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SUMMARY OF DOCTORAL DISSERTATION "THE INDICTMENT AS SUBSTANTIVE COMPLAINT IN POLISH CRIMINAL PROCEEDINGS"

DOCTORAL DISSERTATION PREPARED UNDER THE SUPERVISION OF
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The work is an attempt at a comprehensive analysis of the issue of the indictment as a substantive complaint in the Polish criminal process. The general assumption is to present the indictment against a broad background: normative, dogmatic, historical and pragmatic. The aim of the dissertation is also to evaluate the existing normative model and to present a proposal for solving the most significant interpretative problems in this respect. It was also my aim to theoretically and comprehensively systematise all issues related to this issue.

In particular, the work aims to determine whether, in the current legal state, the indictment and its surrogates are a sufficient procedural means for the implementation of the accusatory function and the principle of complaint. The subject of scientific inquiry is also to analyse whether the system of accusatory complaints is adequate for the type of cases in which individual complaints are made and whether it adequately realises the procedural guarantees of the participants in the proceedings, especially the accused.

The topic of the thesis refers directly to the institution of criminal procedural law, but due to the interference of the accusatory complaint in the sphere of civil rights and freedoms, it also remains in close connection with constitutional law, in terms of the right to defence and its constitutional guarantees. A comprehensive analysis of the issues of criminal procedural law and constitutional law is therefore necessary, with particular reference to the right of the accuser to bring and support an indictment and the citizen's right to a court of law and the right of defence. The institution of the indictment is also of major importance in shaping the course of criminal proceedings and delineating its subject-matter framework.

The thesis of this dissertation is that although the indictment, together with the other substantive complaints, forms a coherent system of complaints, allowing for the proper implementation of the principle of complaint, the detailed regulations in this area require a certain legislative correction, aiming, on the one hand, at streamlining the proceedings and increasing procedural guarantees of its participants, and on the other hand, at clarifying the mutual relationship between the individual complaints and detailing their form.

In the considerations, the method of dogmatic analysis of the binding norms of procedural criminal law and, in many cases, constitutional law was used first of all. The method of dogmatic analysis should be understood as a logical and linguistic method, combining the exegesis of specific provisions of the law and the evaluation of existing solutions, including the formulation of *de lege lata* and *de lege ferenda* postulates. In particular, the paper considers such elements of the dogmatic method as: description and systematisation of legal norms, interpretation of the law, establishment and definition of concepts, analysis of the practice of law application and its improvement.

It was also assumed that, in order to achieve the above objectives, dogmatic analysis alone is insufficient. The statement of A. Podgórecki's assertion that the development of legal sciences cannot advance by way of purely speculative deliberations. The legal sciences can only enter a period of particularly fertile theoretical development when they are supported by empirical knowledge. Then, at times, speculative thought can also be of great help. Indeed, it is advisable to study certain legal institutions with an emphasis on their functional side, which requires confronting legal rules with the state of affairs in reality. With this in mind, the jurisprudence of the Supreme Court and common courts was analysed, with particular emphasis on appellate courts, as well as that of the Constitutional Court and the European Court of Human Rights in Strasbourg.

The work also makes use, albeit to a limited extent, of a legal-historical analysis, taking into account the main trends of normative changes and the basic legislative tendencies. The work is theoretical in nature, so no empirical studies of the practice of law application have been carried out.

Apart from the introduction and the final conclusions, the work is divided into eleven substantial chapters and is structured according to the approach adopted. Initially, general issues relating to the principle of complaint are dealt with, a brief historical outline of both the principle of complaint and individual complaints is provided, before going on to address individual complaints and more specific issues such as the functions and substance of the indictment. This is followed by a discussion of the basis and application procedure for individual complaints.

The first chapter is devoted to the principle of complaint from a historical perspective. It deals with the genesis and formation of the principle of complaint in the criminal process, and of individual prosecution complaints, throughout history, from ancient times through the Middle Ages to the modern criminal process. It has made it possible to point out the significant differences in the various models of trial, from inquisitorial to mixed to complaint.

The second chapter deals with the principle of complaint in contemporary criminal trial. Its aim is to define such concepts as the procedural principle, the complaint in the criminal process and its meaning, types of complaints, and to show the principle of complaint and its function against the background of competing principles: officialdom and legalism. Consideration of these concepts, as well as historical and systemic comparisons, has allowed to draw conclusions that are important for further, more detailed consideration.

The third chapter focuses on the essence and functions of the indictment in the context of the function of protecting the public interest, the accusatory complaint as a procedural premise, the limits of the indictment in terms of the judicial framework of the case.

The following chapters are devoted to individual indictments. They indicate the entities entitled to bring them, the scope of their subject matter and their essence and function. Bearing in mind the doctrinal divisions of complaints and discrepancies as to the manner of their classification, a division of accusatory complaints has been adopted, which has been considered the most complete and adequate for the assumptions adopted in the work.[1] It should be noted, however, that it is possible to adopt yet another way of systematising accusatory acts.[2]

Following this division, Chapter Four is devoted to the ordinary indictment, Chapter Five to the simplified indictment, Chapter Six to the indictment with the public prosecutor's request to convict the accused without trial, Chapter Seven to the subsidiary indictment of an auxiliary prosecutor, Chapter Eight to the private indictment, and Chapter Nine to the other indictments, i.e. the cross-indictment, the amended and supplemented indictment and the oral or supplementary indictment.

Chapter Ten addresses the form of the simple indictment, its constituent elements, including its structure, layout and individual parts, as well as its language. It also addresses issues such as, for example, the indication of personal data of the accused, information on the application of a preventive measure and security of property, description of the act and its legal qualification, indication of committing the act under the conditions of relapse into crime or in an organised criminal group, the court competent to hear the case, justification, signature of the

[1] With regard to the entity entitled to file an indictment, a distinction is made between a public indictment, an indictment by a victim acting as an auxiliary prosecutor, a private indictment, and a mutual indictment.

[2] Types of indictments: 1. an ordinary indictment, 2. a simplified indictment, 3. an indictment with a request of the public prosecutor to convict the accused without trial, 4. a subsidiary indictment of an auxiliary prosecutor, 5. a private indictment, 6. a mutual indictment, 7. a corrected and supplemented indictment 8. an oral or supplementary indictment. The doctrine further distinguishes between special indictments and among them simplified indictments and substitute indictments. With this division, simplified indictments include: 1. an indictment with a motion for conviction without trial (Article 335 § 1 Code of Criminal Procedure), 2. an indictment drawn up in an investigation by the public prosecutor, the police or a body indicated in Article 325d of the Code of Criminal Procedure, which may not contain a statement of reasons (Article 332 § 3 of the Code of Criminal Procedure), 3. an indictment filed by a private prosecutor; 4. an oral extension of the indictment in question (fallback trial under Article 398 § 1 of the Code of Criminal Procedure).

prosecutor, list of persons requested to be summoned by the prosecutor, list of evidence requested by the prosecutor to be carried out at the main hearing, request to refrain from summoning certain witnesses, list of disclosed victims.

Deliberation on the formal review of the indictment was consciously and intentionally not included in the study, as it was considered to be beyond the subject and scope of the study, as the court's actions after the indictment was filed.

Chapter Eleven, on the other hand, focuses on the analysis of the institution of surrogates of the indictment, i.e. complaints replacing the indictment, focusing on the surrogates of the indictment, which include: 1. a motion for sentencing without trial (Article 335 § 2 of the Code of Criminal Procedure), 2. a motion for conditional discontinuance of proceedings (Article 336 of the Code of Criminal Procedure), 3. a motion for discontinuance of proceedings and application of precautionary measures (Article 324 of the Code of Criminal Procedure), 4. a motion for examination of the case in accelerated proceedings (Article 517b § 1 of the Code of Criminal Procedure), and 5. procedural pleadings substituting the indictment and fulfilling functions similar to it.

The considerations carried out in the study and the examples illustrating them from the jurisprudential practice fully confirm the thesis that although the indictment, together with other substantive complaints, forms a coherent system of complaints allowing for the proper implementation of the principle of complaint, the detailed regulations in this area require a certain legislative correction. The normative changes proposed in this area and *de lege lata* postulates are aimed, on the one hand, at streamlining proceedings and increasing procedural guarantees of their participants, and, on the other hand, at clarifying the mutual relationship between individual complaints and specifying their form.