

1. Research Project Objectives

The aim of the project is to determine whether the new appeal measure (called “the complaint”) introduced to Polish criminal procedure by the amendment of the Code of Criminal Procedure of 11 March 2016 with binding force as from 15 April 2016 will actually accelerate criminal proceedings and reduce the number of judgments of appellate courts setting aside judgments of first instance courts. This was the reason behind the introduction of the complaint against appellate court judgment to Chapter 55a of the CCP. However, the preliminary analysis of the regulations concerning the new remedy leads to the research hypothesis that it may prolong criminal proceedings and increase their costs. The second research hypothesis, closely related to the first one, is the following: the new appeal measure is not indispensable in order to decrease the number of judgments of the appellate courts setting aside the first instance judgments. The latter aim is secured by the new wording of Article 437 § 2 of the CCP which contains closed catalogue of grounds for setting aside the first instance judgment. The project’s purpose is to verify both research hypotheses and to elaborate *de lege ferenda* proposals on the basis of the conclusions derived from the research study.

2. Research methodology

The complaint regulated in Chapter 55a of the CCP may be used to challenge only the judgments of the appellate courts setting aside the first instance judgments and remitting the case for reconsideration. The exclusive competence to examine the complaint was assigned to the Supreme Court. Pursuant to Article 539a § 3 of the CCP the complaint may be filed solely due to violation of Article 437 of the CCP or due to infringements listed in Article 439 § 1 of the CCP. It can be expected that the greatest risk of abuse by the appellate courts of grounds for setting aside the first instance judgment and remitting the case for reconsideration will concern the ground indicated in Article 437 § 2 *in fine* of the CCP, i.e. “the need to conduct judicial process *de novo* in its entirety”. For this reason the research will focus on examination how this ground for setting aside the first instance judgment is understood in the jurisprudence of the Supreme Court issued in cases concerning the complaint and in the case-law of the appellate courts. Therefore the study (in this respect) will cover:

- 1) all complaints examined by the Supreme Court as from 15 April 2016 until 31 December 2018;
- 2) judgments of the Lublin Court of Appeal and regional courts of the Lublin appellate region setting aside the first instance judgments and remitting the case for reconsideration due to the need to conduct the judicial process *de novo* in its entirety, issued between 15 April 2016 and 31 December 2018, which were not subject to the complaint brought to the Supreme Court. Due to intertemporal rules, the research will concern only cases initiated by indictments submitted to courts after 30 June 2015.

The study will also cover the evaluation of the average length of re-examination of cases by the first instance courts following the judgment of the appellate courts in the above mention period of time as well as the average length of examination of the complaints by the Supreme Court.

Research will be conducted in two ways. Two parallel studies will cover: 1) theoretical analysis of legal provisions concerning the complaint to the Supreme Court and grounds for setting aside the first instance judgment due to the need to conduct the judicial process *de novo* in its entirety (Article 437 § 2 *in fine* of the CCP, and 2) the analysis of files of cases initiated by the complaint and cases in which appellate courts acted as “cassation courts” and remitted the case for reconsideration but in which the complaint was not submitted to the Supreme Court. The research will be conducted by the co-researches on the basis of two questionnaires: the first one which will concern cases initiated by the complaint brought to the Supreme Court and the second one concerning judgments of the appellate courts setting aside the first instance judgments but not challenged by the complaint.

3. Expected impact of the research project on the development of science, civilization and society

Results of the research shall allow for assessment whether the appellate courts apply extensive interpretation of the ground for setting aside the judgment indicated in Article 437 § 2 *in fine* of the CCP in comparison to the interpretation of the same ground applied by the Supreme Court in the course of examination of the complaint. This will allow to determine whether the complaint is an indispensable remedy for securing the proper application by the appellate courts of grounds for setting aside the first instance judgment. The research should also allow to determine whether the proceedings in which the case was reconsidered by the first instance court were longer than proceedings in which the complaint was accepted by the Supreme Court. Results of the research shall allow for *de lege ferenda* proposals concerning the most suitable model of acceleration of the appeal stage of the proceedings. They will be published in English since remedies similar to the complaint are not known in other European legal systems.