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Title of doctoral dissertation: "Panel of the court in Polish criminal proceedings"

Summary

The main goal behind the preparation of the submitted doctoral dissertation was to provide an in-depth analysis of the issue of the panel of the court in Polish criminal proceedings. The doctoral dissertation reflects the panel of the criminal court in both first-instance and appeal proceedings (including proceedings conducted as a result of extraordinary measures of appeal). In relation to the forum - the panel of the court at the trial and at a hearing was analysed. Within the scope of the subject matter - the panel of the court was considered in criminal proceedings *sensu stricto*, governed by the provisions of the Code of Criminal Procedure, taking into account the supplementary legal and constitutional regulation. The research issues presented therein should be considered significant from the point of view of the characteristics of the criminal proceedings model, understood as the model of criminal proceedings and the system of basic procedural principles associated therewith shaped by the provisions of criminal procedural law, as well as by case law and views of doctrine.

The dissertation presents the issue of the creation of an adjudicating body in a criminal proceedings in a broader, rather than merely criminal-procedural, normative perspective, as well as the main directions of legislative changes taking place in the discussed area over the last decades. For these reasons, in the prepared dissertation, strictly criminal-procedural arguments were supplemented with deliberations of historical, systemic and axiological nature. As part of the dissertation, the evolution of the criminal proceedings regulation devoted to the creation of the adjudicating body in criminal cases was examined, ranging from the regulations in force in the period of the Second Polish Republic, through the legislation of the PRL era, ending on the changes taking place already under the rule of the Code of Criminal Procedure of 1997. Separate considerations were devoted to political issues regarding the organization and method of appointing members of the adjudicating body in criminal cases. In this respect, the issue of proper panel of the court has been confronted with the constitutional and conventional right of recourse to court. In the dissertation, the composition of panels of individual courts provided for in the criminal proceedings were examined in detail. Separate deliberations were devoted to the procedural effects of incorrect panel of the court, with particular regard to the

absolute grounds for reversing the judgment under Article 439 § 1 item 1 and 2 of the Code of Criminal Procedure and the grounds for the extraordinary appeal under Article 89 of the Act on the Supreme Court. Finally, the issue of the participation of non-professional judges in adjudicating criminal cases, in the three forms traditionally distinguished in the literature of the subject matter, i.e. sworn judges, lay judges and magistrates, was extensively discussed in the dissertation.

In order to achieve this dissertation not only to have a theoretical dimension, a critical assessment of the current provisions regarding the panel of the court in Polish criminal proceedings was made, as well as number of legislative proposals relating to the composition of the panel of the court in criminal cases were made. Among the *de lege ferenda* postulants, the following should be considered as the two crucial ones: the postulate of restoring the principle of collegiality in adjudicating criminal cases, taking into account, respectively, the participation of the social factor in the panel of the court, the key emanation of which is the proposal to restore, as the basic adjudicating panel in criminal cases, a mixed three-member panel comprising of one professional judge and two lay judges, as well as a postulate clarified in Chapter V of the dissertation, of introducing magistrates in petty criminal cases to the Polish legal order.

The main thesis of the dissertation boils down to the statement that the desired panel of the court in criminal proceedings, should, as far as possible, include the principle of collegiality and the principle of the participation of social factor in the adjudicating. In the light of the above, the collegiality of court action in criminal proceedings should be considered a more democratic form than a one-man action; moreover, collegiality guarantees a more comprehensive assessment of the case, and also significantly increases the authority of issued decisions. The participation of the social factor in adjudicating criminal cases is, in turn, associated with enriching the adjudicating body with valuable life experience, broadening the perspective of factual and legal assessment of the case, increasing the social acceptability of issued decisions, strengthening social control over the apparatus of professional judges, forcing better preparation of judges for trial and preventing routine, as well as raising awareness and legal culture in society. Therefore both of these principles appear to be particularly important for ensuring the correct resolution of criminal cases, and as such foster the implementation of substantive and procedural justice in criminal proceedings. For these reasons, the collegiality of adjudicating and ensuring the proper participation of the social factor in adjudicating should

constitute the basic criterion for the evaluation of the criminal-procedural provisions regulating the composition of individual court panels in criminal proceedings. In addition, as it clearly stems from the considerations of historical and comparative nature carried out in this dissertation, the collegiality of adjudicating in criminal cases combined with ensuring a wide participation of the social factor in adjudicating (in the form of either sworn judge or lay judges or magistrates) should be genetically associated with the process of democratization of the current institutional and political system. In this perspective, collective panels with a broad representation of the social factor are an emanation of civil rights and freedoms, while fulfilling the guarantee function for the procedural rights of the passive party to the criminal proceedings. From the presented perspective one should highly negatively assess a specific legislative trend, observable in the last several years in Polish legislation, systematically limiting the principle of collegiality in adjudicating criminal cases for the broad implementation of the principle of single-person adjudicating through, in particular, significant limitation of the scope of the social factor's participation in adjudicating by reducing the catalogue of cases to be examined in a mixed professional and lay panel, the key manifestation of which was, inter alia, amendment from 2007 introducing the principle of one-man adjudicating at the trial at first instance.

The presented dissertation was prepared with the use of formal and dogmatic method, as well as complementary - in particular in the scope of chapter V – with the use of a comparative law method. The paper consists of five chapters. Chapter I is devoted to the issue of the composition of the panel of the court in the historical development of the Polish criminal proceedings. Chapter II presents the issues related to the panel of the court in the institutional (including constitutional), international law and axiological perspective. Chapter III was devoted to discussing the composition of individual panels in Polish criminal proceedings. Chapter IV is about the procedural consequences of incorrect panel of the court. The last chapter, Chapter V, was devoted to the issue of the participation of non-professional judges in adjudicating criminal cases.