

Polish Adversarial Trial: Analysing the Fairness of New Model of Appeal Proceedings in the Context of Delivered Research

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Abstract : Regarding the nature of the notion of fair trial, one must see the source of the fair trial principle in the following acts of international law: art. 6 of the ECHR of 1950 and art.14 the International Covenant on Civil and Political Rights of 1966, as well as in art. 45 of the Polish Constitution. However, the problem is that the above-mentioned acts essentially apply the principle of a fair trial to the main hearing and not to appeal proceedings. Therefore, the main thesis of the work is to answer the question whether the Polish model of appeal proceedings is fair. The paper presents the problem of fair appeal proceedings in Poland in comparative perspective. Thus, the authors discuss the basic features of English, German and Russian appeal systems. The matter is also analysed in the context of the last reforms of Polish criminal procedure, because since 2013 Polish parliament has significantly changed criminal procedure almost three times: by the Act of 27th September, 2013, the Act of 20th February, 2015 which came into effect on 1st July, 2015 and the Act of 11th March, 2016. The most astonishing is that these three amendments have been varying from each other - changing Polish criminal procedure to more adversarial one and then rejecting all measures just involved in previous acts. Additional intent of the Polish legislator was amending the forms of plea bargaining: conviction of the defendant without trial or voluntary submission to a penalty, which were supposed to become tools allowing accelerating the criminal process and, at the same time, implementing the principle of speedy procedure. The next part of the paper will discuss the matter, how the changes of plea bargaining and the main trial influenced the appellate procedure in Poland. The authors deal with the right to appeal against judgments issued in negotiated case-ending settlements in the light of Art. 2 of Protocol No. 7 to the ECHR and the Polish Constitution. The last part of the presentation will focus on the basic changes in the appeals against judgments issued after the main trial. This part of the paper also presents the results of examination of court files held in the Polish Appeal Courts in Białystok, Łódź and Warsaw. From these considerations it is concluded that the Polish CCP of 1997 in ordinary proceedings basically meets both standards: the standard adopted in Protocol No. 7 of the Convention and the Polish constitutional standard. But the examination of case files shows in particular the following phenomena: low effectiveness of appeals and growing stability of the challenged judgments of district courts, extensive duration of appeal proceedings and narrow scope of evidence proceedings before the appellate courts. On the other hand, limitations of the right to appeal against the judgments issued in consensual modes of criminal proceedings justify the fear that such final judgments may violate the principle of criminal accurate response or the principle of material truth.

Keywords : adversarial trial, appeal, ECHR, England, evidence, fair trial, Germany, Polish criminal procedure, reform, Russia

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