the independence of the judiciary. Another equally important issues are the system-wide procedural guarantees granted to entities that participate in the examination of the case in different ways. It should be noted that the procedural guarantees are not focused on the subject of each case, but on goods and values

that may be affected by the self operation of the system. In other words, the guarantees are directed against the system and not against the problem with which this system is facing. For this reason, the issue of procedural safeguards can and should be dealt system-wide.

At the same time the analysis of the legal system, conducted in order to create a model of the existing procedures, allows to capture certain constructional rules that govern the shape of the procedure, regardless of the substantive subclass which the procedure works with. In particular, there is a very strong relationship between the nature of the interest and the scope of the procedural rights related to the subject of the proceedings. It might be generally concluded that the higher the content of a public interest in the protection of a value or a good is, the less adversarial the proceedings become. Along with the reduction of the content of public interest, the range of disposition of the subject of the case increases. This pattern is particularly interesting in relation to the criminal process, which normally involves two public authorities - the court and the prosecutor. Therefore the relation between them can be shaped quite flexibly. This does not change the fact that the right to punish (*ius puniendi*) in regimes based on the rule of law, will remain special and exclusive prerogative of the state. In this context, the request of punishment would always be directed to the state, irrespective of the entity entitled to the launch it.

In consequence the adoption of the inquisitorial or adversarial model of criminal procedure will be determined by the relation of *ius puninedi* and the request of punishment, based on the determination of whose interests (state or community) are weighted in the process. Therefore the models of criminal procedure might be also regarded as prosecutor-oriented models and court-oriented models. In this context the issue of burden of proof and the competence of producing the evidence cannot be regarded as a cause, but rather as a consequence of the objective (the request of punishment) and subjective (the entity who is entitled to this right) elements of a model which might be described then as an adversarial, an accusatorial or an inquisitorial one.

This leads to the next question for further internal differentiation of adversarial and inquisitorial models of criminal procedures and the criterion for differentiation. If the case would be regarded as a subject of the proceedings, and these proceedings are a tool used for the implementation of the substantive law, the criterion of differentiation of procedural models should also have a substantive nature. At this time the relation between the content of public interest and the range of the allowed disposition of the good attacked by the crime becomes important. In other words, the procedure should be subject to internal differentiations due to the substantive scope of the disposability of a good which is the subject of criminal attack. The more socially valuable goods are, the greater the public interest in their protection would become. Consequently, this nature of the good or value will

determine the extent of the material disposability of this good (the range of public interest in its protection), and in effect it would determine the shape of the procedural tools (procedural disposability). In the longer term, using this ctiterion, the boundaries between judicial models and the negotiated models and reduced models, taking into account the fact that the constitutional requirement of the system is that the models might be drawn. It must be stated although that the *due process* guaranties that the judicial models would be the basic ones and consensual or reduced models (although dominant in reality, according to the tendency of systems to simplify their operation wherever possible) – would have a subsidiary nature.

These observations were made on the ground of the criminal cases, but this does not mean that they cover the entire spectrum of issues that need to be combined within the model of the criminal process. According to the observed phenomenon of multi-tasking, in addition to the criminal case in a criminal trial - simultaneously or alternatively - a civil or administrative case can be heard. As a result, changes in the material basis of the process lead to the necessity of adjusting the tools that should be relevant to the implementation of all these aforementioned substantive areas. This requirement is dictated by the optimization criteria of justice, fairness and efficiency of the proceedings.

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