


Note

ECONOMICS OF CRIMINAL PROCEEDINGS IN VIEW OF PROCEDURAL PRINCIPLES

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Summary: 1. Economic Analysis of Law in Criminal Cases – General Remarks. – 2. Costs vs the Principle of Truth. – 3. Costs vs the Principle of Legalism. – 4. Costs vs the Principle of Directness. – 5. Costs vs the Principle of the Right to a Defence. – 6. Costs of Criminal Proceedings – Results of Selected Empirical Data. – 7. Conclusions.

Keywords: economics of law, criminal procedure, costs of proceedings.

ABSTRACT

Background: This article was written as part of the *Costs of a Criminal Trial in View of an Economic Analysis of Law* research project. Part one contains deliberations on the impact of economic factors on the regulations concerning the criminal procedure. One needs to answer the question of whether such factors should be considered as affecting the principles on the basis of which the model of the criminal trial is being developed and whether there are any solutions that have been introduced specifically because of the profit and loss account

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related to the prosecution of a perpetrator. Part two focuses on the fundamental results and the conclusions of empirical studies carried out with respect to the expenses incurred by the State Treasury in criminal proceedings, considering the expenses incurred in serious cases, i.e., those examined in the first instance by regional courts, and in minor cases, which in the first instance are handled by district courts.

Results and Conclusions: The article points out three fundamental factors determining the amount of the expenses, i.e., the fact of the accused being imprisoned during the proceedings, the use of scientific evidence (opinions produced by expert witnesses), and the participation of a public defender remunerated by the State Treasury.

1 ECONOMIC ANALYSIS OF LAW IN CRIMINAL CASES – GENERAL REMARKS²

The economics of criminal proceedings are discussed rarely and to a small extent. A more popular concept is the simplicity of proceedings, which is sometimes placed in the context of the principle of efficiency of proceedings and combined with the postulate to ensure that procedural activities are carried out in a concentrated manner, in as much as this is possible without endangering the fundamental purposes of a criminal trial, i.e., a correct penal response based on the conclusions made with respect to facts.

The academic reluctance to analyse criminal proceedings from an economic point of view has historical and cultural foundations. Administration of justice, especially in the area of criminal law, is perceived as a duty and a right of the state to exercise its powers with respect to the individuals subject to its jurisdiction. Consequently, the need to maintain a state apparatus, the purpose of which is to administer justice in criminal cases, is considered to constitute a natural cost of exercising power that remains outside of economic evaluation, which, by nature, makes use of the concepts of profit and loss.

Continental academics seem to be particularly unwilling to engage in an economic analysis of criminal proceedings. The belief that the judiciary is an emanation of the power of the state, shaped over centuries and consolidated during the Enlightenment, excludes an approach where economic issues could be seen as factors that determine the essence of exercising judiciary prerogatives. Naturally, this does not mean that the problem of the costs of proceedings never existed or that no incidental discussions took place.³ However, the economic aspect of criminal proceedings has never been treated (at least not directly) as a factor that is significant from the point of view of shaping the course of such proceedings and the solutions and concepts employed as part of it.

Economic analysis of law is a relatively new area, which emerged at some point in the middle of the 20th century. American academics were the precursors of using economic tools to analyse law. They initially focused on individual concepts and solutions used in broadly understood private law.⁴ This approach followed from a natural assumption that changes to market regulations have economic consequences. Nonetheless, it is still claimed today that an economic approach may be useful when investigating individual regulations, concepts, and solutions rather than when

2 The text is partly based on the publication D Szumiło-Kulczycka, 'Ekonomia postępowania karnego a zasady procesowe' in M Rogacka Rzewnicka, H Gajewska-Kraczkowska (eds), *A book to the memory of Professor Andrzej Murzynowski. Istota i zasady procesu karnego. 25 lat później* (Warsaw 2020) 449.

3 H Kempisty, *Koszty sądowe w sprawach karnych* (Warsaw 1977). RJ Foellmer, *Soll der Verurteilte die Kosten des Strafverfahrens tragen?* (Göttingen 1981).

4 One of the most prominent precursors of this trend is R Posner, *Economic Analysis of Law*, (1st edn, New York 1973); see also R Coese, 'The problem of social cost' (1960) 3 *Journal of Law and Economics* 1; F Famulski, 'Economic efficiency in economic analysis of law' (2017) 3 *Finanse i Prawo Finansowe* 15, 27.

describing law as a phenomenon in general.⁵ This does not affect the fact that the economic approach to court law is becoming more and more popular, as can be seen, for example, in the regular research on the efficiency of the judicial systems by Council of Europe member states.⁶

This article is intended to present the 'economic perspective' in the evaluation of certain criminal law concepts and to point out that this context, even though usually omitted in academic discourse, is in fact noticeable in the recent development trends related to criminal proceedings and undoubtedly has to be taken into account when planning reforms.

2 COSTS VS THE PRINCIPLE OF TRUTH

There is no doubt that progress causes changes to the forms and methods of committing criminal offences, but it impacts crime detection methods to an even larger extent. These processes have been especially visible in recent years when, because of the impact of the technological revolution, new types of crime have come into existence (e.g., electronic espionage) and new methods of committing traditional crimes have emerged due to the development of electronic communication tools (stalking, criminal threats) and the electronic market of services (online scams, crimes against sexual freedom or against protection of minors against sexual violence, trafficking of tissues and organs, arms, and pharmaceuticals and parapharmaceuticals).

The authorities responsible for looking for truth and drawing conclusions with respect to facts are able to use increasingly better operating methods that allow them to arrive at more precise and detailed conclusions. Technical possibilities allow them to reach for highly specialised forms of acquiring knowledge (complex opinions of expert witnesses, court experiments, use of electronic data to determine the course of events). But this knowledge comes at a cost. Both in the original sense, meaning the price that must be paid for the opinion of an expert witness, for a court experiment to be carried out, for acquiring specific documents, etc., but also in a wider sense, as the price related to authorities having to spend time on gathering, analysing, and processing materials. A few years ago, in a criminal trial, it was rare to use psychological profiling, CCTV recordings, or printouts from hard drives, e-mails, mobile phones, etc. Today, these are standard items of evidence in proceedings that concern the most frequent criminal offences, such as domestic abuse, shoplifting, fraud committed with the use of online tools, road accidents, or the illegal drug trade. On the one hand, all of these possibilities in terms of gathering evidence allow law enforcement authorities to determine the actual course of the events reported with much higher precision. However, on the other hand, they take up much more time for the authorities responsible for criminal proceedings, which has a significant economic aspect related to the need to expand the human resources necessary to process incoming cases.

In the continental tradition, it would be difficult to accept an approach in which determining the truth in a criminal trial is not the ultimate goal or where a reduction of costs is an acceptable step. Ideas like that appear iconoclastic, striking at the very foundation of the belief — typical of the continental tradition — about what criminal justice should be, i.e., the importance of the conclusions made with respect to facts. There is no doubt that the principle of objective truth in a criminal trial is often treated as the overriding principle: a

5 EN Zalta, U Nodelman, C Allen, LR Andreson (eds), *The Economic Analysis of Law*. Stanford Encyclopedia of Philosophy (Stanford 2017) 1.

6 Such research has been carried out since 2010. One of the fundamental indicators taken into account are the financial outlays made on the judiciary by the particular member states. The most recent report covers 2016 data. See: *European judicial systems. Efficiency and quality of justice*, vol 26 (CEPEJ Studies 2018) <<https://www.coe.int/en/web/cepej/eval-tools>> accessed 1 October 2021.

principle that has a special and a priority meaning in relation to other procedural principles and one that is an essential element of a fair trial.⁷ It is claimed that

the justice system is able to properly perform its legal and social functions only when penal repressions are applied with respect to actual criminals and the crimes they did actually commit. Every judgment based on error, and therefore unfair, not only fails to perform its positive social function, but also harms the wrongly convicted person, undermining their trust and the trust of others in state authorities.⁸

If one shares the belief that the principle of objective truth is of overriding importance and that this principle is a priority from the point of view of justice in general, it is impossible not to notice that this belief seems axiologically indisputable in the case of imposing a penal sanction on an individual. However, its importance is not necessarily the same when it comes to relinquishing the prosecution of a criminal offence. Therefore, although abandoning the search for truth prior to pronouncing a judgment of conviction is incomprehensible and unacceptable, this mechanism does not appear to be equally black and white in the case of resigning from a prosecution that would be disproportionately expensive in view of the gravity and significance of the committed act.

Consequently, in spite of the special importance of the imperative to search for the truth in criminal proceedings, a closer look at regulations in particular legal systems and, even more so, at the actual practice in this area, shows that, in fact, economic factors and arguments often play a considerable role.

A good example in this respect is the growing number of legal bases for opportunistic discontinuation of proceedings in cases where, in the opinion of the legislator, there is little point in prosecution, the chances of determining the perpetrator are small, or the sense of punishing them is questionable.⁹

This aspect is even more noticeable in the practical actions of judicial authorities. There is no doubt that the authorities responsible for preparatory proceedings are ready to spend higher sums and engage more resources in order to determine the perpetrators of serious criminal offences that are highly harmful to society, e.g., offences producing a fatality, offences against common safety, offences against property of great value, or offences against commercial trading resulting in multi-million financial losses. It would also seem that the more the given crime moves public opinion, the higher this readiness is. On the other hand, simple criminal offences, such as theft or breaking and entering, even though they may be a significant nuisance, rarely entail the utilisation of cost-intensive state-of-the-art methods in order to determine the perpetrators. The fact that state authorities are ready to allocate

7 For a review of the standpoints on the role and importance of the principle of objective truth in relation to other procedural principles see S Waltoś, 'Zasada prawdy materialnej' in P Hofmański, P Wiliński (eds), *System Prawa Karnego Procesowego. Zasady Procesu Karnego*, vol III, part 1 (Warsaw 2014) 269.

8 A Murzynowski, *Istota i zasady procesu karnego* (Warsaw 1994) 115.

9 In terms of the Polish legal system, this concerns concepts such as the so-called registered discontinuation, which was added to the Code of Criminal Procedure in 2003 under pressure from the police and which allows for shortening the duration of formal preparatory proceedings to five days in cases of a lesser calibre and where chances to find the perpetrator are slim (Art. 325f of the Code of Criminal Procedure); after that time, proceedings may be discontinued. Another example of such an economical approach to the problem of prosecution of crime is the concept of absorptive discontinuation (Art. 11 of the Code of Criminal Procedure), where a perpetrator who has been identified is not tried since they have already been sentenced to a stricter punishment on account of another criminal offense. This category also includes conditional discontinuation of proceedings where the legislator allows the authorities to resign from prosecution, and therefore from making categorical statements as to whether the accused is in fact the perpetrator, if the gravity of the committed act, the personality of the accused, and the interest of the aggrieved party are not sufficiently significant to justify the engagement of the personnel and resources of the justice system in an operation that offers slim chances in terms of undoubtedly and ultimately confirming the guilt and of imposing a punishment (Art. 66 of the Criminal Code and Art. 341 of the Code of Criminal Procedure).

substantial funds to finding the perpetrator of a murder and much less likely to do the same in the case of a stolen bike is understandable and, axiologically, fully accepted by society (although the owner of the bike would likely disagree). However, another phenomenon should be pointed out: extensive personnel is engaged, and large sums are spent in order to prosecute trivial offences purely in order to pursue political or ideological interests.¹⁰ Unlike the actions intended to find the perpetrators and evidence in the case of truly grave offences, such actions give rise to axiological objections. In addition to other reasons, these objections are also motivated economically. Cases of this type necessarily lead to questions concerning the proportions between the gravity of the given contravention of offence and the resources engaged in order to detect and judge it. Do such actions of judiciary authorities, financed by the State Treasury and formally justified through the principle of legalism in law enforcement, actually enjoy moral and social acceptance?

3 COSTS VS THE PRINCIPLE OF LEGALISMUS

The problem of the economics of prosecution may be juxtaposed with the principle of legalism, which is widely adopted in continental legal systems, or the principle of equality before the law, which is related to that principle at a slightly higher level. Alternately, systems based on a purely legalistic approach to prosecution no longer exist. Furthermore, this principle does not apply anymore to the prosecution of contraventions and violations of order regulations. Legislators not only accept the resignation from engaging personnel and resources in trivial cases but are also ready to make such a resignation a principle in this area, with prosecution being an exception rather than the rule. Naturally, this is not a simple issue, and decisions as to whether to carry out criminal proceedings or resign from carrying them out can never be based exclusively on a purely economic profit and loss account. The fact that a single act seems trivial and the value of the damage done appears minimal is not sufficient to resign from prosecution. This is because criminal law performs much broader functions than imposing repressions with respect to individual behaviours. It is also a tool for implementing the desired social attitudes and reviling the unwanted ones, a tool for protecting the values that contribute to the well-being of the entire community, etc. A good example of a clash between the pure economics of prosecution of a given act and the general purposefulness of prosecuting a specific type of behaviour is the imposition of penalties on vendors in connection with their failure to record a given transaction on a cash register. A single unregistered transaction may result in the State Treasury losing as little as several cents. However, the costs of the proceedings intended to judge and punish the perpetrator

10 A good example in this respect was the case where the authorities attempted to identify and convict the persons who were preventing a column of government vehicles carrying the leader of the political party in power from entering the grounds of the Wawel Castle where his brother is buried. The event occurred on 18 December 2016; the judgment of acquittal was passed on 22 October 2019. In the course of the proceedings, several dozens of witnesses were questioned and even an expert witness was appointed in order to determine whether the road used by the column of vehicles was a traffic zone or not (!). <<http://krakow.wyborcza.pl/krakow/7,44425,24414831,sprawa-blokowania-kaczynskiego-biegly-droga-na-wawel-nikt.html>> accessed 1 October 2021; <<http://krakow.wyborcza.pl/krakow/7,44425,22948179,p-rokuraturo-amorzyla-sledztwo-ws-protestow-pod-wawelem-wizyty.html>> accessed 1 October 2021. Another example of engagement of personnel and funds disproportionate to the nature of the accusation was the searching and detention of an activist suspected of showing contempt to religious feelings by being in possession of an image of the Virgin Mary with a rainbow-colored aureole. The apprehension operation involved several police officers and included searching rooms, temporary confiscation of the computers and a mobile phone of the woman, and further actions related to examining the contents of the disks and memories of these devices. Ultimately, the court found these actions to be blatantly incorrect and granted the woman a compensation of approx. EUR 1,800. <<https://warszawa.wyborcza.pl/warszawa/7,54420,25806812,8-tys-zadoscuczynienia-dla-elzbiety-podlesnej-za-niewatpliwie.html>> accessed 1 October 2021.

may amount to several hundred euros. Still, this does not affect the fact that, in general terms, prosecution of this type of act turns out to be profitable because of its educational value. Showing the inevitability and severity of the sanction contributes to a spread of legalistic attitudes and therefore prevents such minor contraventions from being engaged in on a mass scale, which, overall, would generate massive losses for the state budget.

The broadly understood economics of proceedings manifests itself not only in connection with the decisions to resign from prosecution or not to search for the truth. It also surfaces in a number of typical issues related to criminal proceedings. The sole differentiation between the types of preparatory proceedings, into a more significant and formalised investigation, reserved for significant cases, and a less formalised probe intended for cases that are, in general, less important, as well as the differences between the types and compositions of courts, show that the legislator accepts higher expenses where a significant case is to be judged and, at the same time, is ready to limit these expenses in the case of minor cases.

Probably the most prominent example of an economic approach to the modelling of criminal proceedings is the dissemination of consensual methods of resolving cases in continental procedures during the last decades of the 20th century. The idea behind this concept, manifesting itself in resigning from carrying out evidentiary proceedings in court and accepting, instead, a resolution agreed upon and proposed by the parties, was solely to speed up proceedings and to reduce the global engagement of personnel and resources, and thus the costs, in terms of judging cases where this could be avoided. The resources thus spared could be used to prosecute and judge more difficult and more significant cases. Consensualism is a good example of the economics of the judiciary overlapping with other values that should be guaranteed in proceedings and the procedural principles intended to protect these values: to a really large extent, it entails at least a potential violation of these values and principles.¹¹ Even though in the normative aspect, all consensual methods of resolving cases known in Polish law require that for a judgment to be based on conclusions as to facts that raise no doubts and on confidence that the accused is in fact guilty, in practice, this area is full of ambiguities, nuances, individual interests of the accused and the aggrieved, and, finally, pragmatic interests of the judiciary authorities themselves — few would be ready to claim with absolute certainty that the idealistic assumptions laid down in statutory regulations are actually being implemented.

4 COSTS VS THE PRINCIPLE OF DIRECTNESS

The principle of directness should also be mentioned in the context of the economics of criminal proceedings. This principle means that a court examining a subject matter should come into direct contact with the evidence on which it bases its conclusions as to facts and that this evidence should be of a primary nature, i.e., there should be a direct relationship between the evidence and the fact to be proven. This principle has never been codified in the Polish legal system; however, its existence has been perceived as a reasonable consequence of common sense. It seems obvious that the more indirect links between the given fact and the judge, the higher the risk of distortions. However, in recent years, the situation has started to change. In 2015, a reform was implemented where the scope of the options for the court of the second instance to supplement the previously collected body of evidence was expanded, leading to a possibility of a completely different decision being made with respect to the accused on the basis of evidence that is known to that court partially in a direct manner and

¹¹ SC Thaman, 'Plea Bargaining, Negotiating Confessions and Consensual Resolution of Criminal Cases' (2007) 113 *Electronic Journal of Comparative Law*, 47 et seq, available at <<https://www.ejcl.org/113/article113-34.pdf>> accessed 10 May 2019.

partially only as a result of reading the case file. This has created a certain asymmetry in terms of the statutory standard of implementation of that principle in proceedings before a court of the first instance. There, the permitted exceptions from compliance with the principle of directness are usually related to the impossibility of all members of the adjudicating panel directly familiarising themselves with the evidence, lack of primary evidence, or the need to verify this evidence. However, the legislator was not bold enough to make it a principle that resigning from the direct taking of evidence should be possible also in a situation where taking evidence would entail significant costs that would be disproportionate to the purpose and importance of the given activity. Naturally, the point is not to force this solution but to consider and discuss the grounds and the boundaries of the principle of directness in the amended Criminal Code, also in view of the economics of proceedings.

5 COSTS VS THE PRINCIPLE OF RIGHT TO A DEFENCE

The last principle that is affected by the economics of proceedings is the principle of the right to a defence. Unlike the principle of directness, its primary meaning in criminal proceedings is obvious. Axiologically, the right to a defence seems to be absolutely impossible to undermine, and no exceptions should ever be allowed for purely financial reasons. But is this really the case? From the Polish perspective, both the existing regulations and the recent discussion concerning the scope of the right to have a defence counsel, as well as the resulting amendments to statutory provisions, clearly show that it is actually the other way round. The regulations concerning the right to a defence in its formal aspect were largely affected precisely by economic factors. Even before the introduction of the 1997 regulations, there had been discussions as to whether a public defender should be appointed *ex officio* to every person who is subject to an indictment and who decides not to employ the services of a defence counsel of their choice. Ultimately, this solution was not implemented precisely because of the costs it would entail. However, back then, the boundaries of obligatory defence were defined rather broadly: the state was obliged to finance, if necessary, a defence counsel also for a person that did not speak Polish. This was abandoned on 1 July 2003, with Art. 6 of the European Convention on Human Rights stated as the basis for the decision, as it only requires that free assistance of an interpreter be provided, with no mention of having to appoint a defence counsel to a person that does not speak the official language of the country in which they are tried. Naturally, the actual reasons for the resignation from obligatory defence in such cases were economic in nature. The same amendment also significantly limited the obligatory defence in the case of persons with respect to which the judiciary authority has doubts as to their sanity: a defence counsel is appointed only if an expert witness confirms that the person is sane.¹² Again, the motivation behind this decision was purely economic. Another amendment to the Polish Code of Criminal Procedure, which came into effect on 1 July 2015, provided that every accused who filed the relevant application for a public defence counsel to be appointed for them was to receive the assistance of such a counsel at the stage of court proceedings. This regulation was abandoned after less than a year, with a reintroduction of the obligation for such an application to demonstrate that the accused does not have sufficient funds to employ the services of a regular defence counsel.¹³ Although the drafting team for this amendment did not directly refer to the costs of such a broadly defined right to demand a defence counsel (which was the case with the amendment

12 Art. 1 of the Polish Law of 10 January 2003 on Amendments to the Code of Criminal Procedure, the Provisions Implementing the Code of Criminal Procedure, the Law on Crown Witnesses, and the Law on the Protection of Classified Information (Journal of Laws No. 17, item 155).

13 The Polish Law of 11 March 2016 on Amendments to the Code of Criminal Procedure and Certain Other Laws (Journal of Laws of 2016, item 437).

of 1 July 2015), there is no doubt that they had to take this issue into account when deciding to reintroduce the principle that the appointment of such a counsel is possible only once the accused has demonstrated that they do not have sufficient funds to employ the services of a regular defence counsel.¹⁴

The problem of financing a public defender is naturally a mere drop in the ocean of the issues which fall within the scope of the economics of proceedings in relation to the principle of the right to a defence. These issues by no means come down to the simple claim that defence means additional costs of proceedings, which should be minimised as far as possible (although this approach occasionally seems to resonate in public discussions concerning the directions of changes to the criminal procedure). A professional defence also means the avoidance of tens of unnecessary activities (such as requesting the accused to make their representations or requests more precise or to remove formal deficiencies in their submissions) and a hope for a better selection of evidence or a reasonable and fair judgment to be delivered following a consensual procedure. The fact that the legislator does notice the positive role of a professional defence counsel in the context of broadly understood economics of proceedings is confirmed, e.g., by the obligation that parties be represented by an attorney-at-law with respect to cassation complaints, appeals against judgments of regional courts, or an indictment filed by the aggrieved party itself. Consequently, one cannot claim that higher outlays are all that the broad and publicly financed formal defence generates. Perhaps it also allows for a reduction of some unnecessary costs. However, the answers to these questions require extensive research and a more thorough analysis, which, due to obvious constraints, cannot be carried out in this article.

6 COSTS OF CRIMINAL PROCEEDINGS – RESULTS OF SELECTED EMPIRICAL DATA

Finally, the results of some research on the costs of criminal proceedings in Poland should be presented. The studies covered a sample of 745 cases where an indictment (or its equivalent)¹⁵ was filed with a court between 1 January 2015 and 31 December 2017. Of these cases, 385 were within the competence of district courts, meaning they were less grave in nature, while 360 were considered by regional courts and, as such, were more significant.¹⁶ The sample comprised courts located in large cities that are also strong academic centres (Kraków and Gdańsk) and two smaller cities located in eastern and western Poland (Białystok and Zielona

- 14 As pointed out in the grounds for the bill of the Polish Law of 11 March 2016 on Amendments to the Code of Criminal Procedure and Certain Other Laws, 'Considering the growing role of the judicial factor in searching for the truth, the restriction of formal requirements to be complied with by the so-called non-professional participants to proceedings, including in particular in terms of formulating means of challenge, it is proposed to abandon the principle of appointing a public defender and representative *ex officio* exclusively as a result of the relevant application being made and without an analysis of the financial and family situation of the applicant, as provided for in Articles 80a and 87 of the Code of Criminal Procedure. Providing a person of modest means with a defender and representative will take place once the financial and family situation of that person has been verified under Article 78 § 1 of the Code of Criminal Procedure'. See Sejm Deputy Document No. 207, available at <<http://www.sejm.gov.pl/>> accessed 10 May 2019.
- 15 For the purpose of the research, a request for a conviction without holding a hearing, a request for conditional discontinuation of proceedings, and a request for discontinuation of proceedings and the use of a protective measure with respect to an insane perpetrator were treated as equivalent to an indictment.
- 16 The research project was fully financed by the Polish National Science Center as part of the Costs of a Criminal Trial in View of an Economic Analysis of Law project (project number 2015/19/B/H55/01217). Full results have been published in the following monograph: D Szumiło-Kulczycka (ed), *Koszty procesu karnego w ujęciu teoretycznym i empirycznym* (Cracow 2020).

Góra, respectively). The idea was to create a demographically and economically diverse research profile. In order to determine the costs of proceedings, the following were taken into account at the stage of preparatory proceedings: remuneration of an expert witness for producing an expert opinion and reimbursement of their expenses, reimbursement of expenses incurred by witnesses on account of their participation in the case, costs incurred on account of temporary confiscation and securing of items, remuneration of translators and interpreters, costs of mediation, costs of convoys, costs of psychiatric observation, costs of detention or temporary arrest, fees for retrieval of information from the National Criminal Register, remuneration of a probation officer for carrying out community interviews, remuneration of public defenders or representatives appointed *ex officio*, and other costs disclosed in case files. The costs incurred both in preparatory proceedings and in court proceedings were taken into account, including proceedings before the courts of the first and the second instance and, if the judgment was quashed, retrials. Consequently, the studies covered costs directly incurred by the State Treasury in a given case. In turn, they did not cover indirect costs related to the maintenance of the entire judiciary system, such as the remunerations of judges, prosecutors, and clerks, costs of upkeep of technical infrastructure, including the buildings and rooms in which procedural activities are carried out, etc. Naturally, these costs should also be taken into account when discussing the general burden borne by the state with respect to administering justice. However, the primary objective of the studies was to determine the relationship between the current criminal procedure model and the resulting expenses and to find out which factors contribute to the greatest extent to the generation of costs, whether there are any significant differences between the particular courts that could be explained with a different practice of application of legal regulations, and which concepts and solutions used in the criminal procedure have the largest impact on the costs of proceedings.

Following the criteria above, it was determined that the total amount spent on examining all of the 745 cases covered with the study was PLN 8,874,576.19, which translates to approx. EUR 1,936,538.76.¹⁷ Of this, PLN 4,870,559.96 (EUR 1,062,814.49) were the costs incurred at the stage of preparatory proceedings, and PLN 4,004.116.23 (EUR 873,746.09) was spent on court proceedings. This means that the cost of a single case amounted to an average of PLN 11,912.18 (EUR 2,599.38), of which PLN 6,537.53 (EUR 1,426.57) was spent on preparatory proceedings and PLN 5,374.65 (EUR 1,172.81) were the additional costs at the stage of court proceedings. However, the median was completely different, amounting to just PLN 861.08 (EUR 187.90). This was a result of substantial differences between the costs of handling the particular cases. The cheapest generated costs of PLN 40 (EUR 8.73) and covered just the flat fees for the delivery of documents. There were 13 cases like that. On the other extreme, the most expensive cases cost in excess of PLN 100,000 (EUR 21,821.20). In the sample, there were eight such cases, and two of those entailed the State Treasury spending more than PLN 200,000 (EUR 43,642.39) on criminal proceedings.

What is particularly important from the point of view of the previous assumptions is the substantial difference between the costs of handling minor cases (those within the competence of district courts) and serious cases (those within the competence of regional courts). The average costs for a case examined by a district court amounted to PLN 1,169.00 (EUR 255.09), while for cases before regional courts, the average was PLN 23,401.41 (EUR 5,106.46)! The medians were equally far away from each other: for cases within the competence of district courts, it was PLN 184.44 (EUR 40.25) and for cases handled by regional courts, PLN 11,099.81 (EUR 2,422.11).

17 According to the exchange rate published by the European Central Bank on 27/08/2021 (EUR 1 = PLN 4.5827).

7 CONCLUSIONS

Considering the above, there clearly are substantial differences between the costs of examining serious and minor cases. Further research has shown that there are only a few factors that generate these differences. The first entails costs related to the imprisonment of the accused in the course of a case. In more serious cases (handled by regional courts), the accused were imprisoned in one way or another (detention or temporary arrest) in a total of 245 instances (68%) at the stage of preparatory proceedings and in 160 out of 360 cases (45%) at the stage of court proceedings. For minor cases (handled by district courts), the same was true in 110 out of 385 instances (28%) at the stage of preparatory proceedings and only in 11 cases at the stage of court proceedings (2.8%). Consequently, it is not surprising that the costs related to imprisonment were a factor with a significant impact on the total cost of proceedings. Additionally, the duration of imprisonment in serious cases was usually much longer (counted in months), while in minor cases, it was mostly a one- or two-day detention.

The second factor that significantly affects the costs of criminal proceedings is the costs incurred in connection with the participation of expert witnesses. Evidence in the form of an expert witness opinion was admitted in 264 out of 360 cases handled by regional courts at the stage of preparatory proceedings (73%) and in 97 cases (27%) at the stage of court proceedings. Meanwhile, this type of evidence was used in 151 out of 385 cases within the competence of district courts (39%) at the stage of preparatory proceedings and only in 16 cases (4%) at the stage of court proceedings. This clearly shows that in cases concerning more serious criminal offences, judicial authorities significantly more often decide to reach for scientific evidence. Furthermore, this type of evidence is much more frequently used in serious cases at the stage of court proceedings. For cases handled by district courts, this occurs sporadically. A comparison of the average costs of an expert witness producing an opinion seems particularly important. In serious cases, the average cost of an opinion amounted to PLN 3,421.90 (EUR 747), while in minor cases, it was only PLN 757.20 (EUR 165). This means that the cost of single opinions produced in cases handled by district courts turns out to be noticeably lower than the cost of opinions produced in the cases within the competence of regional courts.

Finally, the last factor affecting the total expenses incurred directly by the State Treasury with respect to proceedings was the participation of a defence counsel appointed to serve as a public defender for the accused. These costs amounted to PLN 411,564.39 (EUR 89,808) in cases where regional courts were competent, which translated to 4.8% of all of the costs incurred by the State Treasury at this level, and PLN 29,580.96 (EUR 6,454.91) in cases handled by district courts. Again, however, a public defender was involved in cases examined by regional courts much more often than in those within the competence of district courts. In the former, a public defender participated in 139 cases (38%) already at the stage of preparatory proceedings and in 186 cases (52%) at the stage of court proceedings. In the latter, a public defender was appointed with respect to 59 cases (15%) at the stage of preparatory proceedings and in 32 cases (8.3%) at the stage of court proceedings. The average remuneration of a public defender amounted to PLN 924 (EUR 201) in minor cases and PLN 2,212.70 (EUR 482.83) for more serious cases. Yet again, in this aspect, the higher the gravity of the criminal offence, as abstractly defined by the legislator, the more frequent, in practice, the appointment of a public defender for the accused and the higher the remuneration for their services (incurred by the State Treasury).

It should also be pointed out that no major differences have been found in terms of serious cases (handled in the first instance by regional courts) and minor cases (which are within the competence of district courts) when it comes to consensual procedural forms. 137 out of 385 minor cases (35.6%) were settled through an agreement between the prosecutor and the

accused, which was subsequently approved by the court, while this happened in 110 out of 360 more serious cases (30%). Similarly, the number of witnesses questioned in the course of proceedings turned out to be a completely insignificant factor when it came to the direct costs of the cases. This was because witnesses rarely applied for a reimbursement of their costs of appearing at the court. As a result, the total sum of the amounts paid on this account constituted only 1.5% of the total expenses in the investigated cases.

The data presented above is naturally only a small element of much more extensive research. Still, it confirms the claim that the judiciary has an economic aspect that is strictly related to the gravity of the committed act. Naturally, whether the differences in terms of the costs of proceedings are a simple consequence of the complexity of the case remains an open question. However, the results discussed above suggest that other factors should also be looked for. The sole fact that a given criminal offence has been classified as a serious one (and therefore within the competence of regional courts) does not determine that finding the perpetrator and proving their guilt must be a long, complex, and expensive process. Quite the contrary: for instance, murder, which is one of the prohibited acts that are most harmful to society, is usually relatively simple in terms of gathering evidence. When murder is committed within a group of close persons, the perpetrator often pleads guilty, and evidence found on the site does not require the use of complex forensic procedures. Consequently, it is not a rule that a criminal offence classified by the legislator as a major one actually requires more complex and therefore more expensive actions related to evidence, and the other way round: a less grave offence does not mean, by its nature, that finding the perpetrator and proving their guilt will not entail substantial costs.

When looking for the reasons for such significant differences between the costs incurred by the State Treasury in connection with the handling of cases that are within the competence of regional courts and those examined by district courts, the fact that regional courts were much more likely than district courts to take supplementary evidence in the form of an opinion produced by an expert witness seems particularly significant. The opinions of expert witnesses are most often produced at the stage of preparatory proceedings since the grounds for indictment must already be determined at this stage. It is unlikely that prosecutors expect thorough opinions in minor cases already at this stage, while in more serious cases decide that partial or unclear opinions are satisfactory. If anything, it is the other way round. However, there is something that makes the courts that adjudicate more serious cases more likely to supplement those opinions with questioning expert witnesses in person. One may perhaps venture to claim that this element is the awareness of the gravity of the committed act and the prospect of more severe punishment. This naturally translates to a propensity to accept higher expenses on the part of the State Treasury so as to make sure that the conclusions reached with respect to facts are as reliable as possible and that the penal response is appropriate.

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