

Description for the general public in English

In the research project a question will be posed: how to associate institutions in criminal procedure in order to achieve an internal consistency a model of criminal procedure. An attempt will be made to present coherent criteria of this consistency. Every model of criminal procedure can be perceived as a jigsaw puzzle. It consists of elements: procedural solutions, institutions and principles. If a model is constructed of elements that constitute a consistent entity, removing or adding elements from outside may disrupt this entity and cause that it will not be functioning properly. It should be ensured that the elements will be coherent and compatible. In the research project an analysis will be conducted how certain (chosen) elements of criminal procedure (institutions, solutions and principles) influence each other and what are the consequences of their coexistence, as well as whether their coexistence do not negate or disrupt their proper functioning or maybe whether adding a certain solution would improve functioning of other institutions.

The analysis of internal consistence of a model of criminal procedure is indispensable in order to decide whether to adopt a certain solution (e.g. known in another legal system) and what will be the consequences of such a transplant for the rest of the model of criminal procedure. In the time of numerous and radical changes in the model of criminal procedure in Poland it is necessary to analyze which criminal procedure institutions should and which should not coexist. This research project can be also treated as a contribution to search for an „optimal” model of criminal procedure. As a matter of fact every legal system is searching for such a model. We could pessimistically observe that an eternal state of reform and a process of transplanting institutions from other legal systems are a result of continuous discontent and a conviction about a permanent crisis in the justice system. Optimistically we could however conclude that this process is a reflection of a search for a „golden measure” – a perfect model of criminal procedure which would balance the interest of the accused and victims with efficiency and accuracy of penal reaction. However, every time this state seems to be achieved – it escapes as criminal procedure has to keep up with the changing society values and morality and with the requirements set up by the supranational sources of legislation.

The research will be carried on the basis of comparative criminal procedural law – on the basis of different solutions existing in chosen states. Solutions adopted in three different models of criminal procedure will be examined: as an example of adversarial model the systems of the United States, England, Wales and Ireland will be analyzed. In order to present solutions typical for a model of tempered adversality the systems of criminal procedure in Poland and Germany will be presented and to present solutions characteristic for increased adversality – systems of Italy and Poland between the 1st of July 2015 and 15 April 2016. It will be analyzed which factors make some institutions work better among certain other legal solutions: e.g. whether placing the burden of introducing evidence into trial on parties should work more efficiently if there are no files of a case, or the court should receive files prepared by a prosecutor only or maybe by both parties. Another question which can be posed, by way of example, is whether placing this burden on the parties will result in inability to establish the true course of events and establishing the material truth. Obviously, all these questions will be systematically organized and described according to a strict scheme in order to avoid chaos and fortuitousness in research.

The result of this project should be establishing certain universal criteria which should explain how a model of criminal procedure can function in a coherent and integral way. It will also be an attempt to explain why two or more procedural solution could, should or should not coexist in a certain legal environment and in a given system of law. It will also present an analysis of the consequences of introducing a certain legal institution into a model of criminal procedure for other solutions existing in this model.