

DIVERSION AND STRUCTURAL EFFICIENCY IN CRIMINAL INVESTIGATION

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Abstract: The social expectation of efficiency against criminal investigation is formulated more and more vigorously. The efficiency of investigations can be apprehended through exploring the statistically measurable criteria of success and also through applying the rules of criminal procedure law legally and expertly. The police fulfil all these with strictly obeying the legal and professional regulations enforced by the prosecution. However, the result-centric requirement system makes the whole criminal jurisdiction system counter-productive if the directing conditions and activity competences of the structure and the function of the subsystems (the prosecution, the police) are not settled clearly along a uniform efficiency aim philosophy. Their own internal functional management adjusted to the general function of the police can easily conflict with the criminal investigation activity directed by the prosecution. For this reason, only creating the legal institution of cooperation between the subsystems can make way for improving the whole jurisdiction.

Keywords: efficiency, case selection, diversions, simplifying investigation.

INTRODUCTION

In Hungary, investigation is done by the police under the judicial supervision and effective professional direction of the prosecution, which has little independence in initiating diversion procedure methods. Legally, thus it is hardly appreciated that first investigation authorities get into contact in time and space with events happening in the outworld and having relevance from a criminal law point of view. May attention get lost over the condition that the investigation authority operates a kind of selection mechanism in the form of hidden diversions¹ under the pressure of efficiency expectations and necessity, and also in the lack of simple diversions²? Surely, yes. American lawyers studying the European procedure systems has also pointed at: 'the principle of compulsory procedure requires the impossible: enforcement of the law, meanwhile delinquency and violent struggle for obtaining goods are increasing. There is an imperative necessity for changes with leaving principles in force, and where formal law or ideology do not make it possible, informal procedures must be worked out.'³ Today it is a banal establishment that jurisdiction authorities doing criminal investigation are able to deal with only a particular proportion of the cases, since all the crimes cannot be revenged, and neither structural changes nor staff increase mean a solution.⁴

1 Simple diversion means giving up criminal procedure without consequences either in the investigation phase but before the verdict. These are actions with minor danger to the society so using any punitive sanction is not reasonable. The burdens of justice are mainly reduced by cases which do not reach trial.

2 In those legal systems where the principle of legality succeeds, police cannot use diversion if they get to know about a crime from any source, they have to initiate the procedure ex officio. However, hidden diversion creates such a scope for action which police can use when they talk the complainer out of bagatelle actions which seem to be unsuccessful, they do not make the report, they do not take measures in case of reporting. It also has the result that there will be no cases and procedures in case of minor actions. in Blau: *Diversion und Strafrecht*. Jura.1987.S.29.

3 Goldstein, Abraham S. and Marcus, Martin(1998): *The Myth of Judicial Supervision in Three „Inquisitorial” Systems: France Italy and Germany*. The Yale Law Journal. Vol. 87: 240, 1977. p. 280. in: Kertész Imre: *A legalitás eróziója, az opportunitás inváziója*, Magyar Jog, April 1998. p.152.

4 Sléder Judit (2010): *A büntetőeljárás megindítása*. (PhD. manuscript), Pécs.p.140.

THE EFFICIENCY AWKWARDNESS OF THE SUBSYSTEM HIERARCHY

The inevitable dimension of the efficiency of criminal procedure closely related to the diversions of the efficiency of criminal procedure is the institutional hierarchy of the two penal jurisdiction subsystems. Its straight and logical consequence is that the subordination of the elements depending on each other in their forms of activities – for lack of assuring scope for action based on mutuality and confidence – can inevitably cause the injury of the efficiency of the whole system. *'Directing operation and directing activities are in interaction with each other. The latter depends on the former. Directing operation assures the budgetary contribution for the organization, establishes the organization, its structure, personnel decisions are settled there, and it has an effect on the employees' qualification. High-standard, legal activity and its direction **theoretically suppose** the perfect direction of operation. Otherwise functional disorders can happen in the field of law enforcement, the efficiency of directing activity will be smaller. Directing activity is exposed to directing operation, at the same time law settles responsibility for directing investigation on the prosecutor who directs the activity.'*⁵

The drawback of criminal procedure going on beside the investigation-principled and hierarchic functional direction – because of the multi-levelled character of the inquisitoric system – is the compulsion of repetition coming from the claim to 'supervision', which for the lack of appreciation of levels built on each other and not next to each other, with repeating the former activity again it causes the slowing down of the whole procedure and because of its retrospective principle it causes the decrease of its recognition opportunity. In the mixed system the literature of the inquisitoric⁶ model, which especially cares for obeying procedure guarantees, reduces the information distortion of the multi-level procedure caused by the loss of efficiency, which is practically suppressed by the court dominance of the accusatoric⁷ elements of modern rules of law. It can mostly be taken for granted that it would cause the damage of the success of verification if we would not allow the verification results of the investigation phase cited by procedural law solutions one by one.⁸ In this way, the mixed system can be called upon to account for the efficiency loss caused by repeating the results of the investigation phase at the trial, which have logically led to the headway of the role of verification guarantees in the investigation phase, and with it to the widening of legality counter success dimension. On the other hand, with the phenomenon of maximizing success it suffers the other 'disadvantage' coming from the dependence of the investigation authority on the prosecution, which is assessed as an executive compulsion of redundant investigation and verification actions by the investigation authority.

The question is worth placing into a system aspect and seeing the tangible fact that in case of such open systems⁹ as jurisdiction there is an interdependence between the subsystems. Meanwhile they have a relative autonomy when performing their duties, but they endeavour to preserve their independence which can come into conflict with the endeavour of the whole system, i.e. its overall aims. This statement is also true for the relation of the certain elements, as *Connidis* indicates, conflicts between subsystems can also derive from that the certain subsystems attempt to keep different degrees of functional autonomy. *'It is most likely that while an organization attempts to maximize its own functional autonomy and endeavours to minimize others' subsystem, it can originate tension and conflict between them.'*¹⁰

Connecting the relation of the prosecution and the investigation authority mutually, confidentially but not dependently, or though dependently but connecting their activities and operation directions, is significantly related to the loss of efficiency of the whole jurisdictional system. Since if diversion before the trial – prosecutor and police - dominates, criminal procedure also accelerates, in this way the input capacity of the system can increase, consequently the capacity of the investigation authority will be bigger as well. For all this, though, broadening the formal 'diversionary' initiative opportunities of the investigation authority, perhaps making the written work of the investigation phase more simple, furthermore differentiating the order of procedures according to their weight are needed. Consequently, the improving ability of dealing with cases will be realized in the larger number of registered crimes, in the increase of social prestige appreciating more effective criminal investigation behaviour, and in the orientation of decreasing punitive policy.

5 Nyíri Sándor (2003): Az ügyészség és a nyomozóhatóság kapcsolata. Belügyi Szemle. Issue 7-8, p. 64.

6 The procedure is written and secret. It has a fixed verification system, its result is the file, defence is within narrow bounds, the procedure and legal remedy system have several levels. etc.

7 The principle of verbatim, publicity and directness predominates. The principle of free verification system and sharing functions dominates which is realized in relation to characteristic defender's rights.

8 A büntetőeljárásról szóló XIX. törvényt (Be. tv.) amendment of 2010. évi CLXXXIII., among others 291§, 296§, 299§, 301§.

9 Farkas Ákos (2002): A falra akasztott nádpalca avagy a büntető igazságszolgáltatás hatékonyságának korlátai. Osiris kiadó, pp.28-29.

10 Connidis, Ingrid Arnet (1982): Rethinking of Criminal Justice Research. A system perspective. Holt, Rinehart and Winston of Canada Limited. p.32.

SUCCESS DIMENSION AS AN EFFICIENCY OBSTACLE IN THE RELATION OF THE PROSECUTION AND INVESTIGATION AUTHORITY SUBSYSTEMS

Apprehending the notion it seems to be expedient to examine the summary opinion of the penal board of the „Kúria”¹¹ which analyses legal practice. When examining the legality of the accusation, the Analyser Team came to the conclusion that the existence of the **indicium** and increasing it towards verification during criminal procedures – on the basis of rationality and legality – is enough guarantee to eliminate hidden diversions, also terminating illegal procedures determined by ‘success view’. *There is no reason to assume that a criminal procedure starts with a ‘blind investigation’, ‘goes on track’ and cannot be stopped – sticking to the example it stays on track -, ‘its success’ produces a perpetrator who becomes a convict, in comparison with it, high accusation success is the negative figure of criminal procedures, the self-justification of the office.*¹² The serious deficiency of this argumentation is that it neglects the uncontrollable human and structural elements. The investigation authority gets to know and finds out past actions immediately and directly, and assesses them immediately.¹³ Its efficiency can be assured with practicing it which, however, bumps into resistance with the hierarchic and normative expectation system of the prosecution which directs activities. That is the seemingly thorough regulation exactly which locks the investigation authority into the stocks of ‘success endeavour’ and, blocking criminal investigation, makes it the playground of the discretionary scope for action of law enforcement. *On the other hand, the pejorative, negative meaning of accusation success based on the ‘weakness’ and compliance of the court, is not relevant as well. It, that is, neglects that the risk of accusation is lower and its possible success is higher in a system where investigation is regulated.(...) In case of a not regulated investigation the risk of accusation – obviously – is higher and, consequently, the rate of its success is lower. The standpoint which ‘accuses’ the high rate of accusation success, neglects that there are not fewer but more criminal procedures because investigations are regulated.*¹⁴ Being regulated cannot increase the rate of accusation success because the success of investigation dissolves in the success of accusation only in theory, otherwise, it has its own success objectives and performance measuring system. The success of accusation can be seen clearly only in the mirror of the success of investigation and reconnaissance, deducing from it, it is not difficult to understand that in case of limited sources, the compulsion of selecting cases appears in all phases of the investigation. It increases the number of selecting cases and of illegal procedures as well, by increasing regulations and by the stress of over-proving. In this way, efficiency will not be assessed in the correspondence of the mutual result factors of the two systems, but much rather in the performance evaluation principles which qualify the work structure of the independent subsystems.

It is also well demonstrated by the considerably different objective figures: namely the rate of investigation success and accusation success. Accusation success¹⁵ is mainly the proof whether the ‘cases of accusation’¹⁶ are suitable for verification, and not the proof of investigation success.¹⁷ The prosecutor helps cases being suitable for accusation by the right of giving orders to do real verifications. *Accusation success is primarily the consequence of the success of the investigation – and only in accordance with this, the representation of accusation. That is, accusation success cannot be regarded a negative category by itself.*¹⁸ To tell the truth, accusation success can only be regarded a negative category when comparing it to low investigation success, if the investigation authority select cases or the diversionary toolbar is out of their reach.

The investigation authority may only reach vital efficiency improvement in case of promoting informal and confidence-based relation with the prosecution which directs the investigation. In other countries the high rate of accusation success is not inevitably the result of the regulation of investigation, as the differentiated judgment of cases may have an important role there, and as a result of it, cases reaching trial are bound to suffer smaller informal selection mechanism before the inquiry phase¹⁹ of investigation. It demonstrates quite well that in Anglo-Saxon countries cases ending in a confession do not reach trial, relieving courts with it.

11 The highest judiciary authority of Hungary, its former name was the Supreme Court.

12 A vád törvényességének vizsgálata. 2013. Összefoglaló Vélemény. Kúria, Büntető Kollégium, Joggyakorlat elemző Csoport. 2013. EL.II.E.1/4. April 2014. p.12.

13 The investigation authority is the first who get into touch with the case and decide on primary measures. The proper penal classification of the action will be a decisive aspect when determining the mode and degree of reaction, and the chance of predictable, successful, effective clearing up in a certain case have a significant impact on it.

14 A vád törvényességének vizsgálata (2014) i.m. p.12.

15 In Hungary the success of accusation is 96-97% .

16 Cases sent to the prosecution from the investigation authority with a proposal of accusation.

17 The success of investigation is the invert of successful and unsuccessful cases which practically depends on the result of cases which have come to the knowledge of the investigation authority, and in which investigation have been ordered. On nation wide level it currently shows a decreasing tendency of 30-40% depending on the certain investigation authority levels.

18 A vád törvényességének vizsgálata (2014). i.m. p.12.

19 See later the application conditions of the Austrian criminal procedure law diversions used by the prosecutor.

The determinant of the relation system is practically the different success mission and partial interdependence, furthermore dependence on each other. The prosecution expect cases of proper quality, which are revealed and investigated, and suitable for accusation, on the other hand, the investigation authority expect fewer other verification tasks and other restrictions, respectively measures deriving from legality worries. Today both subsystems struggle with significant overload, in this way the own diversion action plan of the prosecution – which definitely finds shape in expedited or consensus procedures - does not inevitably work properly because of the overload of the investigation authority, for lack of co-ordinating the operation direction of the two work-organizations.

THE REMEDIES OF EFFICIENCY CRISIS: DIVERSION AND DIFFERENTIATION

The increase of significant burden of cases and the lack of resources urged penal jurisdiction systems to operate filters in the different levels of criminal procedure which let only some parts of cases go further, in this way they release the further elements of the system.²⁰ The first jurisdiction participant filling the part of such a formal²¹ filter is the prosecutor. The Recommendations of the Council of Europe urge that the discretionary authority of the prosecutor must be extended so that cases with less importance should not get to the court, but get stuck at the prosecutor.²² It is not essential, on the contrary in many cases it is not expedient, that a case gets to the court phase. The range of the authority of considering cases is largely determined by the principles of the criminal procedures of the certain states, whether they are based on the principle of legality²³ or on the principle of opportunity.²⁴

Even before the R (87) 18. Recommendation, the dilemmas of jurisdiction were outlined by 1970, which demanded urgent solutions. Kerezi named three main sources of 'crisis':

- 1) experimental crisis: caused by those research results which questioned the efficiency of rehabilitative treatment;
- 2) resource crisis: caused by the increasing number of convicts in penitentiary institutions;
- 3) theoretical crisis: caused by the authorization of using discretion by treatment institutions.²⁵

The well-known management attitude of enterprises offered a solution to the challenges of efficiency, which made its way into the organizational reform of criminal jurisdiction.

The development of management attitude had an effect on four fields of jurisdiction:

- 1) organization development;
- 2) the tasks and functions of institutions;
- 3) appearing efficiency and success viewpoints in the assessment;
- 4) reforming the personnel of criminal jurisdiction organizations.²⁶

In consequence of the new attitude, more and more diversion forms appeared in the criminal procedures of the different legal systems, since these may obviously and significantly reduce the costs of criminal procedures.

Similarly, the double gauge penal politics meant a breakthrough – under the aegis of efficiency – by the 80ies and 90ies, which is the separation of the perpetrators of slight crimes from the perpetrators of serious crimes (significant crimes, qualified cases, **halmazat**, multiple violent recidivous criminals). Both were treated differently, different procedures were added to the two categories. Different alternative punishments can be used in larger numbers against perpetrators of slighter crimes, emphasizing diversion which could reduce not only the work-load of courts, moreover, it was cost efficient, and also had reparation solutions against the participants of the procedure. As *Korinek* said in 2003: '*Against bagatelle criminality it is more expedient to spread the conflict solving practice of alternative sanctions which have more and more civil law elements.*'²⁷

20 Miskolci László (2001): Egy konferencia tanulságai, avagy a magyar büntetőeljárás továbbfejlesztésének az ügyész-e a kulcsszereplője. *Ügyeszek Lapja* Vo.1. p. 20.

21 The investigation authority filter and select with the suspicion and the classification, but it is not a formal or simple diversion.

22 R (87) 18. számú Ajánlás, a büntetőeljárás egyszerűsítéséről, furthermore R (2000) 19. számú Ajánlás

23 In systems based on the principle of legality, the prosecution is obliged to urge that all perpetrators of all crimes will be called to account. In: Bócz Endre (1994): Legálitás, opportunitás és az ügyész diszkrecionális jogköre, *Rendészeti Szemle*, pp.12-18.

24 On the other hand, in systems based on opportunity, authorities have a wide range of discretionary authority, and decides on practical consideration which cases to investigate.

25 Kerezi, Klára (2006): *Kontroll vagy támogatás: az alternatív szankciók dilemmája*. Budapest, CompLex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft. p.208.

26 Kerezi: (2006) i.m. p. 209.

27 Korinek, László (2003): *Tendenciák. Belügyi Szemle*. Vo.1. p.63.

In order to achieve a more efficient activity, it is a requirement that the criminal procedure law assures enough possibility for the crime investigation authority to synchronize its resources. The contradiction deriving from the differences of the activities and operation direction of the investigation authority, is treated completely differently by those European countries which have bigger past of law or more pragmatic attitude. The question, independently from the type of the legal system, shows a connection with the theoretical concern of some main procedural criteria or principles, such as legality, opportunity or the application scope of diversions.

R (95) 12 EUROPEAN COUNCIL RECOMMENDATION ABOUT THE MANAGEMENT OF CRIMINAL JURISDICTION

This significant European Council recommendation deals with the management system of the criminal jurisdiction system from the side of efficiency. The aim of the recommendation is to promote the efficient and successful criminal jurisdiction. With respect to it, the recommendation drafts the managing principles, strategies and procedures of jurisdiction.

The recommendation outlines four models to achieve efficiency and success:

- the *latosensu* 'procedure law' model, which reduces the number of cases, on new criminal-political considerations;
- the *strictosensu* 'procedure law' model, which aims to simplify cases;
- the 'management' model which wishes to realize the most optimal utilization of resources and to increase the performance of the system;
- the 'financial' model, which wishes to achieve the above mentioned aims with assuring financial resources.²⁸

The rationalization aspect of the structural management of the recommendation lies on the appreciation of the significance of the principles as follows:

- Dividing workload inside the organization.
- Managing infrastructure which mainly means geographical and material allocation.
- Managing human resources – efficient management of human resources, training and career system, and optimising the amount of work compared to the personnel.
- Information and communication – outer and inner information management and the methods of keeping contact with citizens.²⁹

The principles of the recommendation mainly have suggestions in connection with management structures in terms of efficiency, in contradiction to the R (87) 18 recommendation which arranges *strictosensu* procedure³⁰ law questions, and which mainly gives opportunity and diversion patterns in order to simplify criminal procedure. Another much earlier European Council Recommendation also declares the fundamental demand of acceleration: 'everything must be done in order to shorten the time needed for decisions in a case.'³¹ This principle corresponds to the European Treaty of Human Rights paragraph 6, point 1, hereinafter Treaty, and in accordance with it, the delay of court equals with refusing jurisdiction.³² Therefore there is a need for revising old legal institutions, and for assuring the adequate number of personnel and equipment.

'WASTED' CHANCE: THE CONCEPT OF THE CURRENTLY EFFEC- TIVE XIX. CRIMINAL PROCEDURE LAW OF 1998

Nearly 20 years ago, in 1994 the Government made the concept of the new criminal procedure law public, in the form of government regulation.³³ In it the government drafted that the main task of investigation is to inform the department of the prosecutor, thus investigation must fundamentally aim to

²⁸ R (95) 12. számú Ajánlás a büntető igazságszolgáltatás irányításáról

²⁹ Nagy, Anita (2007): Eljárást gyorsító rendelkezések a büntetőeljárás bírósági szakaszában (PhD thesis). Miskolc.p.164. (downloaded: 11 June 2014.)

³⁰ Recommendation No. (87)18 of the Committee of Ministers to Member States Concerning the simplification of criminal justice (Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies)

³¹ R (81) 7 számú Ajánlás B/6. pont

³² R (81) 7 számú Ajánlás C/8. elv

³³ 2002/1994.(I.17.) Korm. határozat a büntetőeljárás jog koncepciójáról

clear up the current evidentiary methods, not to put down the proving facts. Except the unrepeatable verification actions, knowledges acquired during evidentiary methods do not have to be written down.

The codification conception wanted to develop such a system of calling to account, in which responsibility is decided at the trial, in respect of the principle of immediacy, and in which the principle of contradiction is more dominated, within it the right of disposal of the parties. The conception determined the aspects of developing the new law in eight points, and one of the points was the enforcement of the principle of function division, clearly defining the tasks of the police, the prosecutor and the judge. Furthermore, besides the dominance of the basic procedure, creating simplified procedures in order to differently judge cases. During investigation, detailed written work may be omitted in case of parts of the cases, because it has no guarantee significance. Judging certain crimes – especially economic crimes – makes it essential to prepare the cases properly for the trial. In those procedures, of course, documentary evidence is dominated and it requires the judge to bring them to the trial with an up to date method.³⁴

The question arises with reason in the process of legislation that how the reform of organizational order relates to the reform of procedure law, which has bigger density. organizational reform was put to the second place, so it is always exposed to the current financial situation, so procedure law is forced to wait for coming into effect.

It was regarded as an evidence that within the order of procedure, in connection with clearing up, establishing, considering and assessing the facts, inquisition and accusation elements must be in balance. *'Another evidence, can be generalized, is that a procedure has two equal phases, and it would not be appropriate if they built on each other or fell behind each other. They would lead to repeated mechanism or needless repetition and both harm criminal jurisdiction. Either because, though the decision will be non-appealable but it will not be satisfying, or because timeliness deteriorates. Therefore the regulation is correct if the basis of the procedure is the facts established during the investigation and accused, but there is no need to give the case back for a supplementary investigation if completion of verification is needed.'*³⁵

The third evidence was connected to the performance of the authority. According to international experience, the procedure form standing on the ground of legality could not be hold for more. Its slight correction was the suspension of the investigation against the accused who cooperated. Though, connected to several other forms of judicial proceedings, opportunity was put into the act, which left the 'broker' position to the prosecutor, so the prosecutor could decide using more simple forms of procedure. At the same time, - deteriorating the main rule – the act assured the opportunity of independent investigation for investigation authorities as well, and gave them the authority of making decisions without the contribution of the prosecutor, without an injury on the principle of legality. On the other hand, such elements were not introduced which would have mixed the elements of the Anglo-Saxon trial with continental law. Instead of the radical reform of the legal institution, the scheduled 'reorganization' of jurisdiction seemed to be the passable road, which was mainly reasoned with the inflexibility of law enforcement.³⁶ Thus seemingly, in spite of a considerable re-regulation, the organization did not follow the notion of the act in all detail. The relation between the criminal investigation departments of the police and the prosecution was not set to the reform, and their organization structure was not reorganized according to the changes of procedure order, which was thanked to the 'fulfilment' of urgent political will. *'If the social-political and professional conditions of organizational reform are not given, such modification of the procedure law is needed which restores harmony between law and its enforcer.'*³⁷

Beyond the fail of organizational changes, it was a vain hope to expect much from formal reliefs. *'I think that the new Criminal Procedure Law rehabilitates criminalistics with the codification of other data obtaining activities of the investigation authority and with the authorization of reports which substitute police records (168.§). It gives a wide-ranging opportunity for the investigation authority to find out – under less formal and bureaucratic circumstances - where, how and what further knowledge can be obtained, and in what respect they help to reconstruct past actions. Nevertheless, in my opinion, the main aim of investigation – especially in case of personal evidences - must be not creating evidences and records of evidence being used directly in court. Wider space must be given for the investigation authority to inform the prosecuting about verification opportunities.'*³⁸

So the endeavour has failed, procedure order has got back to what it was like the act of 1973.I. in many respects.³⁹ During professional debates, however, many experts objected that if concessions were

34 Ügyészégi értesítő. Volume XXX. 1994. Issue 1. p.7.

35 Márki Zoltán (2003): Az új büntetőeljárási törvény és újdonságai. Belügyi Szemle. Issue 7/8. p. 11.

36 Nagy Zsolt- Kovács Judit: A társadalmi szabályok hatása a büntetőeljárási szabályokra a rendszerváltás után. <http://jesz.ajk.elte.hu/kovacs6.html> (downloaded: 10 June 2014.)

37 Korinek, László (2007): A bűnügyi tudományok helyzete. Magyar Tudomány. Volume 12. <http://www.matud.iif.hu/07dec/10.html> (downloaded: 2 June 2014.)

38 Bócz, Endre (2003): Az eljárásjogi törvény és a kriminalisztika. Belügyi Szemle. Issue 7-8. p. 43.

39 Kadlót, Erzsébet (2004): A jogbizonytalanság múzeuma, avagy barangolások az új büntetőeljárási törvény útvesztőiben. Magyar Jog. Issue 1. p. 8.

made in written work – for example, testimonies, evidentiary facts were not written down –, guarantees would suffer damage. Courts has also indicated that in those cases trials will not be well prepared and they cannot prepare for questioning the accused and witnesses. They managed to reach that investigation means not only collecting verification methods but fixing evidentiary facts 'surrounded by guarantees' as well. Unrestricted time frame means that the legislator is definitely generous with the prosecution when prolonging investigation deadlines, and therefore today in almost every non-patterned cases investigation lasts for several months and quite often for years. During that, witnesses are interrogated and confronted several times, several hundred or thousand pages of investigation document are made, making the preparations of the court 'easier'. Such an investigation inevitably orients the court – which conscientiously studies the documents of the investigation - towards accusation. Has it become a more constitutional state with the investigation verification? Recognition during investigation is one-way, approach is determined and subjective, investigation has become full circle and more time-consuming. Recording investigation and verification testimonies is extremely shifted. The judge's interest is to uphold all the testimonies, otherwise the case cannot be easily and simply judged. The primacy of judiciary verification must be increased, and most evidences would happen there. It would have the advantage of shortening the time of procedures and timeliness in procedures would improve.⁴⁰

Bánáti clearly considers the exaggerated subordination to the prosecutor as the weakening of the constitutional state, and the deceleration of procedures is thanked to overvaluing the role of investigation, and he finds the only proper solution if the border of the judiciary main phase is shifted and relocated. It basically leads to the same initial dilemma, which has been sharpened during the debates before the codification and in connection with the conception, and as a result of enforcing interests, it resulted in the supremacy of courts, in the undervaluation of the formal role of investigation, in practice – agreeing with *Bánáti* – in the spreading the dominance of criminal work.

The Achilles heel of the question is rather hidden in increasing the scope for action of the investigation authority, in differentiating procedures on the basis of summary, and in initiating and conducting diversions by the investigation authority. It is also verified that the regulation reducing the scope for action of the former Criminal Procedure Law has been broken through by the practical claim caused by overload, which has brough several former legal institutions back under the pressure of compulsion.⁴¹ However, the differentiated easing solution of minor offence procedure has totally got out from the act, so the investigation authority has been left without summary procedure differentiation based on criminal law.⁴² Because of its efficiency mission and work organization overload, simple and easily investigated cases have bacome primary, its 'hidden' diversionary selection activity has become even stronger.

Seeking the solution, it can be easily found out that the contradiction might be resolved from two directions: on the one hand, widening diversionary opportunities and introducing procedural differentiation based on criminal law. On the other hand, in case of fundamental procedures besides summary procedures, by resolving the contradiction of success of the subsystem, the operation management of the examination work organization should be placed under the prosecution.

INSTEAD OF SUMMARY

Besides the previously explained structural efficiency obstacles, other questions arise in managing the efficiency crisis of criminal investigation as well. Such question, among others, is the 'pyramid'-like model⁴³ which regulates the authority of the investigation authority, and it gives disproportionately a lot of cases to the local investigation authority, overloading its capacity – with a rigid and unjustified allocation – with it. Besides, it also holds the possibility of transferring cases from superior organizations, and the local investigation authority has no chance to protest against it, though, because of its current overload it is not able to investigate at a high standard. On the other hand, the Criminal Procedure Law does not distinguish simple and fundamental procedures, so in case of offence investigations of minor importance, investigation is done with the same compulsion of 'over-assurance' and guarantee. Simple investigations might expressly be differentiated within the scope of cogent independent procedures and with strict enumeration in the Penal Code. Its main reason is that it is complicated and time consuming to investigate crimes and these features can be imagined neither in the duality of offence and crime, nor in the level of the sanction. The basis of the enumeration is made by cases of simple factual and legal judgement falling within the competence of local

40 *Bánáti, János* (2011): *Gyorsítás versus garanciák. A magyar büntetőjogi társaság jubileumi tanulmánykötete.* Budapest-Debrecen-Pécs, pp. 209-219.

41 example: 172/A. § Feljelentés kiegészítése

42 Investigation in minor offence procedures on the basis of the Act 1973. évi I. tv.

43 The structure of the criminal investigation authority of the police is pyramid-schemed, rigid and hierarchic on the base of 25/2013. (VI.24.) BM rendelet.

authorities, and which appear in large numbers. There is a social and legal-political demand on fast and efficient investigations, which requires the fast and successful solution of such cases. The simplifying method of investigations causes the capacity increase of criminal investigation authorities, which will be realized in improving quality and in activating crime prevention.

The diversionary output of cases is similarly weakened that initiating consensual procedure (mediatory procedure) belongs to the authority of the prosecution. The standpoint can be hardly defended, that if there is the intention of consensus from both sides, the suspect has admitted the action, and able to and willing to compensate the damage, finishing the criminal procedure in such a way will depend on the decision of the law enforcer.⁴⁴ Considering the perpetrator, recidivous perpetrators would be given the chance of such a finish not more than once, but in case of multiple or special recidivous perpetrators it would be clearly excluded. The nature of the crime would also be considered by the cogent regulation in form of enumerating concrete chapters. Crimes which appear in relatively large numbers cannot be excluded from this circle, such as rowdyism or crimes related to documents. In those cases, after recompensing the damage for the offended, the prosecutor would order doing social, useful work in the form of diversion if the perpetrator accepts it. If the perpetrator does not perform it within the given deadline because of his own fault, the investigation and the criminal procedure may be done within the scope of plenary suit.

The empirical examination of the researcher who examines the efficiency of investigation has also supported that the procedural forms of differentiated calling to account – thus the simplified procedures – are in positive connection with the efficiency of procedures. Evidentiary rules used during judging cases of simple factual and legal judgement and the confession of the accused contribute to that in 90% of the examined sample, the case would be end with establishing criminal responsibility.⁴⁵

As an epilogue, nothing would be more expressive than quoting professor *Farkas Ákos* as an authentic answer to the initial question of 'why is it important to improve the efficiency of criminal jurisdiction?': 'The bigger the tension is between the expectations against criminal jurisdiction, the sense of security of the society and the performance of the jurisdiction system, the bigger the chance is of emerging a repressive-autoriter criminalpolitics.'⁴⁶

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44 Be.221/A. §(3) The prosecutor may suspend the case for maximum six months and relegates it to mediation ex officio or if the suspect, the defence or the offended party have a motion, in case if

d) judicial proceedings may be omitted with respect to the nature of the crime, to the method of perpetration and to the character of the suspect, or it may be well presumed that the court will appreciate active regret when punishing.

45 Szabóné Nagy, Teréz (1985): A büntető igazságszolgáltatás hatékonysága. KJK. Budapest. p.307.

46 Farkas, Ákos (2002): A falra akasztott nádpálca, avagy a büntető igazságszolgáltatás hatékonyságának korlátai. Osiris Kiadó. p.51.

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