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**Zkrácené formy trestního řízení – možnosti a limity**

**Shortened Forms of Criminal Proceedings – Possibilities and Limits**

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*Summary*

In the Czech Republic, as in a range of other countries, the effort to accelerate and simplify criminal proceedings is one of the most significant trends in the development of criminal procedure law and in the criminal justice system as a whole. This monograph presents the results of research by the Institute of Criminology and Social Prevention (ICSP) conducted in the years 2012 and 2013. *The subject of research* was legal regulation of shortened preliminary procedure and subsequent simplified proceedings before the court (referred to hereinafter as “summary procedure”) and their application in practice in the Czech penal process. Other procedural institutes meant to contribute to acceleration of criminal proceedings in the CR as well as approaches to acceleration and simplification of criminal proceedings in certain European countries were also subjected to scrutiny. *The aim of this research* was to gain detailed information about the application of shortened forms of criminal proceedings, in particular shortened preliminary procedure and simplified proceedings before the court and evaluation of the options and limits for their further application in the CR.

*The research method* involved document analysis – Czech legal regulations, specialised literature, relevant official documents and a selected sample of criminal court files, and also an analysis of statistical data from the Ministry of Justice and the Supreme Public Prosecutor’s Office, analysis of data from the penal register and finally expert questionnaire survey conducted among judges, public prosecutors and police officers.

*The theoretical part* of the monograph contains a brief overview of the issue of acceleration and simplification of criminal proceedings generally and in the Czech Republic in particular, a study of simplified forms of criminal proceedings in certain European countries, and the study of the state and development of Czech legal regulation of summary procedure and other institutes which are meant to contribute to acceleration and simplification of the penal process.

Often, the fundamental problem of penal justice systems lies in the burden represented by too high caseload with respect to the capacities of the police, public prosecution authorities, courts, prisons, probation services etc. The common reaction to this problem may

be divided into three areas – increasing the capacity of the criminal justice system, reducing the numbers of criminal cases by decriminalisation, de-penalisation and use of diversions and alternative measures, and shortening the length of criminal proceeding by the introduction of simplified forms of the process. Of course, such approaches tend not to be used in their pure form, but in combination, and overlap to a certain extent. Criminal proceedings with the application of certain diversions may be seen as a special (shortened) form of proceedings, in other cases the rigorous use of diversions could, on the contrary, prolong proceedings.

The speed at which the perpetrator of an offence is detected and punished tends to be the deciding factor in the efficacy of criminal proceedings and subsequent punishment. At the same time, the speed of criminal proceedings influences fundamentally the public confidence in the work of the law enforcement and judicial authorities. Great differences exist in the severity, factual and legal complexity of separate offences. A situation where all proceedings are conducted under the same rules and formal prerequisites does not help in meeting demands for speed and individualization of criminal justice. The use of special and, as far as possible, simplified proceedings for less serious criminal matters is contained in the Committee of Ministers of the Council of Europe Recommendation No. R (87) 18 of 17 September 1987. The economic factor is also significant. The complexity of the process leads to criminal proceedings taking longer and costing more. However, making the penal process cheaper should be a secondary goal, since the primary aim of criminal proceedings are fair punishment of offenders and fair trial as imperatives for the existence of a democratic government and a rule of law. While attempting to simplify criminal proceedings the principle of a fair trial, and especially the right of defence, must not be surrendered, even in trivial matters.

Amendment to the Penal Code No. 265/2001 Coll. with effect from 1. 1. 2002 introduced the institute of shortened preliminary procedure and subsequent simplified proceedings before a single judge. Research by the ICSP focused on the application of summary procedure between the years 2002 and 2006 found that summary procedure as a new type of criminal proceedings for the least serious and factually and legally simple criminal cases had proved their overall worth; the authorities involved in criminal proceedings adopted this procedure while the rights of the persons against whom summary procedure were conducted remained preserved and their implementation was ensured. Simplification and acceleration of criminal proceedings remains one of the priorities of re-codification of criminal procedure law. Successful introduction of summary procedure more than ten years ago is certainly encouraging in this respect. This is reflected also in the separate legislative

steps which have increased the range of situations where summary procedure can be applied. On the other hand, some experts call for caution and others are openly critical in respect of continuing efforts to accelerate criminal proceedings.

A survey of approaches to alternative (simplified) forms of handling criminal matters outside “standard” criminal proceedings in 9 European countries showed that simplification of criminal proceedings is the preferred solution to the problem of overburdened criminal justice systems across Europe. The deciding factor of to what extent the simplified approach may be applied is the particular criminal law traditions and their fundamental principles as well as the relationships between the separate authorities involved in criminal proceedings or the role of the public prosecutor in criminal proceedings in relation to how strictly the principles of legality are applied. In almost every country, the courts may opt to use simplification of proceedings by issuing a penal order without a trial. Also, elements such as so called bargaining procedure, typical for the Anglo-American legal system, are being applied more and more often. On the other hand, it is also clear that each country is taking care not to allow simplification of the process be at the expense of the rights of the defendant or the damaged party, or at odds with the accepted basic principles of criminal proceedings. The employment of simplified procedures is limited to a group of offences for which application of “standard” procedures would mean unnecessary administration and demands on time. Generally they are petty offences where the offender has been caught in the act or immediately afterwards and where the case does not demand any complicated evidence procedure. Employment of a simplified procedure is in most cases subject to the approval of the defendant, or at least the right to appeal against the decision in the event of disapproval is preserved. Increased protection is also applied for youths for whom in certain cases such procedures cannot be applied.

Legal regulation of summary procedure has been amended several times since 2002 in order to remedy the shortcomings of the original wording and to increase the applicability of this institute. The most significant changes include the introduction of the option for the public prosecutor to conditionally defer a petition for sentencing and to approve an out-of-court settlement in shortened preliminary procedure, the widening of the range of offences for which summary procedure may be conducted, and the shift of the beginning of the two-week deadline for completing shortened preliminary procedure forward to the date on which the police body informed the suspect what he/she is suspected of having done and what crime such actions constitute. These changes had a significant influence on application of summary

procedure in practice and contributed to the high proportion of their use in comparison to the total number of criminal proceedings conducted.

Further institutes that may encourage acceleration and simplification of criminal proceedings include conditional suspension of criminal prosecution, conditional deferral of a petition for sentencing, out-of-court settlement, waiver of criminal prosecution of youths, penal order and, most recently, guilty plea. It should be added that, with the exception of a penal order – and, it seems, the guilty plea – the acceleration and simplification of criminal proceedings is not the only purpose of the aforementioned institutes. Other important goals include, to varying degrees, to achieve a more profound re-socialisation and educational effect on the offender, to reach reconciliation between the offender and the victim, to prevent of stigmatisation connected with conviction, and to rectify damage incurred by the victim in consequence of an offence. Also in the case of these institutes, amendments of legal regulation have expressed efforts aimed at increasing their efficacy.

*Statistical data concerning the use of summary procedure and other institutes under scrutiny* must be treated with great care, since the current system of processing and reporting statistical data on criminal justice has significant room for improvement. It is clear from statistics that, judging by the number of cases conducted therein, summary procedure have evolved into a form of criminal proceedings that are of equal weight to “standard” or “classic” proceedings. In fact, during recent years the majority of all criminal matters were conducted in summary procedure and more than half of all convicted offenders have been convicted in such proceedings. However, differences in the extent of use of summary procedure exist between regions, and although the gap is closing, they still persist in some regions (even in 2012, classic preliminary proceedings are still the form most commonly used in two judicial regions).

While comparing statistical data on cases conducted in summary procedure and classic criminal proceedings, it can be stated that the differences are becoming less marked. As for the structure of persons convicted, the only significant difference between groups of people convicted in summary procedure and standard proceedings was in the age of the offender. Amongst those convicted in summary procedure, the proportion of youths convicted is markedly lower (almost ten times) than among those convicted in standard proceedings. When looking at the structure of sentences imposed, it can be said that amongst the punishments (or punitive measures that are imposed to juveniles) imposed in summary procedure, there is clearly a lower proportion of unconditional prison sentences (approx. 15 % as against approx. 20 %), and on the contrary, the proportion of alternative punishments is

higher. The proportion of the most frequent sentence, i.e. a suspended prison sentence, is similar for both groups. Differences can be seen in the structure of offences of which offenders are most often convicted. From this point of view, in both types of proceedings the highest occurrence in recent years is for the offence of theft, although numbers of convictions for the offence of disregarding maintenance obligations is also high. Conversely, the numbers of cases of the offence of obstructing the enforcement of an official decision and expulsion, and the offence of threat under the influence of addictive substance, both of which are very frequent in summary procedure, account for only 4% or 3% of standard proceedings, respectively. On the other hand, the offence of fraud in recent years is prosecuted more often in standard proceedings than in summary procedure.

A fairly predictable difference between summary procedure and standard criminal proceedings lies in the average length of proceedings. The greatest difference is in the average length of preliminary proceedings conducted by police authorities which is more than ten times shorter in summary procedure than in classic preliminary proceedings. The difference in the average length of proceedings before the court is also considerable. In 2010, the average length of court proceedings from the beginning (i.e. the day when the indictment - or the petition for sentencing in summary procedure - is delivered by a public prosecutor to the court) till to day 1 of the trial in summary procedure was almost half that in standard proceedings. The difference in the average length of proceedings before the court from the beginning until the date on which the court decision becomes final is even more striking – in 2010 this period was about three times longer in standard proceedings.

As concerns the use of diversions in criminal proceedings, statistics indicate that the situation is fairly stable. The absolute prevalence of diversions involving conditional termination of preliminary proceedings, i.e. conditional suspension of criminal prosecution and conditional deferral of a petition for sentencing is obvious. These two related types of diversion together account for more than 95 % of all diversions employed in each separate year. The proportion of all diversions in the total number of completed preliminary proceedings hovered between 6 % - 8 %. Also in court proceedings the most frequently used diversion (with the exception of penal orders) was conditional suspension of criminal prosecution (in about 95 % of cases). Proceedings before the court during the reference period were terminated by some type of diversion (with the exception of penal orders) only in about 2 – 3 % of criminal cases. The use of penal orders in the long-term is at a high level, with more than half of all criminal cases tried in the first-instance by district courts being decided upon in this way.

*Analysis of a selected set of 47 criminal court files* showed that in comparison with the results of research from 2007, certain differences in the application of the institute of summary procedure are apparent. Although the structure of crimes in the set was more varied, all together this concerned rather cases of petty offences with easy identification of the offender and where the collection of evidence was not demanding. The difference lies in a significantly lower proportion of foreign nationals in this sample. If we simplify the implications, we can say that in the focus group of 2012 the typical offender dealt with in summary procedure is a man, Czech citizen, aged between 30 and 39 years who had already committed an offence in the past. The basic difference from the results of analysis from 2007 lies in the length of summary procedure which, calculated from the very start of criminal proceedings, was almost twice as long in the present research. The difference is most striking in proceedings by police authorities during shortened preliminary procedure where proceedings have become approximately ten times longer.

Also, the *expert questionnaire survey conducted among 175 judges, public prosecutors and police officers* was conceived in such a way as to facilitate comparison with the results of research from 2007. The preference for approaches for solving the high incidence of trivial crime (simplification of criminal proceedings or decriminalisation) have shifted in the separate professional groups from clear prioritisation of simplified criminal proceedings to a more balanced ratio in the range of answers. While supporters of simplifying criminal procedure among police officers represented almost 90 %, their proportion among public prosecutors was just below three-quarters, and among judges their proportion in comparison with supporters of decriminalisation was around two to one. The greatest benefit of summary procedure was seen by the respondents to be considerably quicker resolution of significant part of criminal cases and considerably faster sentencing of offenders, as well as reducing the degree of “bothering” witnesses and other persons involved with the proceedings, freeing capacities of the authorities involved in criminal proceedings for more serious cases, and reducing costs of criminal proceedings. While assessing the possible benefits of summary procedure, judges were the most reticent, whereas the police valued its advantages most. The respondents did not see any fundamental obstacles to more effective application of summary procedure in practice, only possibly with the exception of persisting formalism in proceedings before the court even in trivial cases. Such obstacles are considered more significant by judges, while public prosecutors feel them less strongly.

In the answers given by members of all professional groups questioned, the prevailing opinion was that, from a point of view of individual preventive effect, summary procedure

does not differ significantly from standard criminal proceedings. Most convinced of this were judges, while police officers believe more than the remaining two professional groups that summary procedure has a greater individual preventive effect than standard criminal proceedings.

All professional groups shared the opinion that the range of criminal acts which, under the current penal code, may be dealt with in summary procedure fully corresponds with its purpose. In this respect, judges were rather more reticent, but even so, the vast majority of this group approve of the existing legal regulation.

According to the experience of the judges and public prosecutors taking part in this survey, in practice there are significantly fewer cases where an arrested suspect is brought before the court with a petition for sentencing. Approximately three-quarters of the respondents from both groups stated that the proportion of cases where a petition for sentencing is delivered to the court without the presence of an arrested suspect is 80 % or more. This situation however seems not to apply universally and differs from one court district to the next.

More than half of all respondents from amongst public prosecutors answered with the opinion that the institution of indisputable facts has proved its worth, while under half of judge respondents shared this opinion. More than three-fifths of public prosecutors and nearly three-quarters of judges questioned are in favour of expanding the options of using the institution of indisputable facts for criminal proceedings in general.

Public prosecutor respondents expressed greater satisfaction with the legal regulation for penal orders from a point of view of its utility in deciding on guilt and punishment in simplified proceedings, with two-thirds of them ticking the “very satisfied” box, while amongst judges this view was shared only by one half of respondents. Judges were also more critical with regard to the range of sentences possible to impose with a penal order, with only one third ticking the “satisfied” box as against 60 % of participating public prosecutors.

Satisfaction with mutual cooperation during conduction of summary procedure prevailed among representatives of the professional groups questioned. Public prosecutors most often stated that reports on the results of shortened preliminary procedure receives from the police authorities in practice usually contain minor errors which, however, do not significantly reduce the possibility of submitting a petition for sentencing (this was the answer selected by 63 % of respondents). Just under one third stated that such reports usually contain no errors. Almost half of judges questioned stated that petitions for sentencing received from public prosecutors mostly contain no errors (this answer was chosen by 48 % of respondents).

Minor errors which, however, do not significantly reduce the possibility of hearing the case in simplified proceedings are contained in most petitions for sentencing, according to 39 % of judges. The opinions of police officers and public prosecutors on mutual cooperation during conduction of shortened preliminary procedure did not differ significantly and indicates that such cooperation on the part of the aforementioned authorities is considered to be basically the same as in other cases.

The majority of respondents in all three professional groups suppose that the right of defence in the legal regulation of summary procedure is safeguarded in the same way as in other types of proceedings. Nevertheless, a far from negligible section of participants conceded that slight restriction of this right exists (one-fifth of police officers, one third of public prosecutors and judges).

Respondents from all professional groups pointed out in their answers that the changes had contributed to the phenomenon that they are currently dealing with certain cases in the summary procedure regime which cannot be considered trivial or simple in terms of facts of the matter or evidence, as was the original assumption for implementation of summary procedure. In particular (but certainly not exclusively) judges shared the view that the option of conducting summary procedure against an arrested suspect is used too little, which in their opinion significantly reduces the effect of this institution. Overall, respondents appreciated the fact that the institute of summary procedure have actually contributed to acceleration and simplification of processing of a considerable part the crime load.

The results of the expert questionnaire survey show that the authorities involved in criminal proceedings are aware of the problematic areas in existing legal regulation of summary procedure in practice. Despite the prevailing positive attitude to summary procedure, on comparison with a similar survey conducted as part of research in 2007 it could be seen that, based on practice with this institute, professionals have a rather more sceptical view and identify several aspects that they see as problematic.

Analysis of the *criminal careers of a selected group of 49 offenders* convicted in the years 2002, 2004 and 2006 in summary procedure showed that a quarter of them were not convicted again after that conviction in the years indicated. It should be realised that these were persons who had been convicted of a crime several times before – in three cases four convictions, and even offenders with five, six and even up to nine prior convictions. On the other hand, one fifth of offenders in this group subsequently had at least 5 more entries in the penal register, three of them as many as ten entries. These offenders can be classified as multiple special recidivists, while, from a point of view of the number of cases of special



recidivism, the periods before and after the conviction in question did not differ significantly. It can be inferred that the mentioned conviction in summary procedure was simply another in a long line of encounters with the criminal justice system due to repeated criminal activity of the same sort (obstructing the enforcement of an official decision, theft). In the case of offenders who, after their conviction in summary procedure, were convicted at least once more, we investigated further how much time elapsed before the offender was convicted again. The vast majority of offenders who continued in their criminal career after conviction in summary procedure were convicted again within a year.

Based on the results of this research, the following *recommendations* can be made for the purposes of the re-codification of criminal procedure law that is currently underway:

- consider clear definition of the conditions for conducting shortened preliminary procedure which, if met, would make such conduction obligatory;
- consider a change in the concept of the deadline for completing shortened preliminary procedure so that it would provide sufficient room for collecting the necessary materials while at the same time not allowing artificial prolongation of the verification phase by the police, or to consider introduction of an obligation for the police to inform a potential offender that he/she is a suspect without delay after he/she is found, and of a deadline by which “verification” must be completed in shortened preliminary procedure;
- during re-codification to focus on eliminating the identified obstacles to the speed and fluency of standard criminal proceedings;
- consider eliminating the limit of applicability of a penal order in cases where a cumulative or joint sentence should be imposed and where the prior sentence was imposed by judgment (under condition that such cumulative or joint sentence does not deviate from the range of sentences and from the length of sentence that may be imposed under a penal order);
- consider amending the diversions system so that the ranges of offences for which they are suitable are better differentiated (typically conditional suspension of criminal prosecution vs. out-of-court settlement), thereby reinforcing the applicability of those diversions that are procedurally and administratively more demanding;
- consider thorough revision of the system of collection, processing and reporting judicial statistical data on criminality and operation of the criminal justice system, which are (if reliable) the essential source of findings for creating and implementing

an effective penal policy, in such a way as to eliminate all currently existing serious shortcomings of this system and to avoid devaluation of the efforts of criminal justice professionals who collect such data and of the finances laid out for this system.

Summary procedure were introduced into the penal code as a special form of proceedings, a deviation from standard procedure, intended for dealing with the least serious and most simple types of offences from a factual and legal point of view. Introduction of summary procedure was without doubt successful and had a positive effect on processing criminal matters in the CR. It is clear however that, since 2002, not only legal regulation of summary procedure has changed but also its form in practice. Now the structure of cases heard in summary procedure has changed (also more complicated cases) and the overall duration of shortened preliminary procedure has become longer – in some cases so much that the word “shortened” in its title is beginning not to make sense.

Translated by: Presto