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Vliv vybraných ustanovení velké novely Trestního řádu na průběh trestního řízení

The impact of selected provisions from the large amendment to the Criminal Procedure Code on the course of criminal procedure.

ISBN 978-80-7338-068-7

Summary

Procedural criminal law underwent a major change through the adoption of Act No. 265/1001 Coll., which came into effect as of 1 January 2002. This amendment to the Criminal Procedure Code (hereinafter in the text also the “large amendment”) was adopted at a time of ongoing recodification of Czech criminal law. The large amendment became the initial stage of an entirely new Criminal Procedure Code and, in addition to its fundamental purpose – the immediate improvement in criminal procedure – its application also fulfils the role of testing the effectiveness of the changes that it brought about, i.e. its impact on criminal procedure. These facts were the instigation for the research task stipulated for 2004 – 2007: “The impact of selected provisions from the large amendment to the Criminal Procedure Code on the course of criminal procedure.” With regard to the state of work on the new Code, the information and findings from the research task should, among other things, assist in evaluating the large amendment for purposes of recodification.

The research task was conducted in the form of four relatively independent research themes, while obviously taking into account their mutual inter-relatedness. The following particular research themes were stipulated:

1. Summary procedure
2. Change in the position and role of the public prosecutor in criminal procedure
3. Changes in the area of custodial procedure
4. Enforcing changes in appellate procedure.

The subject matter of the research was generally the legal regulation of selected provisions introduced by the large amendment to the Criminal Procedure Code, its practical application and the effects on the course of criminal procedure. The aim of the research was to provide more comprehensive knowledge and evaluation of the impact of selected changes that the large amendment to the Criminal Procedure Code brought, on the course of criminal procedure, and with regard to the intended purpose of these changes and with regard to findings and requirements from practice

The following methods and techniques were used to perform the research task:

- analysis of professional literature
- analysis of legislation, including available case law
- analysis of available statistical data from the judicial statistics of the Czech Ministry of Justice and Czech Prison Service
- analysis of court files
- questionnaire survey among judges, public prosecutors and police officers
- analysis of relevant official documents.

Summary procedure

One of the most important changes introduced to the Criminal Procedure Code by amendment No. 265/2001 Coll., is the creation of two types of pre-trial proceedings from the hitherto uniformly conceived pre-trial stage of criminal proceedings, depending on the type of danger of the crime committed. In addition to the investigation already known of, it is also possible to conduct summary pre-trial proceedings for certain types of offence. However, in order for the change in this area to have a really effective impact on specific criminal proceedings, it is not exhausted with the end of the pre-trial proceedings but continues in the stage before the court, where a simplified hearing before a single judge follows on from summary pre-trial proceedings.

The research results make it possible to state generally that summary procedure as a new type of criminal procedure for the least serious and factually and legally simple criminal cases was shown to have worked, with law enforcement bodies becoming familiar with the process, while the rights of persons involved in the summary procedure are upheld and safeguarded at the standard level.

With regard to the objectives for introducing summary procedure, we can say that the aims of the amendment's authors have been largely fulfilled in the stage of summary pre-trial proceedings, which actually make it possible in petty cases to pass the perpetrator on to the court quickly and in a relatively informal manner. The simplification and acceleration of the judicial phase of proceedings has not been so successful as yet, chiefly because it was not possible to strip the simplified procedure before a court of the general shortcomings of judicial procedure in the Czech Republic; nevertheless, even in this area the amendment brought positive and effective elements. With regard to conditions for the work of law enforcement bodies the introduction of summary procedure brought positive changes and these bodies quickly and effectively adopted the new process, even though differences obviously exist in what the changes in summary procedure mean for the activity of the police body, public prosecutor and the court. No information was obtained suggesting that the right of the accused (suspect) to a defence would be significantly restricted in summary procedure compared to the standard type of criminal procedure.

Statistical data reveal that during the monitored period (2002 – 2006) the number of people whose case was heard in summary procedure, as well as their share in the total number of persons against whom criminal proceedings were brought, increased. In 2006, the cases of more than a quarter of all persons against whom criminal proceedings were brought were dealt with in summary procedure. The range of crimes which are dealt with in summary procedure most frequently corresponds to the statutory defined conditions for hearing cases in this manner. These therefore concern petty cases of the crimes of theft pursuant to Section 247 of the Criminal Code, obstructing the enforcement of an official decision pursuant to Section 171 of the Criminal Code and, since 2006, also driving a motor vehicle without a driving licence pursuant to Section 180d of the Criminal Code.

The composition of persons convicted in summary procedure is similar to the overall population of convicted persons in the Czech Republic, albeit with a smaller proportion of juveniles since 2004 in particular (which could be partly due to the application of Act No. 218/2003 Coll.). As concerns the sentences imposed in summary procedure, the proportion of unconditional prison sentences roughly corresponds to the proportion for the same type of sentence among all sentences imposed generally in the Czech Republic, although

unconditional sentences in summary procedure are substantially shorter (approx. 70% up to 6 months of imprisonment, approx. 95% up to 1 year of imprisonment). Sentences of community service and expulsion form a higher proportion compared with the overall sentencing structure, although the proportion of suspended prison sentences is currently lower.

The average duration of summary pre-trial proceedings compared to the average duration of pre-trial proceedings is markedly shorter, particularly in proceedings at a police body. The average duration of simplified proceedings before a court is approximately half that of proceedings before a court. The further reduction in the length of simplified proceedings before a court is impeded chiefly by typical abuses of Czech judicial proceedings – problems in ensuring the presence of persons at the trial, problems in serving summons and documents.

The legislation for summary procedure has generally proved successful, without serious shortcomings. The simpler legislation for the course of proceedings reflects the nature of the cases that are to be heard in summary procedure. Some comments or suggestions for legislation on summary procedure which emerged from its analysis concern the specification of the grounds for holding summary pre-trial proceedings in stating the relevant provision of the Criminal Procedure Code, the specification of the time-limit for the conclusion of summary pre-trial proceedings, conditions for the conditional deferral of a petition for sentencing, time-limits for preparing for a trial, and waiving the right to lodge a statement of opposition against a penal order.

An analysis of court files revealed that law enforcement bodies quickly recognised the benefits of this type of procedure and learnt to apply the new legislation effectively. In the sample of files examined, only those cases occurred which by their nature were really appropriate to be heard in summary procedure, and in general those where the perpetrator of a minor crime was caught in the act. No shortcomings were found in the cooperation of police bodies and public prosecutors. The result was generally highly accelerated pre-trial proceedings which, nevertheless, also provided sufficient source documentation for the due conduct of simplified proceedings before a court. The overall speed of proceedings benefited if the motion for sentencing was delivered to the court with the suspect. Single judges often availed themselves of the possibility to issue a penal order. The relatively low sentences imposed in summary procedure were evidently the reason for more accused persons refraining from, or often waiving entirely their right to lodge a statement of opposition against the penal order. Such cases also did not experience delays resulting from the unsuccessful delivery of judgements to the accused.

With regard to safeguarding the right to a defence, the cases monitored show the same level of safeguards as that in standard criminal procedure, as manifested particularly in the fulfilment of the court's duty to instruct and the observance of statutory provisions on compulsory defence, or ensuring an interpreter. The monitored files did not show grounds for concern that some perpetrators might have their rights curtailed because they did not sufficiently comprehend the principle of summary procedure, the extent of their rights in relation thereto, or the consequences of certain procedural acts (e.g. declaration on uncontested facts).

The expert questionnaire survey conducted among police officers, public prosecutors and judges revealed that the introduction of summary procedure is generally perceived as a

positive change, particularly due to the simplification, acceleration and reduction of the formal aspects of procedure. There is also general agreement that the stated positive aspects are chiefly manifested in the pre-trial proceedings phase, whereas in simplified proceedings before a court general problems of judicial procedure occur (ensuring the presence of persons at the trial, service of summons), mainly if the arrested suspect is not delivered to the court together with the sentencing motion.

Those employees of law enforcement bodies contacted generally expressed satisfaction with the legislation for summary procedure and positively assessed the level of cooperation in implementing it. They especially appreciated the possibility to read at the trial, with the approval of the parties concerned, also the official records from pre-trial proceedings as evidence. They considered the degree to which the accused's (suspect's) right to a defence was safeguarded to be essentially the same as in a standard type of procedure. A major impediment to the more effective use of summary procedure was detected in the lack of a system that would ensure quick, up-to-date and complete information on proceedings conducted against the perpetrator at other bodies (police, public prosecutors, courts).

Based on the results of the survey we offer, as a conclusion to this part of the report, the following summary of comments and suggestions that we have drawn attention to in the preceding chapters, and which in our view could contribute towards the more effective implementation of the aims that underlay the incorporation of the provision on summary procedure in the Criminal Procedure Code:

- in our opinion, a police body should, in its records on the commencement of acts for summary pre-trial proceedings, or in records on notification of suspicion, always specify the conditions for conducting this type of proceedings by stating the complete relevant provision of the Criminal Procedure Code so that it is apparent whether it found that the condition for this procedure had been met as stated in Section 179a (1)a of the Criminal Procedure Code or in Section 179a (1)b of the Criminal Procedure Code, or both;
- we recommend to consider stipulating that the time-limit for the conclusion of the summary pre-trial proceedings (Section 179b (4) should only commence at the beginning of the summary pre-trial proceedings, not on the date that a criminal complaint or other suggestion for criminal prosecution is received;
- we recommend that the condition for compensation of damage in the case of a conditional deferral of a sentencing proposal (Section 179g (1)b) be moderated by expanding it to include cases where the suspect concludes an agreement for compensation for damage with the injured party or takes other necessary compensation measures, as is the case in the conditional discontinuation of prosecution (Section 307 (1)b);
- we recommend considering the introduction of a shorter time-limit than the general five-day time-limit (e.g. three days) to prepare for a trial, if this is held in simplified proceedings before a court;
- we recommend considering a change in the legislation on the possibility to waive the right to lodge a statement of opposition (Section 314g (1), last sentence) so that if a penal order is issued in simplified proceedings following questioning of the accused pursuant to Section 314 (2) of the Criminal Procedure Code in his presence, the accused may waive his/her right to lodge a statement of opposition directly on the spot (as is the case in the right to waive an appeal following the declaration of a judgement), not until after the penal order is delivered;

- we recommend to consider introducing the possibility, under stipulated conditions in a trial as part of simplified proceedings, of reading the official record only with the consent of the public prosecutor, if the accused, who has been duly summoned, fails to appear at the trial, and to institute this in the same way as the Criminal Procedure Code allows in the case of reading the protocol on witness testimony in Section 211 (1);
- we recommend considering the possibility of expanding the application of the provision on uncontested facts beyond the area of summary proceedings;
- we recommend considering the possibility that the law enforcement bodies in summary pre-trial proceedings compulsorily ascertain the suspect's opinion on the possible imposition of a sentence or measure for whose imposition the suspect's opinion is important (at present, the sentence of community service);
- we recommend the adoption of legislative or other measures so that law enforcement bodies in pre-trial proceedings proceed, as far as possible (obviously however only in cases where appropriate) so that the arrested suspect can be delivered together with the motion for sentencing to the court (Section 179e, the sentence preceding the semicolon);
- we recommend the adoption of legislative and organisational technical measures so that law enforcement bodies have on-line access to current and complete information on the state of proceedings against concrete persons, e.g. in the form of a register of issued (albeit as not yet final) judgements, by means of linking the databases of the individual law enforcement bodies.

Change in the status and role of the public prosecutor in criminal procedure

One of the aims of the large amendment to the Criminal Procedure Code was to transfer powers and responsibility for pre-trial proceedings to one person, who would to a large extent coordinate the activity of all bodies involved in this phase of proceedings in order to accelerate as far as possible and also to ensure the efficient and correct settling of the criminal case. This was the purpose of strengthening the position of the public prosecutor and expanding the scope for his/her independent activity. The change in legislation was also aimed at monitoring whether the public prosecutor, by means of the more efficient performance of supervision and new independent powers in pre-trial proceedings, received an overview of the case that would enable him/her later to act as counsel for the prosecution in a more qualified manner. This procedure was intended to create the prerequisites to also strengthen the public prosecutor's role as counsel for the prosecution in a subsequent phase of proceedings, i.e. in proceedings before a court. The adversarial character of criminal proceedings was also meant to be strengthened, allowing the parties (i.e. the counsel for the prosecution and the counsel for the defence) to play a more important role.

The information obtained in performing this part of the research indicates that the changes introduced by the large amendment to the Criminal Procedure Code have influenced public prosecutors more in pre-trial procedures, where a strengthening of the public prosecutor's position was registered as well as an improvement in the ability to influence, where needed, the course of this part of the criminal proceedings, even despite a greater work load. Changes concerning the position and role of the public prosecutor in proceedings before a court only partially fulfilled their clearly declared purpose when they created room for the more active and qualified representation of parties, although in doing so perhaps too much leeway was left to the parties to decide whether they will avail themselves of this option.

The confrontation between the aims of the monitored changes and their actual practical impact has led us to the following conclusions. There has unquestionably been a relatively significant strengthening in the public prosecutor's position in pre-trial proceedings, and the conditions have been created for him to have a dominant position in this phase of criminal procedure, including the possibility of greater oversight on the criminal case from the very beginning. On the other hand, the effective and efficient performance of supervision in pre-trial proceedings is prevented by the practical impacts of the large amendment, which materially increase the scope of duties, as well as by the inadequate personnel arrangements of the administrative element of this activity for public prosecutors, which more often causes the formal performance of supervision to see that legality is observed as the public prosecutor's most important activity in pre-trial proceedings.

The public prosecutor's preparedness from pre-trial proceedings for acting as counsel for the prosecution in a qualified manner in proceedings before a court has not been substantially increased since the large amendment. The public prosecutor's position in pre-trial proceedings may have been significantly strengthened (which should enable him/her to familiarise him/herself more thoroughly with cases for purposes of a trial), but there has been a significant transfer of the workload involved in criminal proceedings to the stage of proceedings before a court, as a result of which the scope of facts determined in pre-trial proceedings, and documented in a form that can be used for evidence, has generally markedly declined, which actually weakens the public prosecutor's position in which he enters the proceedings before a court (a certain exception can be found in proceedings on crimes on which the regional court holds proceedings in the first instance, where their form has not changed markedly in comparison with the situation before the amendment). Providing the possibility to decide on settlement in pre-trial proceedings had practically no effect on the position of the public prosecutor or on criminal proceedings as a whole as this procedure is scarcely used, for the host of reasons described.

The statistical data monitored reveal that the large amendment helped further reduce the length of pre-trial proceedings, both as concerns the length of the investigation and the total length of pre-trial proceedings. However, immediately after the large amendment came into effect there was a prolongation of the length of proceedings on the part of the public prosecutor, which was then naturally reduced progressively in the following years. The mentioned changes were from the beginning highly influenced by the introduction of summary pre-trial proceedings, although generally it is possible to say that the law enforcement bodies, including public prosecutors, overcame certain initial difficulties associated with the practical application of changes that the large amendment introduced.

In respect of the application of the provision on settlement, although there was a certain increase in the number of cases where this was used by the public prosecutor in pre-trial proceedings, this increase was insignificant and in no way as material as it was expected to be. The use of the conditional discontinuation of prosecution declined slightly and in the following years tended to fluctuate. This was caused on the one hand by the introduction of summary pre-trial proceedings and on the other hand by the ongoing complexity of the provision on settlement, which clearly did not become ingrained in criminal-law practice.

After the large amendment came into effect there was a gradual fall in the number of cases returned annually by the court to the public prosecutor for additional investigation (alongside a fall in the number of charged persons), although there exist differences in individual cases where according to the Criminal Procedure Code a case can be returned, and

developments were not identical for cases dealt with by district and regional Public Prosecutor's Offices. The main reason appears to be the limitation on the range of grounds for which a court can return a case to the public prosecutor for additional investigation; nevertheless, the data ascertained also indicate that courts gradually adapted to the new legislation.

Despite the opposite trend in the number of persons against whom a charge was brought, the number of persons acquitted of charges rose relatively sharply after the introduction of the large amendment. It is possible to assume that the change in legislation was of major importance in transferring the emphasis to the stage of proceedings before a court and limiting the extent and application of the facts ascertained during pre-trial proceedings. However, certain indications have also appeared of the imperfect evaluation of the fulfilment of conditions for bringing a charge by public prosecutors.

The analysis of the legislation found that the large amendment, by changing the scope and method of performing supervision and by transferring powers, helped strengthen the public prosecutor's position in pre-trial proceedings and created the conditions by which to obtain quicker and larger oversight in criminal cases. Despite the fact that legislation since the large amendment to a certain extent distinguishes between pre-trial proceedings conducted for less serious, more serious and very serious crimes, the performance of supervision, including other duties, should according to the legislation be applied in the full, and therefore the same, extent in all the mentioned cases, which in practice to a certain degree prevents the public prosecutor's active involvement in pre-trial proceedings where this is really necessary. In relation to the police body, for whose activity the public prosecutor, due to his/her position, bears a certain responsibility in pre-trial proceedings, the public prosecutor does not have the effective authority which would permit him/her to respond promptly and effectively in a case where the police body acted inadequately.

The large amendment created the scope for greater activity by the parties (public prosecutor and the defence) in proceedings before a court. Nevertheless, it also left final responsibility for the result of substantiation of facts and the whole proceedings with the court, which in practice to a large extent eliminated the intended strengthening of the adversarial character of proceedings. Limiting the grounds for returning cases to the public prosecutor for additional investigation also helped shift the bulk of criminal procedure to the stage of proceedings before a court.

The expert questionnaire survey showed that since the large amendment public prosecutors sense a strengthening of their position in pre-trial proceedings and concede that they are able to be more actively involved in pre-trial proceedings. However, they say this in relation to the scope provided by legislation. In practice they see the application of these changes as presenting real obstacles due to the inadequate staffing of public prosecutor's offices, as personnel is needed to deal with the increased administrative demands. Public prosecutors therefore in general did not judge the large amendment to have had any practical influence on their work in pre-trial proceedings, and if so, it was rather slightly negative than positive.

Judges and public prosecutors agree that the large amendment to the Criminal Procedure Code has been felt in the marked shift of the bulk of proceedings to the stage of proceedings before a court and in the creation of wider scope for the procedural activity of parties therein. Nevertheless, their experience indicates that in practice the changes are not

manifested in judicial proceedings to the extent intended. The possibilities of more active procedural representation have thus far not been exploited either by public prosecutors or the defence in all cases. Public prosecutors themselves judge the influence of the large amendment on their activity in proceedings before a court to have been neutral or slightly negative. Judges evaluated the preparedness of public prosecutor from pre-trial proceedings to act as counsel for the public prosecution in proceedings before a court after the large amendment took effect to be similar or a little better than before the amendment.

On the basis of our findings we offer for consideration the following suggestions or comments, which in our view could help create better conditions for public prosecutors in order to improve the performance of their primary mission, in other words to represent a public action in criminal proceedings, and to do so taking into account the changes introduced by the large amendment to the Criminal Procedure Code:

- we recommend considering the possibility of establishing an immediate power by which public prosecutors can promptly and adequately intervene vis-a-vis the police body in cases where its procedure is marked by real shortcomings, or in some other way give the police body's greater responsibility for promptness and quality in its work as part of pre-trial proceedings;
- we recommend expressly stipulating in the Criminal Procedure Code the police body's duty to satisfy the public prosecutor's request to provide evidence following the bringing of a charge (Section 179 (2) of the Criminal Procedure Code);
- we believe that the judicial procedure pursuant to Section 180 (2) of the Criminal Procedure Code (a request to the public prosecutor for evidence that has not yet been obtained or heard) and Section 203 (1) of the Criminal Procedure Code (requiring the public prosecutor to take separate evidence or action) should be exceptional and should respect the division of procedural roles, and that the legislation should reflect this requirement more clearly;
- we recommend considering the possibility of introducing the duty for a public prosecutor to state in a charge which of the proposed evidence he/she would wish to hear personally; according to how the proceedings develop he/she could, during the course of proceedings before a court, refrain from hearing them personally or, on the other hand, request the possibility of hearing further evidence;
- we recommend adopting measures that would make it possible for the public prosecutor who performed supervision in pre-trial proceedings to always act as counsel for the prosecution in proceedings before a court;
- we recommend considering the possibility of the wider admission of facts ascertained in pre-trial proceedings for purposes of evidence in proceedings before the court under the stipulated conditions.

Changes in custodial proceedings

Prior to the issue of the large amendment to the Criminal Procedure Code, the most problematic elements of Czech custodial proceedings were designated as being the relatively high number of persons in custody and the disproportionate length of custody. The reasons for the high number of persons in custody are not found exclusively in the excessive use of the provision on custody by law enforcement bodies but in the inappropriate selection of such persons, where the majority comprise persons charged with minor crimes. The aim of the large amendment was to eliminate the criticised shortcoming in custodial proceedings.

Perhaps the most telling indicator of the quality of custodial proceedings, their development, the results achieved and changes, are statistical data compared over an extended period. In this respect we can definitely say that all fundamental statistical data from the middle of the 1990s relating to custody and custodial proceedings are very favourable for our country. These results suggest that the changes brought by the large amendment have positively impacted on procedure in custodial cases. Statistical data clearly show that the number of custodies fell and that the average length of custody is shorter. On the other hand, it should be borne in mind that the fall in custodies and the improvement in other indicators in custodial proceedings already occurred in the years immediately preceding the large amendment, roughly from 1995 onwards. Nevertheless, it is true that the large amendment from 2001 significantly accelerated this positive trend.

The provisions on custody that formed the subject matter of the analysis of legislation make up an important part of the Criminal Procedure Code. Before 1989 the legislation did not contain any time-limit for custody and it is therefore easy to conclude that the regulation of the length of custody and its maximum duration was a matter of immediate import following the revolution of November 1989. The principle change in this respect was introduced by the first post-revolution amendment to the Criminal Procedure Code of 13 December 1989 No. 159/1989 Coll., and the related subsequent amendments. Another fundamental change introduced as early as at the beginning of this period consisted in the transfer of decision-making powers on custody from the public prosecutor to the courts, which was enacted by the amendment No. 558/1991 Coll. Other amendments from the 1990s also introduced important changes in the legislation on custody and custodial proceedings.

The legislative process of introducing fundamental reforms to criminal procedure, which spanned several years, was now concluded with the large amendment to the Criminal Procedure Code. This amendment also had a profound effect on existing custody legislation. It chiefly concerned changes in the grounds for custody, the exclusion of custody in certain cases, changes in decision-making on extensions to custody and changes relating to the longest permissible duration of custody. In our opinion, the analysis of legislation indicates that the large amendment was generally correct in focusing on those provisions of the Criminal Procedure Code which had hitherto caused the biggest problems. Although it removed a lot of these problems, several shortcomings remained which have been described in the relevant chapter of the concluding report from the research.

The most important decision in the whole criminal agenda is undoubtedly the decision by a court to have the accused remanded in custody. It can be said that all such decisions which were contained in the analysed court files included the due particulars required by law and were generally of a good standard. This indicates that the courts already handle this agenda without major problems. The same conclusion can be drawn from the motions of public prosecutors for the accused to be remanded in custody, and from the requests by police officers for a motion to be submitted to remand the accused in custody. One-third of accused persons lodged complaints against decisions to be remanded in custody, although the court of second instance did not accede to any of these complaints. In the analysed files we did not find any formal deviations in the approach of law enforcement bodies, which leads us to believe that these bodies had already become familiar with the new legislation.

As far as concerns the general evaluation of the large amendment to the Criminal Procedure Code, most respondents to the questionnaire survey assess the large amendment's provisions relating to custodial procedure positively and are convinced that as a whole it has

led to an improvement in custodial procedure. This is evidenced chiefly by the fact that custodial procedure is quicker and the number of custodial cases has fallen. They nevertheless have serious reservations with regard to certain provisions of the large amendment and believe that these should be changed. The provision most frequently criticised by judges and the majority of public prosecutors was Section 71 paragraphs 1 to 6, which concerns decision-making regarding the further duration of custody. They drew attention to the formal aspects, the complexity and chaotic nature of this regulation, which seems to them imperfect and in the opinion of certain respondents even redundant. Other provisions of the amendment that respondents criticise most frequently are those on the grounds for custody (Section 67 c) the provisions ruling out remanding the accused in custody (Section 68 paragraphs 2 and 3), the provision on separating the total period of custody (Section 71 paragraph 9), or the provision on the accused's repeated request to be released from custody (Section 72 paragraph 3).

Enforcing changes in appellate proceedings

According to the explanatory report on the large amendment to the Criminal Procedure Code, the aim of the new concept of appellate proceedings is the reinforcing of appellate procedure elements. The court of appeal substantially complements proceedings with evidence necessary for it to be able to decide on an appeal, with the exception of cases involving extensive and difficult-to-hear evidence which would mean substituting the activity of the court of first instance. Such cases, which are exceptional by nature, are returned to the court of first instance for evidence to be supplemented in the required extent. There has also been a significant restriction on the reviewing principle in examining a contested judgement by the court of appeal and a strengthening of the disposal principle in appellate proceedings. The principle has been established of a court being bound by the content of the lodged appeal, which with certain reservations means that the appellant determines the scope of the court of appeal's duty to review.

Our findings obtained from the survey indicate that the legislative changes in the monitored areas are necessary to accelerate proceedings and to prevent criminal cases being pointlessly returned from courts of appeal to the courts of first instance or to the preceding stage of criminal proceedings. In some cases the limitation of the reviewing principle also means the simplification of proceedings. The new concept of appellate proceedings has been adopted by judges, is applied in their activity and has generally proved to function, including with regard to achieving the intended goal.

The statistical data revealed that the number of criminal cases settled by district courts following the amendment increased sharply and that the number of cases settled by the appellate panels of regional courts has also risen. The proportion of lodged appeals to the overall number of cases settled has not changed, however. In high courts, on the other hand, the number of cases settled by them has fallen regularly since 2001, although in the last two years in particular there has been a sharp rise in the proportion of lodged appeals in relation to the number of cases settled in the first instance by regional courts. The difference between appellate instances in the proportion of lodged appeals is significant and results from the gravity, factual and legal demands of the criminal case that is heard.

During the monitored period the decision-making activities of the courts of appeal statistically reflected in the changes, consisting in the wider application of appellate procedure elements and the further limitation of cassation, which the large amendment highlighted as

one of the fundamental principles for appellate procedure. In both appellate instances the ratio of cases cancelled by them and returned to the courts of first instance for a new hearing and decision has fallen since 2002, as has the proportion of cases returned to public prosecutors for additional investigation in relation to the overall number of cases settled by them. The largest decrease in returned cases took place in 2002, i.e. in the first year after the large amendment came into effect, although this positive result could not be repeated in subsequent years.

Statistical data also showed that, compared with the period before 2002, the proportion of cases also rose in regional and high courts where a merits judgement was passed on a lodged appeal with statements on the guilt, sentence, compensation for damage and protective measure. For high courts this proportion was greater and ranged around 40%. For regional courts there was an increase in the proportion of cases where a decision was taken to reject an appeal following the fulfilment of review duties, which suggests an improvement in the quality of decision-making in district courts. In 2006, regional courts decided, pursuant to Section 256 of the Criminal Procedure Code, to reject almost half of lodged appeals, and high courts decided to reject a third of lodged appeals. Since 2002, the average length of proceedings at courts of appeal has also fallen. From 89 days in 2002, it fell to 60 days in 2006. The proceedings of courts of appeal as a proportion of the total length of judicial proceedings also fell (from 22% in 2002 to 15% in 2006).

As part of the research we performed an analysis of court files in cases where courts of appeal heard appeals lodged by authorised persons after the large amendment to the Criminal Procedure Code came into effect. All authorised persons received the pertinent instruction on lodging an appeal from the courts of first instance and the overwhelming majority of lodged appeals met all the statutory requirements of their content. However, there were also shortcomings in this respect, which the courts of first instance were forced to resolve by acts to eliminate defects in the lodged appeals. The courts of appeal, without a merits review of a criminal case duly, i.e. after meeting the statutory conditions, also applied the new provision on rejecting an appeal.

As part of their reviewing activity, courts of appeal respected the principle of being bound by the lodged appeal and its highlighted defects and this limitation on the reviewing principle has been proven in practice. The extension of reviewing duties to include a statement on guilt, in the case of an appeal lodged exclusively against a statement on sentencing, was only found in two cases. Beyond the scope of a lodged appeal, the court of appeal also reviewed a separable statement on sentencing, and also applied the limited reviewing principle for separable statements on guilt and on compensation for damage, always with the due justification.

As cassation grounds leading to the overturning of contested judgements, the decisions of courts of appeal most often stated the imposition of an unreasonable sentence, breach of a Criminal Code provision, and uncertainty and doubt concerning the correctness of the facts ascertained. In many cases there was an accumulation of several reasons. Entirely isolated cases were found of a judgement being overturned on grounds of a material defect in proceedings which in all cases were irremovable in appellate procedure.

Following the overturning of a judgement, the grounds stated in the monitored cases for returning a case were chiefly material procedural defects or such shortcomings in the fact ascertained that precluded any other approach and were impossible to rectify in a public

hearing at the courts of appeal. However, isolated cases were also found where doubts arose over the justifiability of this approach as an ultimate possibility in cases where the facts were difficult to substantiate, which would mean substituting the activity of the court of first instance. Not a single instance was found of a case being returned to the public prosecutor for additional investigation pursuant to Section 260 of the Criminal Procedure Code, which was unquestionably the result of the stricter conditions for this procedure laid down by the large amendment to the Criminal Procedure Code.

In other cases, the courts of appeal, after overturning a judgement, either decided to reject an appeal or themselves decided on the case with final legal effect. By issuing merits judgements, they altered statements on guilt and sentencing, on compensation for damage and on a protective measure. By doing so, they fulfilled the purpose of appellate proceedings, which consisted in rectifying ascertained defects in the decisions of courts of first instance, and the appellate principle, reinforced by the large amendment, according to which the own decisions of an court of appeal should become the rule.

Another of the research methods applied was the use of questionnaire survey among judges of the district and regional courts and public prosecutors from district and regional Public Prosecutor's Offices. More than half of the respondents questioned (61%) stated that the large amendment to the Criminal Procedure Code had led to a reinforcing of appellate elements in the practice of courts of appeal and to the far greater limitation of cassation. The courts of appeal already supplement evidence themselves to a greater extent than previously and decide on merits in a case. On the other hand, a third of respondents believe that the decision-making of courts of appeal has not altered and that cases are returned to the courts of first instance in roughly the same extent (understandably more from among district court judges – 43%). The most common grounds for returning a case to a court of first instance are, in their experience, incompletely ascertained facts of the case (75%), often together with procedural defects.

According to most respondents, the reinforcing of the appellate principle has led in practice to an acceleration of judicial proceedings. However, some judges pointed out that this could also have been affected by other reasons, e.g. a generational change in the appellate panels of judges. They also drew attention to certain practical problems, such as the protracted rectification of defects in lodged appeals in cases where there is no defending counsel, and the period by which the appellate procedure is shortened is extended again in fact-finding proceedings.

The contacted judges and public prosecutors generally expressed satisfaction with the current legislation on appellate procedure and consider it to be optimal, balanced and relevant to the requirements in practice. Of the respondents, 35% stated their wish for the further reinforcing of the appellate principle, and some of them (judges from district courts) believe that the law should clearly define the court's of appeal duty to decide cases on merit, or to limit cassation grounds only for material and irremovable procedural lapses, excluding the possibility of returning the case to courts of first instance merely for the purpose of supplementing evidence.

Based on the research conducted, it is possible to conclude that the reinforcing of appellate elements and the new concept of reviewing in appellate proceedings according to the current legislation can only be put into practice by strictly adhering to the amended

provisions and by a responsible approach on the part of judges and public prosecutors in these proceedings. Also necessary is:

- for the judicial decisions of the Supreme Court to be applied promptly to resolve problems of interpretation connected with the new legislation,
- for proceedings at courts of appeal to respect the limited reviewing principle and as far as possible to supplement evidence so that it is already possible in these proceedings to decide on merit and so that the return of a case to courts of first instance only occurs as an ultimate possibility,
- for proceedings before courts of first instance to pay more attention to fulfilling the instruction duty of persons authorised to lodge an appeal, and to do so following the oral delivery of a decision, to take an active approach in rectifying defects in a lodged appeal and promptly to submit court files to courts of appeal for subsequent procedure,
- for public prosecutors, by preparing properly for hearings in courts of appeal and by their submissions, to assist in the due review of contested decisions and in rectifying defects ascertained primarily in these proceedings.

Any further development of the new principles applicable to appellate proceedings and detailed elaboration of current legislation is only possible within the prepared recodification of the Criminal Procedure Code. The research findings suggest that the following recommendations should be considered:

- the appellate principle should be further reinforced at the expense of cassation so that the return of cases to a court of first instance for a new hearing and decision really is an exceptional decision by the court of appeal and is only chosen in cases where it is beyond dispute that the ascertained defects cannot be rectified in appellate procedure,
- the way that the scope and grounds of a lodged appeal are settled should enable the persons lodging appeals to change them immediately upon finding this is necessary, and not later than within a certain period following delivery of the summons or notification of an order for a public hearing, or upon its initial commencement if the need for supplementing is not justified by the evidence heard at the court of appeal,
- the time-limit for the appellate procedure should be extended so that it corresponds to the length of the appellate procedure time-limit in civil-law proceedings, which gives appellants more scope for the due definition and justification of the appeal and eases the responsibilities of courts of first instance regarding the rectification of defects in the lodged appeal.

Translation by: Marvel