

## **Direct effect of EU Directives in the criminal process: between the effectiveness of EU procedural safeguards and the national procedural autonomy**

The progressing process of integration of Member States within the EU is not without significant impact on criminal procedural law. The inclusion in the Lisbon Treaty of an express legal basis conferring on the EU competence to adopt minimum standards on the criminal procedure (Article 82(2) TFEU) has permanently changed the reality of the functioning of the EU criminal justice system. Adopted on this basis, a set of EU directives designed to strengthen procedural safeguards (*inter alia* interpretation and translation, access to a lawyer, children's rights, victim's rights) imposes the approximation of the legislation of the Member States in this matter, since the directive is binding as to the result to be achieved (Article 288(3) TFEU). This is particularly important as the lack of effective harmonisation means that the threshold condition for the further-reaching objective of mutual recognition of judgments in criminal matters is not met, undermining the effectiveness of state cooperation itself and mutual trust within the EU (Article 82 TFEU). One can therefore conclude that building and developing an EU-wide legally binding standards to be met in all Member States for the protection of individual rights in criminal proceedings (and consequently cooperation in criminal matters, in particular, mutual recognition) would not be possible without two phenomena of EU law – the EU directive as a secondary legal act and the principle of direct effect. The mechanism intended to guarantee the effectiveness of EU law is simple in concept – if a directive is not correctly transposed into national law, an individual is entitled to invoke the rights conferred by that directive in proceedings before a domestic court. However, the meeting of the prerequisites of direct effect established in the case-law by provisions of a directive constitutes only a minimum condition (requirement) for its applicability in national proceedings. The actual effectiveness of the procedural rights conferred by the directive depends on the domestic regulations in force, in particular those determining the type of proceedings, their stage and concerning their course.

Consequently, the obligation to ensure the effectiveness of EU law, through its implementation, falls on the courts and other criminal procedural authorities. However, this is far from easy as the principle of direct effect is essentially jurisprudential and doctrinal in nature. The directive was not a legal act in the area of the former Third Pillar and, although it has been present in the area of freedom, security and justice for more than 10 years, the problem of application of its directly effective provisions in the criminal procedural field has still not received the comprehensive examination it deserves. Hence, whereas the shortcomings of transposition are visible, it is extremely difficult to find examples of the direct effect of EU directives in the practice of Polish criminal justice. In some sense, the direct effect of the EU directives in Polish criminal proceedings resembles the yeti – everyone has heard of it, but no one has seen a real one. In order to clarify any possible doubts and to pave the way, the planned research is intended to examine and determine the mechanism of the direct effect of the EU directives in the field of the Polish criminal process. The additional purpose is to formulate practical conclusions for the courts (and other competent procedural authorities in the criminal process) regarding the various possible forms and implications of the direct effect of EU directives in criminal procedure, to serve as a guide in the practice of law application. The research also intends to draw conclusions about the desired directions of further amendments in Polish criminal procedural law.

An essential distinguishing feature of the proposed research is the complexity of the analysis of the application of directly effective provisions of EU directives in criminal proceedings. Firstly, reconstruction of the currently developed *acquis* in terms of criteria and conditions of the direct effect of EU directives with particular emphasis on the specificity of the criminal procedure will be conducted. Then, through the prism of the existing provisions of the directives on procedural rights, a certain typology will be developed, which will allow identifying a test to be applied when examining the provisions of EU directives, in order to verify whether given provisions are capable of direct effect. Subsequently, the results of the previous stage will be used to determine the optimal methods (operating model) of application of the directly effective provisions of the EU directives in Polish criminal proceedings. Lastly, the findings of the previous two stages will be confronted with the Polish criminal procedural regulations currently in force and the practice of the Polish criminal justice system, in order to identify transposition shortcomings and possible, optimal ways of filling the identified gaps in the practice of criminal procedural law application. To enrich the research perspective, a comparative analysis of normative solutions and case-law in criminal matters in other selected Member States will be carried out, especially with a similar model of criminal procedure to the Polish one.

The most important expected results of the research are the presentation of optimal procedural methods of application of the directly effective provisions of the EU directives in criminal proceedings (development of operating model), as well as relevant practical proposals about the desired directions of further amendments for the Polish legislator.